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6–24–04 Thursday
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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB74

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, gives notice that no adverse comments were received regarding the direct final rule amending its regulations to update the seismic safety requirements of the agency, and confirms the effective date of the direct final rule.

DATES: The direct final rule published in the **Federal Register** on April 30, 2004, (69 FR 23641) was effective on June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of 7 CFR Part 1792 codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds provided or guaranteed by RUS or RTB, or when obtained through a lien accommodation or subordination approved by RUS or RTB.

The Executive Order requires all Federal agencies to ensure that any new building which is leased for Federal uses or purchased or constructed with Federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

According to a recent study commissioned by the ICSSC, the model codes and standards that are equivalent to the 1997 NEHRP Recommended Provisions are the 2000 International Building Code and the ASCE 7–98 Minimum Design Loads for Buildings and Other Structures. These codes will be added to the list of codes equivalent to the 1994 or 1997 NEHRP Recommended Provisions. In addition, clarification is added to the acknowledgment.

Confirmation of Effective Date

This is to confirm the effective date of June 14, 2004, for the direct final rule, 7 CFR 1792, Seismic Safety, published in the **Federal Register** on April 30, 2004.

Dated: June 18, 2004.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 04–14323 Filed 6–23–04; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

19 CFR Part 24

[CBP Dec. 04–19]

RIN 1651–AA59

Overtime Compensation and Premium Pay for Customs Officers

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. In addition, a conforming change is made to the definition of "immigration officer." These revisions are necessary to reflect recent changes in the functions and organizational structure of U.S. Customs and Border Protection consistent with the Homeland Security Act of 2002.

DATES: *Effective Date:* July 24, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Financial Analyst, Office of Field Operations, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

Section 24.16 of the Customs Regulations (19 CFR 24.16) sets forth the procedure that U.S. Customs and Border Protection (CBP) must follow to furnish overtime and premium pay to customs officers, as required by the Customs Officer Pay Reform Act, 19 U.S.C. 267 ("COPRA"). The statutory language at 19 U.S.C. 267(e)(1) provides that overtime compensation and premium pay may be paid to an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Since the enactment of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*), these regulations are now promulgated by the Secretary of Homeland Security.

The enabling regulation, specifically 19 CFR 24.16(b)(7), Customs Regulations, currently defines those eligible for COPRA coverage by specifying only four position

descriptions: "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," and "Supervisory Canine Enforcement Officer." This definition does not encompass the expanded border security and inspection functions brought into CBP by the government reorganization consistent with the Homeland Security Act of 2002. (See Homeland Security Act and the President's Reorganization Plan of November 25, 2002, as amended by the President's January 30, 2003 modification.)

When CBP was established on March 1, 2003, it brought together some 18,000 inspection personnel from different agencies and disciplines at the nation's ports of entry, with the priority mission of preventing terrorists and terrorist weapons from entering the United States. At present, three different overtime and premium pay systems are required to administer overtime compensation and premium pay for inspection personnel.

Proposal

On April 7, 2004, CBP published a document in the **Federal Register** (69 FR 18296) proposing to amend the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. If this proposed regulatory change to the definition of "customs officer" in 19 CFR and a conforming change to the definition of "immigration officer" in 8 CFR is adopted, the Department of Homeland Security (DHS) would make COPRA (the current overtime and premium pay system for customs officers) the overtime and premium pay system for the other inspectors working in CBP, in effect creating a single overtime and premium pay system instead of the three different systems that are now in place. This change would eliminate the inequities and disparities in pay and scheduling under the three different systems.

A new position, Customs and Border Protection Officer (CBP Officer), was recently established to merge the expanded border and inspection functions formerly performed within three separate agencies: The former Immigration and Naturalization Service of the Department of Justice, the former United States Customs Service of the Department of the Treasury, and the Animal and Plant Health Inspection Service of the Department of Agriculture. The CBP Officer is the principal front line officer carrying out the priority mission and the traditional customs, immigration and some agriculture inspection functions which are now the responsibility of CBP. The establishment of the new position enables the agency to perform its mission more efficiently and to provide better protection and service to the public at the ports of entry. In addition, CBP established the CBP Agriculture Specialist position with responsibilities for agriculture inspection of passengers and cargo as well as analysis of agriculture imports. In order to assure that these officers meet their responsibilities to the public, they are required to be available for overtime as a condition of employment.

To enable CBP to furnish overtime compensation and premium pay for these new positions, it proposed to include "Customs and Border Protection Officer" and related positions within the definition of "customs officer" in 19 CFR 24.16(b)(7). It is noted that the continued usage of the term "customs officer" does not reflect any reorganization within DHS. Rather, it occurs because it reflects the pertinent statutory authority, 19 U.S.C. 267, regarding overtime compensation and premium pay. Including the "Customs and Border Protection Officer" within the definition of "customs officer" in 19 CFR 24.16(b)(7) does not affect the authority of a "Customs and Border Protection Officer" to engage in customs, immigration, and agriculture inspection functions. Instead, it is a key step to implementing the "one face at the border" initiative by harmonizing the pay systems for the personnel who perform those functions.

Furthermore, CBP proposed to include a technical change in 8 CFR 103.1 to authorize a customs officer, as defined in 19 CFR 24.16(b)(7), to perform immigration inspection functions, without a separate designation. Currently, customs officers perform such immigration functions pursuant to a designation as an immigration officer.

Finally, it is important to note that CBP's proposed rule was tangentially related but separate and distinct from the proposed rule published on February 20, 2004 in the **Federal Register** by DHS and the Office of Personnel Management regarding the establishment of a new human capital system for DHS. The two proposed rules addressed different human resources issues. The proposed rule regarding COPRA expands the eligibility of certain employees to receive overtime compensation and premium pay under 19 U.S.C. 267; however, it has no impact on setting any employee's basic rate of pay. The human capital rule, on the other hand, proposes to create a new system for setting basic pay within DHS.

Discussion of Comments

CBP solicited written comments on its proposal regarding overtime compensation and premium pay. It received a total of 8 comments in response to the April 7, 2004 notice of proposed rulemaking. What follows is a review of and CBP's response to the issues and questions that were presented by the comments concerning the proposed regulations.

Five of eight respondents were specifically in favor of the consolidation and offered suggestions and clarifications on the proposal. The remaining three comments, though not negative, offered suggestions for further improvements to the implementation of this change. None of the commenters were opposed to the conversion into COPRA; however, they raised questions regarding the implementation of the conversion. To facilitate the conversion, CBP plans to post further guidance on its internet page *(http://www.cbp.gov)* upon publication of this final rule.

Comment: Several commenters suggested that Agriculture Technicians should also be covered by COPRA based on the nature of the work that they perform.

CBP Response: The "one face at the border" concept addressed the work and pay of the legacy Customs Inspector, the Immigration Inspector and the Agriculture Inspector occupations. Similar to the inspectional occupations, there are three legacy technician occupations. A review of the work performed by these employees is planned. After the review is complete, a determination will be made as to whether overtime changes are necessary. In the interim, Agriculture Technicians will continue to receive overtime compensation as they have in the past.

Comment: Some CBP Agriculture Specialists (formerly Agriculture Inspectors) commented that, while they were generally in favor of being included under COPRA, they did not appreciate that commuting time would be limited to one hour (paid at three times the hourly rate). They felt that, due to the specialized nature of their work, they would be required to incur longer commutes than CBP Officers.

CBP Response: The rules for commuting time compensation under COPRA are set forth in 19 CFR 24.16(e)(3). COPRA provides an employee three hours of base pay for an overtime assignment involving a commute regardless of the length of time needed for the commute. CBP believes that this provision is fair and administratively efficient. Furthermore,

the majority of commuting instances for CBP Officers and CBP Agriculture Specialists fall within the three-hour timeframe.

Comment: A commenter inquired as to the effective date for the COPRA conversion.

CBP Response: The effective date of the regulation will be 30 days after publication of this final rule in the **Federal Register**. Employees will be covered thereafter at the earliest date practicable dependent on administrative contingencies. In the interest of fairness and equity, the change will be implemented for all CBP Officers and CBP Agriculture Specialists at the same time. This implementation is an important step for the agency to move forward in unifying the workforce.

Comment: One commenter was concerned that the COPRA overtime cap would be applied, in mid-year, to the affected employees. Further, concern was expressed about the $25,000 limit on overtime earnings under COPRA which is lower than the $30,000 cap that currently applies to CBP employees.

CBP Response: For those converting to COPRA during the current fiscal year, the COPRA overtime cap will only be applicable for the remainder of the fiscal year. Overtime earned by CBP Agriculture Specialists and Immigration Inspectors prior to conversion to COPRA is limited to the CBP $30,000 cap. The $25,000 cap under COPRA is an annual cap but it will only apply to earnings during the period between conversion to COPRA and the end of the fiscal year (approximately three months). Therefore, it is not expected that individual overtime earnings will be impacted.

The $25,000 limit on overtime and premiums under COPRA is established by statute. In prior years, specific appropriations language increased this limit to $30,000. Action is underway to reestablish the COPRA limit at $30,000.

Comment: Two commenters asked about the effect of the annuity provisions of COPRA and whether these provisions could be applied retroactively to past overtime earnings under a different pay system.

CBP Response: As originally noted in the Notice of Proposed Rulemaking, COPRA provides up to one half of the statutory cap in calculating retirement pay. However, this provision is applicable only to COPRA earnings. Earnings under other overtime systems would be creditable toward an annuity only if those systems also included such a provision. Consequently, employees moving to COPRA will be unable to "grandfather" in previous overtime earnings toward retirement if their former system did not provide for such credit.

Comment: Two comments expressed concern about Senior Immigration Inspectors (SRI) receiving only COPRA pay in lieu of Administratively Uncontrollable Overtime (AUO). One of these comments spoke specifically to the perceived similarities between the Border Patrol Agent and SRI positions, both of whom currently earn AUO.

CBP Response: After a review of the requirements of the SRI position, it was determined that the nature of the work falls within the duties defined for the CBP Officer occupation. (It should be noted that although Border Patrol Agents and SRIs currently receive AUO, the two occupations have different functions and operate in different environments. SRIs work at ports of entry and handle inspections as well as specialized enforcement functions. Border Patrol Agents operate between the ports and focus on interdicting, tracking, deterring, and apprehending illegal immigrants.) The work performed by SRIs will continue in CBP Officers whose position description includes specialized law enforcement responsibilities as well as inspection duties. Just as the CBP Officer occupation will also include officers who specialize in training (CBP Officer, Training), or handling canines (CBP Officer, K–9), the specialized functions currently performed by the SRIs will be performed by a CBP Officer with the requisite specialized skills. Due to the exclusive nature of COPRA (employees covered by COPRA are not eligible for other forms of overtime) and the amount of inspectional work required within the duties of this position, all work beyond the normal work day will be paid through the provisions of COPRA. It should be noted that of the entire inspectional workforce in CBP (over 18,000), approximately 250 are SRIs. Only about half of these SRIs earn AUO, with the others earning other forms of inspectional overtime.

Adoption of Proposal as Final Rule

In view of the foregoing, following careful consideration of the comments received and upon further review of the matter, CBP has concluded that the proposed regulations should be adopted as a final rule.

Executive Order 12866

This rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS assessed the impacts of this rulemaking and its alternatives, as presented in the April 7, 2004 notice of proposed rulemaking. CBP did not receive contradictory information pertaining to the preliminary regulatory impact analysis published with the proposed rule. Accordingly, CBP is restating those findings in final form below.

Impact on User Fees

At present, three user fees, supplemented by appropriations, fund the three different overtime pay systems that, in turn, govern the three traditional inspection disciplines. CBP will assure that there will be no impact on fees or service levels. CBP will track and account by activity how the fees are spent to ensure the proper transfer of immigration and agriculture funds to reimburse the Customs User Fee Account to cover costs incurred for immigration and agriculture overtime services. CBP plans to use the Cost Management Information System (CMIS) to track expenses by activity. CMIS is an activity-based cost accounting system that has been audited and endorsed by the General Accounting Office. Employees use established activity codes to track their time through the Customs Time and Attendance System. Fee payers that are currently providing the traditional user fee funding for customs, immigration and agriculture inspection services will continue to pay and benefit as they have in the past.

Impact on Employees

As noted, when CBP was established on March 1, 2003, it brought together inspection personnel from three different agencies (Agriculture, Immigration and Naturalization Service, and Customs). Inspectors in each of these workforces earn overtime and premium pay based on three different statutes. In order to establish "one face at the border," CBP is creating a new frontline officer corps to unify and integrate the inspectional work of these three legacy agencies. The unified occupations require a single compensation system. Today, while the officers are still classified in the three legacy occupations, they are paid under three sets of overtime rules, which has resulted in disparate earnings for virtually the same work. In addition, the three separate occupations and overtime rules have created significant administrative inefficiencies, as well as work assignment and payroll problems. The impact of this rule on the inspectional workforce is that officers who perform the same functions at the

ports of entry will be paid overtime and premium pay under the same computational rules.

This rule does not address the number of overtime hours the officers will be required to work, which varies by individual, by port, and by other factors such as workload fluctuations, staffing levels at a particular location, and changes to the national threat alert level. Instead, this rule adds currently classified immigration and agriculture officers (approximately 8,000 inspectors) to the COPRA system, and thus affects their rates of overtime and premium pay for actual hours worked. (Over 10,000 inspectors, all former Customs Service, are already covered by COPRA.)

The impact of this rule will be that, for some work schedules, certain employees will earn more, while for other work schedules, they will earn less. For example, current agriculture inspectors who work overtime on a weekday will earn "double time" under COPRA instead of "time-and-a-half" under their current system. On the other hand, these same inspectors may earn less under COPRA than under their current system for work on a Sunday. The chart below provides additional examples of how the three overtime systems differ when comparing hours worked. On the whole, the impact of this rule on the overall earnings for the same or similar number of hours worked is expected to be minimal. While some features of COPRA are less generous than those of other systems, there are compensating features that are more generous. Thus, the differences between COPRA and the other systems balance out in terms of earnings for hours worked. However, it is noted that this rule affects only one aspect of overtime and premium pay earnings of employees. Other factors, such as the total number of hours worked and when the overtime is worked, impact the aggregate earnings of officers on an annual basis. The explanation provided herein, both in text and in the accompanying Table, represent a good faith effort to explain the potential impact of this rule on the employees. However, due to the complexities of the different systems and the differing work schedules of individual inspectors, the exact impact of the proposed rule on a specific employee is speculative and incapable of exact computation. The difficulty of comparing these systems was highlighted in the November 2001 GAO Report titled *Customs and INS—Comparison of Officer's Pay* (GAO–02–21). The GAO Report compared two of these systems and concluded that "straightforward and generalizable comparisons in relation to these pay provisions are infeasible."

CBP does not anticipate that the amendment will have an impact on private entities because the changes pertain to the agency's internal operating procedures and because overtime compensation will be funded with existing user fees the expenditure of which will be subject to normal accounting within the government. However, DHS has determined this action is a "significant" regulatory action within the meaning of Executive Order 12866 because it may be perceived to relate to the revisions of the Federal employment system DHS is presently considering under the Homeland Security Act. This rule is separate from those revisions, which do not address overtime compensation.

Similarities and Differences Between COPRA and Other Overtime Systems

There are a number of similarities and differences between COPRA and the overtime systems under which legacy immigration and agriculture inspectors have been covered.

The following chart compares the major provisions of the three systems. The chart contains a high-level overview of the practices established by legacy agencies in their implementation of their overtime systems. It is not intended to contain all the details relevant to determining the rate of pay in specific situations.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Basic pay	General Schedule pay with locality pay adjustment based on geographic area.	Same as Customs	Same as Customs.
Basic hourly rate	General Schedule hourly rate with locality pay included.	Same as Customs	Same as Customs.
Basic workweek	7-day	6-day (Monday–Saturday)	6-day (Monday–Saturday).
Basic overtime	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 2 times the basic hourly rate—a 100-percent premium (COPRA).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled workweek. Applies to inspection overtime hours worked between 5:00 p.m. and 8:00 a.m., Monday–Saturday and anytime on Sunday or a holiday. Overtime pay is 4 hours pay for each additional 2 hours or fraction thereof (1931 Act).	Compensation in addition to basic pay for work in excess of the 40-hour week or work in excess of 8 hours in a day. Overtime pay is 1.5 times the basic hourly rate not to exceed a GS–10.1 pay for overtime Monday through Saturday (Title 5).
Other overtime	Not applicable	Compensation in addition to basic pay for (1) overtime inspection work between 8:00 a.m. and 5:00 p.m. Monday–Saturday and (2) non-inspection overtime outside these hours. Overtime is paid at 1.5 times the basic hourly rate (50- percent premium.) Maximum rate is based on salary for GS–10, step 1—(the 1945 Act, FEPA).	Not applicable.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS—Continued

Pay provision/term	Customs inspectors	Immigration inspectors	Agriculture inspectors
Premium pay	Overall term referring to extra compensation or "premium" paid for work performed on Sunday, holiday, or at night. (The term does not cover overtime pay.).	In addition to Sunday, holiday, and nigh pay, INS includes overtime in its definition of premium pay.	Overtime term referring to extra compensation or "premium" paid for work performed on holiday or at night. (The term does not cover overtime pay.)
Sunday pay	Premium paid in addition to basic hourly rate for Sunday work. Sunday pay is 1.5 times the basic hourly rate (50-percent premium). Sunday can be a regularly scheduled workday. Officers are paid for actual hours worked.	Compensation for Sunday work. Sunday pay is 2-days' pay for 8 or fewer hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime. Immigration inspectors are paid based on minimum periods of time worked.	Compensation for Sunday work. Sunday pay is 2 times the hourly rate for actual hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime.
Holiday pay	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).	Premium paid in addition to basic hourly rate for hourly rate for work on a holiday. Two days' pay for 8 or fewer hours worked (Mon.–Sat.), in addition to basic pay.	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly (100-percent premium).
Night pay (night differential)	Premium paid in addition to basic hourly rate for night work. Night differential pay rates differ based on the time or shift hours worked. Officers paid 1.15 or 1.2 times the basic hourly rate (15- or 20-percent differential). "Majority of hours" provision applies depending on actual hours worked.	Premium paid in addition to basic hourly rate for night work. Officers are paid 10-percent premium or "differential" for hours worked between 6 p.m. and 6 a.m.	Same as Immigration.
Night pay on leave	Customs inspectors are paid night differential for work assigned on night shifts when they are on annual, sick, or other leave.	Immigration inspectors are paid limited night differential (if less than 8 hours per pay period) for work assigned to night shifts when they are on leave. INS does not pay night differential to officers on vacation (extended annual leave).	Same as Immigration.
Commute Compensation	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is 3 times the basic hourly rate.	Not authorized	Compensation for returning to work (commute) to perform an overtime work perform an assignment. Commute compensation is based on local rates. It is generally between 1 to 3 times the basic hourly rate.
Callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate.	See rollback	Additional overtime paid for returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate for Sundays but capped at GS–10.1 pay for overtime work between Monday and Saturday.
Rollback	See callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Rollback is 2-hours' additional pay at basic overtime rate.	See callback.
Foreign language proficiency Award.	Premium paid for proficiency and use of foreign language while performing inspection duties. Foreign language award is between 3 and 5 percent of basic pay.	Not authorized	Not authorized.
Retirement annuity (overtime earnings included).	Customs includes overtime earnings (up to ½ the Statutory Cap) in calculating retirement pay.	Not authorized	Not authorized.
Alternate work schedule	Regularly scheduled work during a pay period based on a 9- or 10-hour workday totaling 80 hours per pay period (every 2 weeks)..	Same as Customs	Same as Customs.

Increased Efficiency

The adoption of a single overtime system in lieu of the three overtime systems now in place provides greater efficiencies in scheduling, monitoring and tracking overtime. Thus, CBP anticipates no net costs from this regulation, either to the public at large or to user fee payers interested in maintaining levels of services and facilitation. In fact, CBP anticipates savings both to the government and to the public as the systems for paying officers for overtime and clearing goods and passengers are made more effective and efficient.

Alternatives Considered

A key objective in establishing DHS was to unify border security functions at the nation's ports of entry. In DHS, the three separate agencies whose employees previously worked side by side at these ports of entry are now united. They are unified not only in the same organization, with the same management chain of command—they are also united around a common priority mission. In addition, these employees, with appropriate cross-training, will merge to perform the traditional missions that came together at the ports of entry from the legacy agencies of U.S. Customs, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service. Thus, a well-trained and well-integrated workforce serves as a "force multiplier" in carrying out both the priority mission and the traditional missions of CBP. However, in order to integrate the workforce, a common overtime and premium pay system is required.

In order to implement the new frontline positions of CBP Officer and CBP Agriculture Specialist, it is necessary and appropriate to have the incumbents of these positions work under the same overtime system. That is, it is not feasible to pay incumbents of the same position under different overtime systems. Notwithstanding the feasibility, it is also not fair to employees to pay them differently when they are working side by side, performing the same type of work. Thus, the alternative of maintaining three overtime systems was not considered viable under the Secretary's "one face at the border" initiative.

CBP undertook a review of available options for the overtime system and selected COPRA as the best available compensation system for the new positions because of the advantages it offers management, employees, and the traveling public. It is the most modern of the three systems, implemented only 10 years ago; in contrast, the statutes governing the other legacy systems were each enacted over 50 years ago, before the exponential growth of international trade and travel. COPRA more closely aligns pay to actual work performed, enabling the agency to more efficiently manage overtime. It establishes a 7-day workweek under which Sunday is not considered an overtime day, thereby providing greater flexibility in managing work assignments since officers can be regularly scheduled for any day of the week based on operational needs. Further, it is not statutorily permissible to use the overtime systems governing the immigration (1931 Act) and agriculture (Pub. L. 107–171) inspectors to cover all inspectional activities performed by these new unified officer positions.

CBP considered, but rejected, the option of converting all inspectors to a totally new overtime and premium pay system. In order to do so, CBP would have needed to seek authorizing legislation. As a result, it is not certain whether, or when, appropriate legislation would have been enacted. This option would have involved unacceptable delays in the implementation of the "one face at the border" initiative.

For the employee, COPRA offers better premium pay rates than the other systems for employees who work night shifts (as outlined in the comparison chart above). Another significant advantage over the other systems is that COPRA provides a retirement benefit. Under the statute, up to 50% of the statutory cap (Pub. L. 103–66) on overtime earnings is credited as base pay for retirement purposes, yielding a higher annuity that is more aligned with the officer's annual earnings. COPRA also authorizes payment of a foreign language proficiency award (up to 5% of base pay) to officers who maintain and use their language skills as part of their job duties.

Regulatory Flexibility Act

DHS has determined that, as this rule applies only internally to CBP employees, it will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates

These regulations will not result in the expenditure by State, local, or tribal governments of more than $100 million annually. Thus, no written assessment of unfunded mandates is required.

E.O. 13132, Federalism

DHS has determined these regulations will not have Federalism implications because they will apply only to Federal agencies and employees. The regulations will not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

E.O. 12988, Civil Justice Reform

This proposed rule is consistent with the requirements of E.O. 12988. Among other things, the regulation would not preempt, repeal or modify any federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

Paperwork Reduction Act

The regulations do not involve any information collection from any member of the public.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Immigration, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, User fees, Wages.

Amendments to the Regulations

■ For the reasons stated above, chapter I of Title 8 and chapter I of Title 19 of the Code of Federal Regulations are amended as set forth below.

TITLE 8, CHAPTER I

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552A; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

* * * * *

■ 2. In § 103.1, paragraph (a) is republished and paragraph (b) is amended by adding a sentence at the end to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under

the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* * * * Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

TITLE 19, CHAPTER I

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 3. The general authority citation for part 24 is revised and the specific authority citation for § 24.16 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section § 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

* * * * *

■ 4. In § 24.16, paragraph (b)(7) is revised to read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

* * * * *

(b) * * *

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," "Supervisory Canine Enforcement Officer," "Customs and Border Protection Officer," "Supervisory Customs and Border Protection Officer," "Customs and Border Protection Agriculture Specialist," or "Supervisory Customs and Border Protection Agriculture Specialist."

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–14415 Filed 6–23–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–17–AD; Amendment 39–13662; AD 2004–12–03]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires inspection of the main landing gear's (MLG) separation bolt harness, corrective actions if necessary, and replacement of the MLG's separation bolt harness. For certain airplanes, this AD also requires modification of the MLG separation bolt's electrical harness. This action is necessary to prevent failure of the MLG to extend during use of the emergency backup system. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2004.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17077). That action proposed to require inspection of the main landing gear's (MLG) separation bolt harness, corrective actions if necessary, and replacement of the MLG's separation bolt harness. For certain airplanes, that action also proposed to require modification of the MLG separation bolt's electrical harness.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 224 airplanes of U.S. registry will be affected by this AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $65 per work hour.

For certain model—	Action—	Number of airplanes affected—	Work hours—	Parts cost—	Total cost—
SAAB SF340A and SAAB 340B series airplaines.	Inspection of the harnesses	224	4	(none)	$58,240, or $260 per airplane.
SAAB SF340A and SAAB 340B series airplanes.	Replacement of the harnesses ...	224	12	$2,100	$645,120, or $2,880 per airplane.

For certain model—	Action—	Number of airplanes affected—	Work hours—	Parts cost—	Total cost—
SAAB SF340A series airplanes ..	Modification of the harnesses	56	2	$1,475	$89,880, or $1,604 per airplane.
SAAB SF340A series airplanes ..	Modification of the harnesses	40	1	(none)	$2,600, or $65 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:

2004–12–03 Saab Aircraft AB: Amendment 39–13662. Docket 2003–NM–17–AD.

Applicability: Model SAAB SF340A series airplanes with serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes with serial numbers 160 through 459 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) to extend during use of the emergency backup system, accomplish the following:

Inspection and Corrective Actions

(a) Within 3 months after the effective date of this AD, perform an inspection of the MLG's separation bolt harness for broken wires and corroded connectors, and any applicable corrective actions by doing all of the actions in the Accomplishment Instructions of Saab Service Bulletin (SB) 340–32–127, dated December 18, 2002; or Revision 01, dated January 23, 2003. Perform the inspection/corrective actions in accordance with the service bulletin. Perform any applicable corrective actions before further flight.

Replacement

(b) Within 12 months after the effective date of this AD, replace the separation bolt harnesses of the MLGs with new separation bolt harnesses in accordance with the Accomplishment Instructions of Saab SB 340–32–128, dated March 28, 2003.

(c) The inspection required by paragraph (a) of this AD is not required for airplanes on which the replacement required by paragraph (b) of this AD is done within the compliance time specified in paragraph (a) of this AD.

Concurrent Service Bulletins

(d) For Model SAAB SF340A series airplanes: Prior to or concurrent with accomplishment of paragraph (b) of this AD, do the actions specified in Table 1 of this AD, as applicable.

TABLE 1.—PRIOR/CONCURRENT ACTIONS

For airplanes with serial numbers—	Accomplish all actions associated with—	According to the accomplishment instructions of—
004 through 108 inclusive	Modifying the MLG separation bolt's electrical harness.	Saab SB 340–32–041, Revision 01, dated October 9, 1987.
004 through 078 inclusive	Modifying the MLG separation bolt's electrical harness.	Saab SB 340–32–028, Revision 01, dated November 25, 1986.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) The actions shall be done in accordance with the following Saab service bulletins, as applicable:

TABLE 2.—INCORPORATION BY REFERENCE

Service bulletin	Revision level	Date
340–32–028	01	November 25, 1986.

TABLE 2.—INCORPORATION BY REFERENCE—Continued

Service bulletin	Revision level	Date
340–32–041	01	October 9, 1987.
340–32–127	Original	December 18, 2002.
340–32–127	01	January 23, 2003.
340–32–128	Original	March 28, 2003.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in Swedish airworthiness directives 1–186, dated December 20, 2002, and 1–189, dated April 1, 2003.

Effective Date

(g) This amendment becomes effective on July 29, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12820 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–149–AD; Amendment 39–13682; AD 2004–13–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200B, and –200F series airplanes. This action requires initial and repetitive inspections to find discrepancies in the upper and lower skins of the fuselage lap joints, and repair if necessary. This action is necessary to find and fix such discrepancies, which could result in sudden fracture and failure of a lap joint and rapid in-flight decompression of the airplane fuselage. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; 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 747–100, –200B, and –200F series airplanes was published in the **Federal Register** on July 2, 2003 (68 FR 39483). That action proposed to require initial and repetitive inspections to find discrepancies in the upper and lower skins of the fuselage lap joints, and repair if necessary.

Comments

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

Request To Withdraw the Notice of Proposed Rulemaking

One commenter states that the proposed rule, as it applies to Model 747 series airplanes, is unnecessary, will not improve safety, and imposes an undue burden on airplane operators. The commenter suggests that there is a tenuous connection between the 737 incident and the 747 fleet. The commenter further states that Model 747 series airplanes have a stronger design than Model 737 series airplanes; that Model 747 series airplanes have existing modifications and modification requirements; and that Model 747 series airplanes are better maintained by U.S. operators. In addition, this commenter recently completed "full modification" of eighteen upper lobe lap joints on an affected Model 747 series airplane and found no evidence of scratches.

The FAA infers from these comments that the commenter is requesting that the proposed rule be withdrawn. We do not agree. To date, no reports of cracks and scratches in the subject area have been found on Model 747 series airplanes. In consideration of this fact, we specified a longer compliance time in this AD for Model 747 series airplanes than the compliance time for Model 737 series airplanes specified in AD 2000–17–04, amendment 39–11878 (65 FR 51750, August 25, 2002). We chose repetitive intervals of 72 months for the required low frequency eddy current (LFEC) inspections in order to minimize the effect on the operators while still providing an adequate level of safety. In addition, we determined that the possibility of scratches that initiate during manufacture exists for any cold-bonded adhesive skin panel, and that there have been numerous reports of corrosion on cold bonded skin panels in Boeing Model 747 series airplanes. Corrosion has also been reported on Boeing Model 747 series airplanes on which full modification has previously been accomplished per AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990); and AD 94–12–09 amendment 39–8937 (59 FR 30285, June 13, 1994). For these reasons, it is both warranted and necessary to issue this AD.

Remove Certain Inspection Requirements

The same commenter requests that the LFEC inspections for corrosion at the upper fastener rows should not be required at locations that have had "full modifications" accomplished per Boeing Alert Service Bulletin 747–53A2267, dated March 28, 1986

(required by AD 94–17–01, amendment 39–8996 (59 FR 41653, August 15, 1994)), or Boeing Service Bulletin 747–53–2307, Revision 1, dated August 27, 1992 (required by AD 94–12–09). The commenter states that the "full modifications" are sufficient to detect and remove damage, and that the post-modification inspections required by AD 94–12–09 and the SSID AD (AD 94–15–18, amendment 39–8989, 59 FR 41233, August 11, 1994)) provide an equivalent level of safety in detecting subsequent damage.

We do not agree that the external LFEC inspections should not be required for operators that have accomplished the modifications required by Boeing Alert Service Bulletin 747–53A2267 or Boeing Service Bulletin 747–53–2307. We have received reports from the manufacturer of corrosion on airplanes on which the full modification had been accomplished. While the re-sealing process included in the full modification does provide some level of improvement in surface protection, it does not provide enough of an improvement to prevent corrosion.

We also do not agree that the post-modification inspections required by AD 94–12–09 and the SSID AD (AD 94–15–18) provide an equivalent level of safety. The post-modification external high frequency eddy current (HFEC) inspections required by AD 94–12–09 and AD 94–17–01 address cracks only in the upper row on the surface of the upper skin. The external LFEC inspections required by this AD address corrosion beneath the surface, at the interface between the upper and lower skins. We have not changed the final rule regarding these issues.

Include Alternative Method of Compliance (AMOC) for Repaired Airplanes

The same commenter suggests that the proposed AD include specific instructions for conducting inspections where existing repairs may interfere with or obstruct the required inspections. The commenter also suggests that these potential obstructions will result in an exorbitant number of requests for AMOCs, and that the industry and the FAA are ill equipped to handle the number of requests. Further, the manufacturer has informed the commenter that a revision to Boeing Alert Service Bulletin 747–53A2463 (which is referenced in this AD as the appropriate source of service information for the required actions) is being prepared to include instructions to account for existing repairs.

While we agree that it would be preferable to cite specific instructions for inspections at repaired areas, we cannot include such instructions until we receive the revised service bulletin from the manufacturer. At that time, we will review the revised service bulletin and, upon our approval of the new requirements, we will consider further rulemaking. We have not changed the final rule regarding this issue.

Conclusion

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

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 86 airplanes of the affected design in the worldwide fleet. The FAA estimates that 55 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 5,334 work hours per airplane to accomplish the inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $19,069,050, or $346,710 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:

2004–13–02 Boeing: Amendment 39–13682. Docket 2002–NM–149–AD.

Applicability: Model 747–100, –200B, and –200F series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2463, dated March 7, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies in the upper and lower skins of the fuselage lap joints, which could result in sudden fracture and failure of a lap joint and rapid in-flight decompression of the airplane fuselage, accomplish the following:

Initial and Repetitive Inspections

(a) Do the applicable (initial and repetitive) inspections as specified in Figures 2 through 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002, to find discrepancies (cracking and corrosion) in the upper and lower skins of the fuselage lap joints. Do the inspections at the applicable times specified in Figure 1 of the

Accomplishment Instructions of the alert service bulletin, in accordance with the alert service bulletin; except that where Figure 1 specifies a compliance time of "after the release date of this service bulletin," this AD requires a compliance time of "after the effective date of this AD." Where Figure 1 specifies a compliance time of "flight cycles" this AD requires a compliance time of "total flight cycles."

(b) Where Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002, specifies that the manufacturer may be contacted for certain inspection procedures, inspect per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

Adjustments to Compliance Time: Cabin Differential Pressure

(c) For the purposes of calculating the compliance threshold and repetitive interval for the inspections required by paragraph (a) of this AD: Flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure flight cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane. No fleet-averaging of cabin pressure is allowed.

Repair

(d) Before further flight, repair any discrepancy (cracking or corrosion) found during any inspection required by paragraph (a) of this AD, per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002. If any discrepancy is found and the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2463, including Appendices A, B, and C, dated March 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on July 29, 2004.

Issued in Renton, Washington, on June 9, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13866 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18231; Directorate Identifier 2004–NM–94–AD; Amendment 39–13683; AD 2004–05–12 R1]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD currently requires repetitive inspections of the left and right engine throttle control gearboxes for wear, and corrective action if necessary. This AD limits the applicability of the existing AD, extends the compliance time for the initial inspection, and clarifies the reporting requirement. This AD is prompted by numerous failures of the engine throttle control gearbox, some of which resulted in an in-flight engine shutdown. We are issuing this AD to prevent excessive wear of the gearboxes and subsequent movement or jamming of the engine throttle; movement of the throttle towards the idle position brings it close to the fuel shut-off position, which could result in an in-flight engine shutdown.

DATES: Effective July 9, 2004.

The incorporation by reference of Bombardier Service Bulletin 601R–76–019, Revision "A," dated February 19, 2004, listed in the AD, is approved by the Director of the Federal Register as of July 9, 2004.

On March 25, 2004 (69 FR 11293, March 10, 2004), the Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003.

We must receive any comments on this AD by August 23, 2004.

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

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

You can get the service information identified in this AD from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You may examine this information 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.*

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Examining the Dockets

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11581; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: On February 25, 2004, we issued AD 2004–05–12, amendment 39–13507 (69 FR 11293, March 10, 2004). That AD applies to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires repetitive inspections of the left and right engine throttle control gearboxes for wear, and corrective action if necessary. That AD was prompted by numerous failures of the engine throttle control gearbox, some of which resulted in an in-flight engine shutdown. The actions specified in that AD are intended to prevent excessive wear of the gearboxes and subsequent movement or jamming of the engine throttle; movement of the throttle towards the idle position brings it close to the fuel shut-off position, which could result in an in-flight engine shutdown.

New Relevant Service Information

Since we issued that AD, Bombardier has issued Service Bulletin 601R–76–019, Revision 'A,' dated February 19, 2004. (AD 2004–05–12 refers to the original issue of that service bulletin, dated August 21, 2003, as the appropriate source of service information to use when you do the required actions.) The procedures in Revision 'A' of the service bulletin are similar to those in the original issue. Therefore, we have revised paragraphs (a), (b), and (c) of this AD to allow you to use Revision 'A' of the service bulletin when you do the required actions. We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition.

Comments

We provided the public the opportunity to submit comments in response to AD 2004–05–12. We have considered the comments that were submitted.

Request To Limit Applicability

One commenter states that the difference in applicability between AD 2004–05–12 and Canadian airworthiness directive CF–2004–01, dated January 21, 2004, which is the Canadian airworthiness directive that parallels AD 2004–05–12, is unnecessary and could confuse operators. (This difference is noted in the "Differences Among Canadian Airworthiness Directive, Bombardier Service Bulletin, and This AD" section of AD 2004–05–12.) The commenter would like the applicability of our AD to include only serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive. The commenter explains that one of the airplanes included in the applicability of the U.S. AD but not the Canadian airworthiness directive has been destroyed and another is a prototype used for testing, is not eligible for a standard Certificate of Airworthiness, and can't be sold to a commercial operator.

We agree that making the applicability statement of our AD the same as that of the Canadian airworthiness directive will eliminate confusion and will not omit any affected airplanes. We have limited the applicability of this AD to airplanes having serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive.

Request To Extend Compliance Time

Several commenters request that we revise or eliminate the calendar time portion of the compliance time in paragraph (a) of AD 2004–05–12 (which was specified as "Within 1,000 flight hours or 90 days after the effective date of this AD, whichever is first"). The commenters assert that this compliance time will not significantly improve safety and, for airplanes with a low use rate, may force operators to do the required actions much earlier than the actions need to be done to ensure safety. One commenter states that many operators use their airplanes at a rate of only about 50 flight hours per week, and the 90-day compliance time would force operators to modify components that still have adequate wear margin. Two commenters note that tying the compliance time to calendar time is not appropriate because gearbox wear is not time dependent, only flight-cycle dependent. One commenter also points out that the 90-day compliance time may not allow operators sufficient time to plan for corrective actions and to procure parts, so airplanes could be grounded due to lack of parts.

We agree. After further review of the use rates of the affected airplanes, we find that an acceptable compliance time is the later of 1,000 flight hours or 90 days after the effective date of the AD. We determine that extending the compliance time in this way will ensure that worn gearboxes are removed from the airplane before the wear extends beyond specified limits, and won't adversely affect safety. We revised paragraph (a) of this AD accordingly.

Request To Include Subject Part Numbers

One commenter requests that AD 2004–05–12 include the part numbers of the current gearbox, as listed in the referenced Bombardier service bulletin. The commenter notes that this would prevent the inspection requirements of the AD from being incorrectly applied to gearboxes of a new design certificated in the future.

We agree. If we specify the subject part numbers in this AD, you will not have to inspect new gearbox designs (with new part numbers) certificated in the future, and we will not have to revise this AD or approve an Alternative Method of Compliance for this AD. We added the subject part numbers to paragraph (a) of this AD.

Request To Clarify Reporting Requirement

One commenter requests that we revise the reporting requirement specified in paragraph (c) of AD 2004–05–12 to clarify what information should be reported to the manufacturer. The commenter notes that paragraph (c) specifies to send a report of gearbox wear to the manufacturer, but also refers to specific paragraphs in the Accomplishment Instructions of the service bulletin that instruct operators to report incorrect bolt and screw torque values to the manufacturer. The commenter states that it isn't clear what data the AD requires to be sent to the manufacturer.

We agree to clarify the reporting requirement. Our intent is for you to report data on gearbox wear, not necessarily the incorrect torque values mentioned in the service bulletin. The reference to the service bulletin was intended to indicate only the fax number to which you should send the report. For clarification, we revised paragraph (c) of this AD to remove the references to the service bulletin, and to

specify what information you must report and where you must send the report. We have also revised paragraph (c) of this AD to add certain boilerplate regulatory language that was omitted from AD 2004–05–12.

Request for Credit for Inspections Done Previously

One commenter requests that we provide credit for inspections already done on affected airplanes. The commenter states that it inspected several of its airplanes before we issued the AD. The commenter states that not giving credit for previous inspections would require it to inspect the airplane again, possibly at a much shorter interval than the 1,000-flight-hour repeat interval required by the existing AD.

We find that no change to the AD is necessary to meet the intent of the commenter's request. We always give credit for work done previously, by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously." If you've already done the initial inspection, you must do the next inspection within the repetitive interval required by the AD. We have not changed the final rule regarding this issue.

Request To Correct Terminology

Two commenters note that a certain term used in the statement of the unsafe condition throughout AD 2004–05–12 is incorrect. Where the unsafe condition refers to "fuel shut-off switch," the correct term is "fuel shut-off position." This is the term used in the referenced service information and the airplane maintenance manuals. We agree with the commenters and have corrected the term in this AD.

Request To Revise Note 1

One commenter requests that we revise Note 1 of AD 2004–05–12 to refer to Trans Digm, Inc., AeroControlex Group, Service Bulletin 2100140–007–76–04, dated July 22, 2003. (Note 2 of AD 2004–05–12 refers to that service bulletin as an additional source of service information.) The commenter is concerned that Note 1 does not adequately define the necessary inspection. The commenter states that the inspection procedures in the Trans Digm, Inc., AeroControlex Group, service bulletin are more thorough.

We do not agree that any change is necessary. Paragraph (a) of AD 2004–05–12 specifies "doing all the actions per Part A, paragraphs A., B., and C.(1) through C.(4), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019 * * *." The inspection definition in Note 1 of the AD is a standard inspection definition that we use in all AD actions that specify a detailed inspection. Note 1 does not relieve the requirement, specified in paragraph (a) of this AD, to accomplish the inspection per the Accomplishment Instructions of the service bulletin. We made no change related to this comment.

Request To Revise Paragraph (b)

One commenter requests that we revise paragraph (b) of AD 2004–05–12 to delete paragraphs (b)(1), (b)(2), and (b)(3). The commenter is concerned that repeating the verbiage of the service bulletin may confuse operators. The commenter notes that the procedures are fully described in the service bulletin, so there is no need to repeat the procedure in our AD.

We do not agree. We acknowledge that paragraph (b) could have been written at a higher level with less detail. However, the information specified in those paragraphs is technically accurate, and paragraph (b) requires that the applicable actions in paragraphs (b)(1), (b)(2), and (b)(3) must be done per the Accomplishment Instructions of the referenced service bulletin. We have made no change related to this comment.

FAA's Determination and Requirements of This AD

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

Therefore, this AD is being issued to revise AD 2004–05–12. We are revising that AD to continue to require repetitive inspections of the left and right engine throttle control gearboxes for wear, and corrective action if necessary. This AD limits the applicability of the existing AD, extends the compliance time for the initial inspection, and clarifies the reporting requirement. This AD requires you to use the Bombardier service information described previously to perform these actions, except as discussed under "Difference Between the AD and Service Information." This AD also requires that operators report the inspection results to Bombardier.

Difference Between the AD and Service Information

Although the Bombardier service information recommends returning discrepant gearboxes to the parts manufacturer, this AD does not contain that requirement.

Interim Action

We consider this AD to be interim action. The reports that you are required to submit will enable the manufacturer to obtain better insight into the nature, cause, and extent of the wear of the engine throttle control gearbox, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18231; Directorate Identifier 2004–NM–94–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13507 (69 FR 11293, March 10, 2004) and adding the following new AD:

2004–05–12 R1 Bombardier, Inc. (Formerly Canadair): Amendment 39–13683. Docket No. FAA–2004–18231; Directorate Identifier 2004–NM–94–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive wear of the gearboxes and subsequent movement or jamming of the engine throttle (movement of the throttle towards the idle position brings it close to the fuel shut-off position, which could result in an in-flight engine shutdown), accomplish the following:

Repetitive Inspections

(a) Within 1,000 flight hours or 90 days after March 25, 2004 (the effective date AD 2004–05–12, amendment 39–13507), whichever is later: Do a detailed inspection for wear of the left and right engine throttle control gearboxes having part number (P/N) 2100140–005 or 2100140–007 by doing all the actions per Part A, paragraphs A., B., and C.(1) through C.(4), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; or Revision "A," dated February 19, 2004. If the wear value is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of the service bulletin, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

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

Corrective Action

(b) If the wear value found during any inspection required by paragraph (a) of this AD is not the same as that specified Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; or Revision "A," dated February 19, 2004: Do the applicable actions required by paragraph (b)(1), (b)(2), or (b)(3) of this AD, at the time specified, per the Accomplishment Instructions of the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 flight hours.

(1) If the wear value on one or both of the gearboxes is the same as that specified in Part A, paragraph B.(5), of the Accomplishment Instructions of the service bulletin: Before further flight, replace the affected gearbox with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin.

(2) If the wear value on both the left and right gearboxes is the same as that specified in Part A, paragraph B.(6), of the Accomplishment Instructions of the service bulletin: Before further flight, replace the gearbox having the higher wear value with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin. Within 1,000 flight hours after doing the replacement, replace the other gearbox.

(3) If the wear value on only one gearbox is the same as that specified in Part A, paragraph B.(7), and the wear value on the other gearbox is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of the service bulletin: Within 1,000 flight hours after the inspection, replace the gearbox with the wear value that is the same as that specified in Part A, paragraph B.(7), with a new or serviceable gearbox. Do the replacement by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin.

Additional Service Information

Note 2: Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; and Revision "A," dated February 19, 2004; reference Trans Digm, Inc., AeroControlex Group, Service Bulletin 2100140–007–76–04, dated July 22, 2003, as an additional source of service information for accomplishment of the inspections and replacement.

Reporting Requirement

(c) Within 10 days after doing the inspection required by paragraph (a) of this AD, or within 10 days after March 25, 2004, whichever is later: Submit a report of gearbox wear to Bombardier Aerospace, In-Service Engineering (Engine Group); fax (514) 855–7708. The report must include the airplane serial number, the number of flight hours on the airplane, and the number of flight hours on each gearbox (if different than the number of flight hours on the airplane). Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(e) You must use Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; or Bombardier Service Bulletin 601R–76–019, Revision "A," dated February 19, 2004; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R–76–019, Revision "A," dated February 19, 2004; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; on March 25, 2004 (69 FR 11293, March 10, 2004).

(3) You can get copies of the documents from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2004–01, dated January 21, 2004.

Effective Date

(f) This amendment becomes effective on July 9, 2004.

Issued in Renton, Washington, on June 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–13915 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–235–AD; Amendment 39–13685; AD 2004–13–04]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–SHERPA series airplanes, that requires a repetitive detailed inspection of the stub wing shear decks for corrosion and abnormal wear on and around the retaining pin in the main landing gear (MLG) forward pintle pin; and corrective action, if necessary. This AD also provides an optional terminating action. These actions are necessary to detect and correct corrosion and abnormal wear to the top and bottom shear decks, which could result in damage to the MLG and consequent reduced controllability of the airplane on landing. This action is intended to address the identified unsafe condition.

DATES: Effective July 29, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 29, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. 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: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; 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 Short Brothers Model SD3–SHERPA series airplanes was published in the **Federal Register** on April 15, 2004 (69 FR 19956). That action proposed to require a repetitive detailed inspection of the stub wing shear decks for corrosion and abnormal wear on and around the retaining pin in the main landing gear (MLG) forward pintle pin; and corrective action, if necessary. That action also proposed an optional terminating action.

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

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

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,520, or $845 per airplane, per inspection.

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.

If an operator chooses to accomplish the optional terminating action rather than continue the repetitive detailed inspections, it will take about 12 work hours per stub wing (2 stub wings per airplane) to accomplish the replacement of the retaining pin and circlip with a new retaining pin with castellated nut and cotter pin, at an average labor rate of $65 per work hour. Required parts will cost about $2,400 per stub wing. Based on these figures, we estimate the cost of this optional terminating action to be $6,360 per airplane.

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:

2004–13–04 Short Brothers PLC: Amendment 39–13685. Docket 2003–NM–235–AD.

Applicability: Model SD3–SHERPA series airplanes, except those that have embodied Short Brothers Service Bulletin SD3 SHERPA–32–4, dated July 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and abnormal wear to the top and bottom shear decks, which could result in damage to the main landing gear (MLG) and consequent reduced controllability of the airplane on landing, accomplish the following:

Repetitive Inspections

(a) Within 6 months after the effective date of this AD, and continuing at intervals not to exceed 6 months, perform a detailed inspection of the stub wing shear decks to detect corrosion and/or abnormal wear according to the Accomplishment Instructions of Short Brothers Service Bulletin SD3 SHERPA–53–6, dated May 2003.

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."

Repair

(b) If any corrosion and/or abnormal wear is discovered during the inspection required by paragraph (a) of this AD, before further flight, perform corrective actions in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD3 SHERPA–53–6, dated May 2003, Part B and/or Part C as applicable; except where the service bulletin specifies that operators should contact the manufacturer for disposition of certain repair conditions, before further flight, repair those conditions per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the UK–CAA (or its delegated agent).

Optional Terminating Action

(c) Performance of the optional terminating action, which includes replacement of the retaining pin and circlip with a new retaining pin, washer, castellated nut, and cotter pin, per the Accomplishment Instructions of Short Brothers Service Bulletin SD3 SHERPA–32–4, dated July 2003, terminates the requirement for repetitive detailed inspections specified in paragraph (a) of this AD.

No Reporting Requirement

(d) Operators should note that, although Short Brothers Service Bulletin SD3 SHERPA–32–4, dated May 2003, describes procedures for reporting inspection results to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Short Brothers Service Bulletin SD3 SHERPA–53–6, dated May 2003; and Short Brothers Service Bulletin SD3 SHERPA–32–4, dated July 2003; 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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected 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*.

Note 2: The subject of this AD is addressed in British airworthiness directive 004–05–2003, dated August 2003.

Effective Date

(g) This amendment becomes effective on July 29, 2004.

Issued in Renton, Washington, on June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14179 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–063]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations and request for comment.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary 90-day deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the Brightman Street Bridge, at mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts. Under this temporary 90-day deviation the draw need not open for pleasure craft traffic from 7 a.m. to 9:30 a.m. and from 4 p.m. to 6:30 p.m., Monday through Friday, July 1, 2004 through September 28, 2004. The draw shall open for vessels engaged in commercial service on signal at all times. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90-days and solicit comment from the public.

DATES: This deviation is effective from July 1, 2004 through September 28, 2004. Comments must reach the Coast Guard on or before October 15, 2004.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts, 02110, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

Request for Comments

We encourage you to participate in this test deviation by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–063), indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period in deciding whether to propose a permanent schedule change.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Brightman Street Bridge has a vertical clearance in the closed position of 27 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.619(b).

The Town of Somerset, Massachusetts, and the Massachusetts State Police asked the Coast Guard and the bridge owner Massachusetts Highway Department for assistance with vehicular traffic delays resulting form unregulated bridge openings at the Brightman Street Bridge.

The Coast Guard in response to the above request is temporarily changing the drawbridge operation regulations for 90-days to test an alternate drawbridge operation schedule.

Under this temporary 90-day deviation the bridge need not open for pleasure craft traffic from 7 a.m. to 9:30 a.m. and from 4 p.m. to 6:30 p.m., Monday through Friday, July 1, 2004 through September 28, 2004. Commercial vessel traffic shall be passed on signal at all times.

This action is expected to provide relief to the vehicular traffic delays while still meeting the reasonable needs of navigation.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: June 10, 2004.

John L. Grenier,

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

[FR Doc. 04–14370 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–033]

RIN 1625–AA09

Drawbridge Operation Regulations: Hutchinson River, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the Pelham Parkway Bridge, mile 0.4, across the Hutchinson River, New York. This temporary final rule allows the bridge owner to require a thirty-minute advance notice for bridge openings between 6 a.m. and 7 p.m. from July 25, 2004 through May 1, 2005. This action is necessary to facilitate bridge painting operations.

DATES: This rule is effective from July 25, 2004 through May 1, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–033) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 4, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Hutchinson River, New York, in the **Federal Register** (69 FR 24548). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Pelham Parkway Bridge has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water in the closed position. The existing operating regulations listed at 33 CFR § 117.793(a), requires the draw to open on signal at all times.

The owner of the bridge, New York City Department of Transportation, requested a thirty-minute advance notice for bridge openings at the Pelham Parkway Bridge between 6 a.m. and 7 p.m. from July 1, 2004 through May 1, 2005, to facilitate bridge painting operations at the bridge.

This temporary final rule is necessary to facilitate the safe removal of construction personnel and equipment from the bridge after a request to open the bridge is received.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. We have changed the effective date for this final rule from July 1, 2004, to July 25, 2004. This action was necessary to allow this rulemaking to become effective in not less than 30 days after publication in the **Federal Register**. The notice of proposed rulemaking was delayed and not published until May 4, 2004, necessitating this change in effective date.

Regulatory Evaluation

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

This conclusion is based on the fact that the bridge will continue to open on signal for vessel traffic provided the thirty-minute notice is given.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open on signal for vessel traffic provided the thirty-minute notice is given.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From July 25, 2004 through May 1, 2005, § 117.793 is temporarily amended by adding a new paragraph (d) to read as follows:

§ 117.793 Hutchinson River (Eastchester Creek).

* * * * *

(d) The draw of the of the Pelham Parkway (Shore Road) Bridge, at mile 0.4, shall open on signal; except that from July 25, 2004 through May 1, 2005, between 6 a.m. to 7 p.m. each day, the draw shall open after at least a thirty-minute advance notice is given by calling the New York City Highway Radio (Hotline) Room.

Dated: June 10, 2004.

John L. Grenier,

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

[FR Doc. 04–14381 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–106]

RIN 1625–AA00

Security Zone; Georgetown Channel, Potomac River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone on the waters of the upper Potomac river. This action is necessary to provide for the security of an anticipated 400,000 visitors to the annual July 4th celebration on the National Mall in Washington, DC. The security zone will allow for control of a designated area of the river and safeguard spectators and participants.

DATES: This rule is effective from 12:01 a.m. (local) through 11:59 p.m. (local) on July 4, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–106 and are available for inspection or copying at Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Building 70, Baltimore, Maryland 21226, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Ports and Waterways Department, Port Safety and Security Branch, Phone: (410) 576–2513 or 2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Delaying this regulation to allow for public notice and comment would be contrary to public interest. It is in the public interest to appropriately regulate the movement of vessels on the Upper Potomac River in order to improve security for this significant event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This temporary zone is of short duration and is necessary to provide for the security in a designated area. To delay the effective date would be contrary to the public interest. In addition, advance notice will be made via marine information broadcast and local media.

Background and Purpose

On July 4, 2004, an anticipated 400,000 visitors will attend the annual July 4th celebration on the National Mall in Washington, D.C. This security zone is necessary to manage the large number of vessels on the waterway and will allow for control of the designated area and safeguard spectators and participants.

Discussion of Rule

This rule designates a portion of the Potomac River from the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge complex) to the Theodore Roosevelt Memorial Bridge and all water in between as a security zone. Vessels may be allowed to enter this area, but may only do so with the permission of the Captain of the Port or his designated representatives. The Captain of the Port will make additional notifications via maritime advisories.

Regulatory Evaluation

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

Although this rule creates a security zone, the effects of this rule will not be significant due to the limited duration of the regulation, the limited size of the designated area, and the extensive notifications that will be made to the maritime community via marine information broadcasts and local media. In addition, at the direction of the Captain of the Port or his designated representatives, mariners will be allowed to transit the designated area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the Georgetown Channel, Potomac River from 12:01 a.m. to 11:59 p.m. on July 4, 2004.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than twenty-four hours. Although the security zone will apply to the entire width of the river, traffic will be allowed to pass through the zone at the direction of the Coast Guard Captain of the Port or his designated representatives. Additionally, the Coast Guard will make notifications via marine advisories so that mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities desiring assistance with understanding this rulemaking can receive assistance by contacting the Coast Guard using the information under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rulemaking is a security zone less than one week in duration. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12:01 a.m. to 11:59 p.m. on July 4, 2004, add temporary § 165.T05–106 to read as follows:

§ 165.T05–106 Security zone; Georgetown Channel, Potomac River, Washington, DC.

(a) *Location.* The following area is a security zone: The waters of the Georgetown Channel of the Potomac River, from the surface to the bottom, between the Long Railroad Bridge (the most eastern bridge of the 5-span, Fourteenth Street Bridge complex) to the Theodore Roosevelt Memorial Bridge, including the waters of the Georgetown Channel Tidal Basin.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels entering into or passing within the zone must follow the directions of the Captain of the Port, Baltimore, Maryland, or his designated representatives. Designates representatives include any Coast Guard commissioned, warrant, or petty officer.

(3) The operator of any vessel within this zone shall:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or his designated representative, and

(ii) Proceed as directed by the Captain of the Port or his designated representative.

(iii) If permitted to transit the zone by the Captain of the Port or his designated representative, proceed at the minimum speed necessary to maintain a safe course while within the zone.

(iv) Persons desiring to contact the Captain of the Port may do so at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz).

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective Date.* The zone is effective from 12:01 a.m. (local) to 11:59 p.m. (local) on July 4, 2004.

Dated: June 17, 2004.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 04–14371 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–002]

RIN 1625–AA00

Safety Zone Regulations; Seafair Blue Angels Air Show Performance, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulations for a safety zone on the waters of Lake Washington, Seattle, Washington. The Coast Guard is taking this action to safeguard participants and spectators from the safety hazards associated with the Seafair Blue Angels Air Show Performance. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective July 26, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–04–002 and are available for inspection or copying at Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 10, 2004, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone Regulations; Seafair Blue Angels Air Show Performance, Lake Washington, WA in the **Federal Register** (69 FR 6219). No comments were received by the Coast Guard regarding this proposed rule. A public hearing was not requested and none was held.

Background and Purpose

The Coast Guard has, in the past, issued temporary final rules establishing safety zones for the Blue Angels Seafair Air Show Performance (*see, e.g.*, 68 FR 44888, July 31, 2003, [CGD13–03–023], 33 CFR 165T.13–014). The Blue Angels air show has become a permanent part of the Seafair events and takes place during the Seafair unlimited hydroplane races. The air show poses several dangers to the public including excessive noise and objects falling from any accidents by low flying aircraft. Permanent regulations already exist which restrict general navigation during the Seafair unlimited hydroplane races (33 CFR 100.1301). This Final rule complements the existing regulations contained in 33 CFR 100.1301, which are intended to ensure public safety during Seafair.

Discussion of Comments and Changes

No comments were received by the Coast Guard as a result of the request for comments in our NPRM.

Regulatory Evaluation

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

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

This expectation is based on the fact that the regulated area established by the regulation would encompass an area near the middle of Lake Washington, not frequented by commercial navigation. The safety zone is also of limited time and duration. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the Blue Angels to fly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Lake Washington during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. The environmental analysis and Categorical Exclusion Determination are available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1319 to read as follows:

§ 165.1319 Safety Zone Regulations, Seafair Blue Angels Air Show Performance, Seattle, WA.

(a) *Enforcement period.* This section will be enforced annually during the last week in July and the first two weeks of August from 8 a.m. until 4 p.m., each day during the event. The event will be one week or less in duration. The specific dates during this time frame will be published in the **Federal Register**.

(b) *Location.* The following is a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: Near the termination of Roanoke Way 47°35′44″ N, 122°14′47″ W; thence to 47°35′48″ N, 122°15′45″ W; thence to 47°36′02.1″ N, 122°15′50.2″ W; thence to 47°35′56.6″ N, 122°16′29.2″ W; thence to 47°35′42″ N, 122°16′24″ W; thence to the east side of the entrance to the west highrise of the Interstate 90 bridge; thence westerly along the south side of the bridge to the shoreline on the western terminus of the bridge; thence southerly along the shoreline to Andrews Bay at 47°33′06″ N, 122°15′32″ W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33′44″ N, 122°15′04″ W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin. [Datum: NAD 1983]

(c) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the zone except for support vessels and support personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives.

Dated: June 10, 2004.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–14374 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–075]

RIN 1625–AA00

Safety Zone; Metro North Railroad Bridge Over the Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. This zone is necessary to protect vessels that wish to transit past the bridge due to an allision that occurred on April 11, 2004 which destroyed the fender system under the bridge's western span, thereby exposing the bridge piers to the possibility of direct allision. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 12 a.m. June 16, 2004 until 11:59 p.m. on August 1, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–

075 and will be available for inspection or copying at Group/MSO Long Island Sound, 120 Woodward Ave., New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to restrict and control maritime traffic while transiting in the waters of the Norwalk River under the Metro North Railroad Bridge, Norwalk, Connecticut. On April 11, 2004, the fendering under the western span of the bridge was completely destroyed by an allision with two barges carrying stone. A temporary safety zone was implemented (CGD1–04–050) effective from 11 a.m. on April 11, 2004 to 11:59 p.m. April 16, 2004, and was then extended from April 17, 2004 to June 15, 2004, (69 FR 23655) to prevent traffic from transiting under the bridge, exposing the bridge piers under the western span of the bridge to the possibility of direct allision. At that time, the damaged fendering system extended into the navigable channel and presented a hazard to navigation. Due to the extensive damage on the bridge and the need for work to be approved by various State and Federal agencies prior to commencing, as well as the extensive repairs needed, the repairs to the bridge are running longer than originally anticipated. On June 8, 2004, CONNDOT has requested extension of the safety zone in order to complete repairs. Currently, the bridge piers in the western channel remain exposed with no fendering system. Steel pilings that are the support structure for the new fendering system have been installed, and are exposed in the waterway, presenting an additional hazard to navigation if vessels were permitted to pass in the Channel. The delay inherent in the NPRM process is contrary to the public interest and impracticable as immediate action is needed to prevent further allision with the bridge and prevent collision with the exposed steel pilings in the west channel.

Background and Purpose

On Sunday April 11, 2004 at approximately 2:40 a.m., two barges filled with stone being pushed by a barge hit the pilings of the fendering system on the western span of the Metro North Railroad Bridge over the Norwalk River, Norwalk, Connecticut. The allision by these barges completely destroyed the fendering system under the western span of the bridge. While the bridge has been determined to be safe for rail traffic, the lack of a fendering system, that is designed to protect bridge piers from direction allision, leaves the bridge piers exposed to the possibility of direct damage. Further damage to the bridge pier could impede rail traffic and the safety of the bridge and public utilizing the rail service. In addition, steel pilings constituting part of the new fendering have been installed in the west channel, and are exposed in the waterway. These piling present a hazard to hazard to navigation for any vessels utilizing the waterway. The Coast Guard is establishing a safety zone in all waters of the Norwalk River in Norwalk, Connecticut within 100-yards of the Metro North Railroad Bridge. This safety zone is necessary to protect the safety of the bridge, bridge operations and public using the Metro North Railroad from further allision directly with the bridge piers. It is also necessary to prevent vessels from colliding with exposed steel pilings which are part of the fendering system being constructed.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Norwalk River within 100-yards of the Metro North Railroad Bridge, Norwalk Connecticut. This action is intended to prohibit vessel traffic in a portion of Norwalk River to prevent further damage to the Metro North Railroad Bridge, which may be caused due to lack of a fendering system around bridge piers around the western span of the bridge. The safety zone is in effect from 12 a.m. on June 16, 2004 until 11:50 p.m. on August 1, 2004. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation of the rest of the Norwalk River except for the portion delineated by this rule. In addition, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound. Other entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The safety zone is only for a temporary period, vessels may transit in all areas of the Norwalk River other than the area of the safety zone, recreational vessels may pass on the east side of the channel, and commercial vessels may request permission to transit the area from the Captain of the Port, Long Island Sound.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of the Norwalk River covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it,

please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C..1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in thee **Federal Register** (66 FR 363661, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action, therefore it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 12 a.m. June 16, 2004 to 11:59 p.m. on August 1, 2004 add temporary § 165.T01–075 to read as follows:

§ 165.T01–075 Safety Zone: Metro North Railroad Bridge over the Norwalk River, Norwalk, CT.

(a) *Location:* The following area is a safety zone: All waters of the Norwalk River, Norwalk, Connecticut within 100 yards of the Metro North Railroad Bridge.

(b) *Exceptions:* Recreational vessels are authorized to pass under the bridge's east span.

(c) *Regulations.* (1) In accordance with the general regulations in 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) Persons desiring to contact the Captain of the Port may do so at telephone number (203) 468–4401 or via VHF Marine Band Radio Channel 16 (156.8 MHz).

(3) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: June 14, 2004.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–14372 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA150–5079a; FRL–7777–7]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). The revision establishes regulations for the control of volatile organic compound (VOC) emissions from mobile equipment repair and refinishing operations in the northern Virginia portion of the Metropolitan Washington, DC Ozone Nonattainment Area (northern Virginia Area). EPA is approving this revision to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 23, 2004, without further notice, unless EPA receives adverse written comment by July 26, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA150–5079 by one of the following methods:

A. Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov.*

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch Name, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA150–5079. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *lewis.janice@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA issued a determination that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by the statutory date of November 15, 1999, and reclassified the area from "serious" to "severe" for one-hour ozone. As a severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the States that comprise the DC Area (Maryland, Virginia, and the District of Columbia) must implement additional control measures and submit SIP revisions for post-1999 Rate of Progress Plans, Contingency Plans, and the Attainment Demonstration.

As part of Virginia's strategy to meet its portion of emission reductions keyed to the post-1999 ROPs, the 2005 attainment demonstration, and/or the contingency plan, the State adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from solvent metal cleaning operations.

On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of four new regulations to 9 VAC 5, chapter 40, amendments to one existing article of 9 VAC 5, chapter 40, and amendments to one article of 9 VAC chapter 20.

The new regulations are:

(1) 9 VAC 5 chapter 40, New Article 42—"Emission Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–42")—(9 VAC 5–40–5700 to 9 VAC 5–40–5770).

(2) 9 VAC 5, chapter 40, New Article 47—"Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–47")—(9 VAC 5–40–6820 to 9 VAC 5–40–6970).

(3) 9 VAC 5, chapter 40, New Article 48—"Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia

Volatile Organic Compound Emission Control Area" ("Rule 4–48")—(9 VAC 5–40–6970 to 9 VAC 5–40–7110).

(4) 9 VAC 5, chapter 40, New Article 49—"Emission Standards for Architectural and Industrial Maintenance Coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area" ("Rule 4–49")—(9 VAC 5–40–7120 to 9 VAC 5–40–7230).

The February 23, 2004, submittal also included amendments to 9 VAC 5–20–21, "Documents incorporated by reference," to incorporate by reference additional test methods and procedures needed for Rule 4–42 or Rule 4–49, and, also amendments to section 9 VAC 5–40–3260 of Article 24, "Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogenated Solvents" ("Rule 4–24").

This action concerns only Rule 4–48 of the February 23, 2004, SIP revision. The remaining portions of the February 23, 2004, SIP revision submittal which will include Rule 4–42, Rule 4–47 and Rule 4–49, as well as all of the amendments and additions to 9 VAC 5–40–3260 and 9 VAC 5–20–21, will be the subject of separate rulemaking actions.

II. Summary of SIP Revision

On February 23, 2004, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision consists of VOC emission standards for mobile equipment repair and refinishing operations in the northern Virginia counties of Arlington, Fairfax. Loudoun, Prince William, and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Affected persons must comply by January 1, 2005.

The Virginia mobile equipment repair and refinishing operations (Rule 4–48) applies to each mobile equipment repair and refinishing operation. The provisions also apply to each person who sells coatings used in such operations. This regulation applies only to sources in the northern Virginia volatile organic compounds emissions control area. The regulation defines applicability, compliance, notification, monitoring, recordkeeping, and reporting requirements similar to the OTC model rule.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrates a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation. authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998, opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

IV. Final Action

EPA is approving a revision to the Commonwealth of Virginia SIP to establish regulations for the control of VOC emissions from mobile equipment repair and refinishing operations in the northern Virginia ozone nonattainment area, which was submitted on February 23, 2004. Implementation of this VOC control measure will strengthen the Virginia SIP, and result in emission reductions that will assist the DC area in meeting the additional requirements associated with its reclassification as a severe nonattainment area for one-hour ozone.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 23, 2004, without further notice unless EPA receives adverse comment by July 26, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the Commonwealth of Virginia's regulation to control emission from solvent metal cleaning operations in the northern Virginia area, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 14, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended by adding entries under chapter 40, part II to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP citation)
*	*	*	*	*
Chapter 40—Existing Stationary Sources				

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP citation)
*	*	*	*	*
	Part II—Emission Standards			
*	*	*	*	*
Article 48	Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4–48)			
5–40–6970	Applicability and designation of affected facility	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–6980	Definitions	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–6990	Standards for volatile organic compounds	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7000	Standard for visible emissions	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7010	Standard for fugitive dust/emissions	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7040	Compliance	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7050	Compliance schedule	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7060	Test methods and procedures	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7070	Monitoring	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7080	Notification, records and reporting	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7090	Registration	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7100	Facility and control equipment maintenance or malfunction.	3/24/04	[6/24/04 *Federal Register page citation*].	
5–40–7110	Permits	3/24/04	[6/24/04 *Federal Register page citation*].	
*	*	*	*	*

[FR Doc. 04–14214 Filed 6–23–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7777–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Deletion of the property known as 475 South Jefferson Street in Orange, New Jersey as a partial deletion of the U.S. Radium Corp. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 2, announces the deletion of the property known as 475 South Jefferson Street in Orange, New Jersey, which is part of Operable Unit Two of the U.S. Radium Corp. Superfund Site, from the National Priorities List (NPL) and requests public comment on this action. The U.S. Radium Corp. Site is listed on the NPL as located in Orange, New Jersey, but is composed of contiguous and non-contiguous properties in the municipalities of Orange, West Orange, and South Orange. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This Direct Final Notice of partial deletion of the U.S. Radium Corp. Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995).

This deletion pertains to the property known as 475 South Jefferson Street in Orange, New Jersey (Block 158, Lot 21), which is located at the corner of South Jefferson Street and Nassau Street. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions under CERCLA have been completed at 475 South Jefferson Street and no further cleanup pursuant to CERCLA is appropriate. This partial deletion covers only the property known as 475 South Jefferson Street; all other properties and operable units remain on the NPL.

DATES: This direct final partial deletion will be effective August 23, 2004, unless EPA receives significant adverse comments by July 26, 2004. If significant adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register**, informing the public that the deletion will not take effect.

ADDRESSES: Comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on the U.S. Radium Corp. Site is available for viewing, by appointment only, at: U.S. EPA Records Center, 290 Broadway—18th Floor, New York, New York 10007–1866.

Hours: 9 a.m. to 5 p.m.—Monday through Friday. Contact the Records Center at (212) 637–4308.

Information is also available for viewing at the Information Repository located at: Orange Public Library, 348 Main Street, Orange, New Jersey 07050.

FOR FURTHER INFORMATION CONTACT: Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3914; fax: (212) 637–4393; e-mail: *vaughn.stephanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The United States Environmental Protection Agency (EPA) Region 2

announces the deletion of the property known as 475 South Jefferson Street in Orange, New Jersey which is a portion of the U.S. Radium Corp. Superfund Site (Site), Operable Unit Two, listed as located in Orange, New Jersey, from the National Priorities List (NPL). EPA maintains the NPL as the list of those sites that appear to present a significant risk to public health or the environment. This partial deletion pertains only to the property known as 475 South Jefferson Street, located in Orange, New Jersey (Block 158, Lot 21), at the corner of South Jefferson Street and Nassau Street. The property includes a six-story building and a paved parking lot. This partial deletion covers only the property known as 475 South Jefferson Street; all other properties and operable units remain on the NPL.

EPA considers this action to be noncontroversial and routine, and therefore, EPA is taking it without prior publication of a Notice of Intent to Delete. The action will be effective August 23, 2004, unless EPA receives significant adverse comments by July 26, 2004, on this action or the parallel Notice of Intent to Delete published in the Notice section of today's **Federal Register**. If significant adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this Direct Final Deletion before the effective date of deletion and the deletion will not take effect. EPA will, if appropriate, prepare a response to the comments received and will continue the deletion process on the basis of the Notice of Intent to Delete and the comments received. There will be no additional opportunities to comment.

Section II explains the criteria for deleting sites from the NPL, and Section III describes the procedures that EPA is using for this action. Section IV discusses the property and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List provides that properties may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking of remedial measures is not appropriate.

EPA proposes to delete this portion of the Site because all appropriate CERCLA response activities have been completed on this property. If new information becomes available which indicates the need for further action, EPA may initiate such actions under Section 300.425(e)(3) of the NCP. Pursuant to 40 CFR 300.425(e) of the NCP, any Site or portion of a Site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the Site warrant such action.

III. Deletion Procedures

The following procedures apply to the proposed deletion of the property known as 475 South Jefferson Street.

1. The Site was listed on the NPL in September 1983.

2. EPA selected a remedy for the Site, which included this property, in a Record of Decision (ROD) dated August 29, 1995. The remedy called for removal of radiological contamination at Operable Unit 2 of the Site.

3. 475 South Jefferson Street consists of a six-story commercial building located approximately three miles from the former U.S. Radium Corporation facility. Radiological contamination was found only on the sixth floor of the building and in a small section of the parking lot located at the rear of the building.

4. The remediation of 475 South Jefferson Street was conducted during Phase Six of the overall Site cleanup. Remedial work on the property began in January 2002 and was substantially complete in May 2003. It involved the removal of radiologically-contaminated material from the floor and walls of the sixth floor of the property, as well as from the affected area of the parking lot. A Remedial Action Report for the sixth phase of the cleanup was signed on September 25, 2003.

5. EPA recommends the deletion of this portion of the U.S. Radium Corp. Site and has prepared the relevant documents.

6. The State of New Jersey, through the New Jersey Department of Environmental Protection, has concurred with the deletion decision in a letter dated May 27, 2004.

7. Concurrent with this direct final partial deletion, a notice has been published in a local newspaper and appropriate notice has been distributed to Federal, State and local officials, and other interested parties. This notice announces a thirty-day public comment period on the deletion, which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

8. EPA has placed all relevant Site documents in the Site information repositories identified above.

9. Concurrent with this action a notice of intent for partial deletion has been published in today's **Federal Register**. Upon completion of the thirty (30) day public comment period, EPA will review all comments received. If significant adverse comments are received concerning this action, the notice of intent to delete, the local notice, or the notice provided to Federal, State, and local officials and other interested parties, EPA will publish a timely notice of withdrawal of this Direct Final Deletion before its effective date. EPA will prepare, if appropriate, a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments received.

Deletion of a Site, or portion of a Site, from the NPL does not itself create, alter, or revoke any person's rights or obligations. Deletion from the NPL does not alter EPA's right to take appropriate enforcement actions. The NPL is designed primarily for informational purposes and to assist Agency management.

IV. Basis for Intended Partial Site Deletion

The following summary provides EPA's rationale for deletion of the portion of the U.S. Radium Corp. Site located at 475 South Jefferson Street from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied:

The former U.S. Radium Corporation plant site was a radium-processing facility where extraction, production, application, and distribution took place from about 1915 through 1926. In addition, radium-contaminated soils and debris have been identified at more than 240 noncontiguous properties in the vicinity of the plant site and at various satellite locations throughout the municipalities of Orange, West Orange and South Orange. Investigations to identify other radium-contaminated properties associated with the site have covered approximately 650 properties and are still on-going. The noncontiguous vicinity and satellite properties are occupied by residences, light industries, offices, grocery stores, and apartment buildings.

Soil and building materials contain radium-226 and other radioactive materials. The radium-226 decays to radon gas and radon decay products which can concentrate in basements and other ground-level enclosed spaces. Residents who are directly exposed to radiation, inhale radioactive dust particles, or inadvertently ingest radioactive particles from the Site may suffer adverse health effects in the form of an increased risk of certain types of cancer. Workers and customers of commercial properties would be similarly affected.

Remedies for the Site were selected in two Records of Decision, signed in September 1993 and August 1995. The remedial action involves the excavation and off-site disposal of radium-contaminated material at the plant site and at affected Satellite properties. This is the final remedy for these properties. Ground water under these properties will be addressed by a separate operable unit and remains included in the NPL listing.

The long-term soil remedy has been divided into phases. Phase 6 of the remedy, which included the property known as 475 South Jefferson Street, began in September 2001 and was completed in September 2003.

All known radiological contamination has been removed from 475 South Jefferson Street. No radiological contamination is known to remain on this property or the properties surrounding it. All restoration and maintenance activities have been completed on this property and no further work is required as part of the cleanup of the U.S. Radium Corp. Site. Information about this work is contained in a Remedial Action Report dated September 2003.

Public participation activities for the U.S. Radium Corp. Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The RI/FS and the RODs were subject to a public review process. All other documents and information which EPA relied on or considered in recommending that no further activities are necessary at a portion of the U.S. Radium Corp. Site, and that this portion of the Site can be deleted from the NPL, are available for the public to review at the information repositories.

One of the three criteria for Site deletion specifies that EPA may delete a Site, or a portion of a Site, from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New Jersey, through the New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met at 475 South Jefferson Street. Consequently, EPA is proposing deletion of this portion of the U.S. Radium Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 10, 2004.

Anthony Cancro,

Acting Regional Administrator—Region 2.

■ For the reasons set out in the preamble, part 300, title 40 of Chapter I of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by adding a "P" in the Notes column in the entry for U.S. Radium Corp., Orange, New Jersey.

[FR Doc. 04–14218 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 04–110]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration and clarification.

SUMMARY: By this document, the Commission denies a number of petitions for reconsideration of the tariff rules governing the charges for interstate switched access services provided by competitive local exchange carriers (LECs). Although the Commission denies the petitions for reconsideration, it addresses a number of issues raised in petitions for clarification and amends the rules accordingly. The Commission also concludes that it is not necessary to immediately cap competitive LEC access rates for toll-free traffic at the rate of the competing incumbent LEC. With this decision, the Commission retains the benchmark regime governing interstate switched access services provided by competitive LECs and clarifies application of the regime in several respects.

DATES: Effective July 26, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Victoria Schlesinger, Wireline Competition Bureau, Pricing Policy Division, (202) 418–7353.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Eighth Report and Order and Fifth Order on Reconsideration in CC Docket No. 96–262, adopted on May 13, 2004, and released on May 18, 2004. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *http://www.bcpiweb.com.*

Synopsis of Order on Reconsideration and Report and Order

1. In 2001, the Commission adopted new rules governing the charges for

interstate switched access services provided by competitive LECs, *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96–262, Seventh Report and Order, 66 FR 27892, May 21, 2001, and Further Notice of Proposed Rulemaking, 66 FR 27927, May 21, 2001 (*CLEC Access Reform Order*). These rules established a regime whereby tariffed competitive LEC access rates cannot exceed a specified benchmark rate, 47 CFR 61.26(b). Under this regime, competitive LECs may not generally tariff interstate access charges above the competing incumbent LEC rate, 47 CFR 61.26(c).

2. In order to avoid too great a disruption for competitive carriers, however, the Commission established a three-year transition period. During the transition, competitive LECs are permitted to charge rates higher than those charged by the competing incumbent LEC, but their tariffed rates cannot exceed specific benchmark rates set by the Commission and contained in § 61.26(c) of the Commission's rules, 47 CFR 61.26(c). Under § 61.26(d) of the Commission's rules, 47 CFR 61.26(d), these transition rates are not available to competitive LECs in new markets where they began serving end-users after the effective date of the *CLEC Access Reform Order*. This three-year transition period ends on June 21, 2004, 47 CFR 61.26(c). The Commission also adopted a rural exemption, pursuant to which rural competitive LECs meeting certain criteria are permitted to tariff rates up to the highest rate band in the NECA tariff, 47 CFR 61.26(a) and (e).

3. With this decision, the Commission disposes of several petitions for reconsideration of the tariff rules adopted in the *CLEC Access Reform Order*. Although the Commission denies the petitions for reconsideration, it addresses several issues raised in petitions for clarification of the current rules. First, the Commission clarifies that a competitive LEC is entitled to charge the full benchmark rate if it provides an IXC with access to the competitive LEC's own end-users. It finds that the rate a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. Second, the Commission provides guidance on the meaning of the appropriate switching rate used in determining the "competing ILEC rate" after the three-year transition period to the competing incumbent LEC rate ends. Third, the Commission clarifies that any pre-subscribed interexchange carrier charge (PICC) imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. Fourth, it identifies permissible ways in which competitive LECs may structure their rates if they serve a geographic area with more than one incumbent LEC. Fifth, the Commission clarifies the source of its authority to impose IXC interconnection obligations under section 201(a) and it denies a pending petition for waiver of the CLEC new markets rule. Finally, the Commission declines to set a separate access rate for originating toll-free (8YY) traffic and allows it to be governed by the same declining benchmark as other competitive LEC interstate access traffic.

Accounting for Services Still Provided by the Incumbent LEC

4. Section 61.26(b) of the Commission's rules, 47 CFR 61.26(b), provides that a competitive LEC's tariffed rate for "its interstate switched exchange access services" cannot exceed the benchmark. Under § 61.26(a)(3), 47 CFR 61.26(a)(3) the term interstate switched exchange access services "shall include the functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching." The rate elements identified in § 61.26(a)(3), reflect those services needed to originate or terminate a call to a LEC's end-user. When a competitive LEC originates or terminates traffic to its own end-users, it is providing the functional equivalent of those services, even if the call is routed from the competitive LEC to the IXC through an incumbent LEC tandem.

5. The Commission is aware of a number of disputes regarding the appropriate compensation to be paid by IXCs when a competitive LEC handles interexchange traffic that is not originated or terminated by the competitive LEC's own end-users. Because neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate in this scenario, the Commission now clarifies that the benchmark rate established in the *CLEC Access Reform Order* is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. The Commission explains that a competitive LEC that provides access to its own end-users is providing the functional equivalent of the services associated with the rate elements listed in § 61.26(a)(3) and therefore is entitled to the full benchmark rate.

6. Because of the many disputes related to the rates charged by competitive LECs when they act as intermediate carriers, the Commission concludes that it is necessary to adopt a new rule to address these situations. The Commission amends § 61.26 of the Commission's rules, 47 CFR 61.26, on a prospective basis, to specify that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. The Commission explains that regulation of these rates is necessary because an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and that it is necessary to constrain the ability of competitive LECs to exercise this monopoly power.

7. Neither the *CLEC Access Reform Order* nor other applicable precedent addressed the appropriate rate a competitive LEC may charge when it is not serving the end-user. Further, the Commission established only a single rate for each year of the transition period and did not state that this rate was available only if a competitive LEC served the end-user on a particular call. Therefore, prior to this decision, the Commission finds that it would not have been unreasonable for a competitive LEC to charge the tariffed benchmark rate for traffic to or from end-users of other carriers, provided that the carrier serving the end-user did not also charge the IXC and provided that the competitive LEC's charges were otherwise in compliance with and supported by its tariff.

8. Under the existing rules, tariffed competitive LEC access rates must decrease over time until they reach the rate charged by the competing incumbent LEC, subject to some exceptions. In order to avoid litigation and uncertainty, the Commission clarifies the meaning of the competing incumbent LEC rate used to determine the benchmark. The Commission finds that the competing incumbent LEC switching rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. Competitive LECs also have, and always had, the ability to charge for common transport when they provide it, including when

they subtend an incumbent LEC tandem switch. Competitive LECs that impose such charges should calculate the rate in a manner that reasonably approximates the competing incumbent LEC rate.

The CLEC New Markets Rule

9. Under § 61.26(d) of the Commission's rules (the CLEC new markets rule), 47 CFR 61.26(d), competitive LECs may not tariff a rate higher than the competing incumbent LEC rate in metropolitan statistical areas (MSAs) where the competitive LEC initiated service after the effective date of the *CLEC Access Reform Order*. The Commission declines to modify the rule as requested in petitions for reconsideration. In adopting the benchmark system for competitive LEC access charges, the Commission intended to limit the subsidy flowing from IXCs and the long distance market to competitive LECs and their end-users, and to do so with a bright line mechanism that is objective and easy to enforce. Modifying the rule as the competitive LECs suggest could substantially increase the amount by which IXCs subsidize competitors in the local-service market and would create ongoing incentives for economically inefficient entry in new markets.

10. The Commission also denies claims that it violated the Administrative Procedure Act because it did not provide notice that it was considering a different rule for new markets and did not provide any opportunity for parties to comment on it. The Commission specifically sought comment on the competing incumbent LEC rate as a benchmark in an earlier Further Notice of Proposed Rulemaking in CC Docket No. 96–262, *Access Charge Reform*, CC Docket No. 96–262, Further Notice of Proposed Rulemaking, 64 FR 51280 (1999). Thus, the Commission concludes that it should have been apparent to any interested party that the Commission was contemplating a benchmark at the competing incumbent LEC rate for at least some markets. That the Commission ultimately decided to adopt a transition mechanism for some parties does not in any way render the notice provided to parties defective.

11. Moreover, the Commission clarifies that the CLEC new markets rule does not apply if the competitive LEC would otherwise qualify for the rural exemption contained in § 61.26(e) of the Commission's rules. The rural exemption rate is a substitute for the incumbent LEC rate that would otherwise be used as the benchmark rate. The Commission agrees that this is the correct interpretation of the Commission's *CLEC Access Reform Order*, and amends § 61.26(e) accordingly to read "Notwithstanding paragraphs (b) through (d) of this section * * *."

The Rural Exemption

12. Under § 61.26(f) of the Commission's rules (the rural exemption), 47 CFR 61.26(f), qualifying competitive LECs competing with non-rural incumbent LECs may tariff rates up to the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching and the transport interconnection charge minus the NECA tariff's carrier common line (CCL) charge if the competing incumbent LEC is subject to certain access rates. The Commission retains the rural exemption and declines requests to broaden its applicability based on the record. In adopting the rural exemption, the Commission intended to keep the exemption as narrow as possible to minimize the strain it placed on the interexchange market. The Commission also emphasized the need for administrative simplicity, and noted that it would apply only to a small number of carriers serving a small portion of the nation's access lines.

13. The Commission also declines to revise the rural exemption to allow competitive LECs to charge the CCL portion of the NECA rate. Excluding the NECA tariff's CCL charge when the competitive LEC competes with a CALLS incumbent LEC promotes parity between the competing carriers. Because both the CCL charge and transport interconnection charge have since been eliminated, the Commission revises § 61.26(e) of the rules to remove any references to the CCL and the transport interconnection charge.

14. The Commission further clarifies that a PICC may be imposed by a rural competitive LEC in addition to the rural exemption rate if and only to the extent that the competing incumbent LEC assesses a PICC, and revises § 61.26(e) of the Commission's rules accordingly. As the Commission found in the *CLEC Access Reform Order*, the ability of rural competitive LECs to assess a multi-line business PICC obviated, in part, the need for a CCL charge because the PICC provided a potential revenue source.

Structure of the Benchmark

15. The Commission also rejects a specific proposal to modify the benchmark scheme to allow competitive LECs to charge higher access rates in lower density markets. In creating exemptions to the general benchmark scheme, the Commission emphasized the need for administrative simplicity and narrow application. The proposal considered would not meet these goals. Moreover, the proposed proxies for density would be ill-suited to the job, and additional arguments made in support of this proposal rely on the assumption that there has been some regulated determination of competitive LEC costs, which is not the case.

Multiple Incumbent LECs in a Service Area

16. The Commission further specifies what access rate applies when more than one incumbent LEC operates within a competitive LEC's service area. It states that competitive LECs serving an area with multiple incumbent LECs can qualify for the safe harbor by charging different rates for access to particular end-users based on the access rate that would have been charged by the incumbent LEC in whose service area that particular end-user resides. The record suggests, however, that some competitive LECs may prefer to charge IXCs a blended access rate when more than one incumbent LEC operates within a competitive LEC's service area. The Commission confirms that one alternative for competitive LECs is to negotiate a blended access rate with the IXCs. If a competitive LEC charges a blended access rate other than a negotiated rate, however, the Commission finds that such a rate must reasonably approximate the rate that an IXC would have paid to the competing incumbent LECs for access to the competitive LEC's customers.

Billing Name Information

17. The Commission also declines to condition the IXCs' section 201(a) duty to accept competitive LEC access services on the provision of billing name and address (BNA) information that the IXC deems sufficient. The Commission considered the issue of LEC obligations to provide BNA information in the context of an extensive rulemaking proceeding, and determined that, in some cases, LECs are required to provide billing information under tariff. Moreover, competitive LECs persuasively argue that this proposal would encourage IXCs to find inadequacies with competitive LECs' BNA information in order to avoid accepting (and paying for) access service. This could create a loophole in the 201(a) obligation that the Commission imposed and would thereby again endanger the ubiquity of the network, a consideration that substantially animated the *CLEC Access Reform Order*.

Other Matters

18. The Commission also declines to addresses several other specific requests contained in petitions for reconsideration and clarification. For instance, the Commission declines to address whether past refusals of AT&T to continue providing service without authority from the Commission violate section 214 and section 203(c) of the Act. The Commission finds that whether the prior actions of AT&T violated the Act depends on fact-specific findings that are more appropriately handled in the context of an enforcement proceeding. Similarly, the Commission finds that any claims of violations of section 202(a) or section 203(c) should be decided on a case-by-case basis because such claims depend on fact-specific circumstances. Moreover, the Commission rejects a request to impose a negotiation or arbitration requirement on IXCs and permit competitive LECs to tariff rates above the benchmark if cost-justified. The Commission observes that this request assumes incorrectly that the Commission adopted a cost-based approach to competitive LEC access charges in its *CLEC Access Reform Order*.

19. Further, in the *CLEC Access Reform Order*, the Commission determined that section 201(a) of the Act places certain limitations on an IXC's ability to refuse competitive LEC access service. In determining these limitations, the Commission focused on the first clause of section 201(a), which requires common carriers to furnish communication service upon reasonable request therefor. In this discussion, the Commission also referenced the second clause of section 201(a), which empowers the Commission, after a hearing and determination of the public interest, to order common carriers to establish physical connections with other carriers, and to establish through routes and charges for certain communications. The Commission did not, however, explicitly rely on this portion of section 201(a) in imposing limitations on an IXC's ability to refuse service. The Commission now finds it necessary to clarify its intent to rely on the second clause of section 201(a) to support such limitations. Accordingly, the Commission finds that an IXC's refusal to accept competitive LEC access service at rates at or below the benchmark would run afoul of the second clause of section 201(a).

20. Finally, the Commission denies a Petition for Temporary Waiver of Commission rule in 47 CFR 61.26(d), the CLEC new markets rule, as applied to certain MSAs that Z–Tel was capable of serving as of the petition date. The Commission denies the petition because the arguments made by Z–Tel and other parties in support of a waiver are identical to those considered and rejected in this decision. The Commission also denies the petition for the separate reason that Z–Tel failed to demonstrate any special circumstances necessary to support a waiver of the Commission's rules.

Eighth Report and Order

21. In the Further Notice of Proposed Rulemaking issued with the *CLEC Access Reform Order*, the Commission raised various questions relating to toll-free (8YY) traffic originating on competitive LEC networks. The Commission concludes that it is not necessary immediately to cap competitive LEC access rates for 8YY traffic at the rate of the competing incumbent LEC, and allows it to be governed by the same declining benchmark rate to which other competitive LEC access traffic is subject. The Commission is not convinced that the revenue-sharing arrangements that competitive LECs may have entered into with 8YY generators necessarily affect the level of traffic that these customers, typically universities and hotels, generate. The IXCs have failed to demonstrate that commission payments to 8YY generators such as universities or hotels translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls. Moreover, even if the Commission were persuaded that there was an incentive for 8YY traffic generation, the fact that competitive LEC access rates are now subject to the declining benchmark should eliminate any harm to IXCs from this traffic.

22. The Commission also rejects AT&T's request that we adopt a separate competitive LEC access rate for outbound 8YY traffic carried over dedicated local access facilities. The Commission finds that the record does not support adoption of a separate lower benchmark rate based on the incumbent LEC local switching rate. To the extent that AT&T is concerned that it is paying two carriers for originating a call, the Commission addresses that concern by clarifying that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. When there are no intermediate carriers between the competitive LEC and the end-user, the fact that the end-user may provide some portion of the facilities would seem to be irrelevant.

Supplemental Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 1999 *Further Notice of Proposed Rulemaking* (FNPRM) in CC Docket No. 96–262, 64 FR 51280, September 22, 1999. The Commission sought written public comment on the proposals in that FNPRM, including comment on the IRFA. A Final Regulatory Flexibility analysis was provided in the *Sixth Report and Order*, 65 FR 38684, June 21, 2000, as well as the *Seventh Report and Order*, 66 FR 27892, May 21, 2001, and *Further Notice of Proposed Rulemaking*, 66 FR 27927, May 21, 2001 (*CLEC Access Reform Order*). This present Supplemental Final Regulatory Flexibility Act Analysis conforms to the RFA. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of these orders preceding the Supplemental FRFA, the rules and statement set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

24. In the *CLEC Access Reform Order*, the Commission revised its tariff rules more closely to align tariffed competitive LEC access rates with those of incumbent LECs. Specifically, the Commission limited to a declining benchmark the amounts that competitive LECs may tariff for interstate access services; restricted the interstate access rates of competitive LECs entering new markets to the rates of the competing incumbent local exchange carrier (incumbent LEC); and established a rural exemption permitting qualifying carriers to charge rates above the benchmark for their interstate access services. In adopting these rules, the Commission sought to ensure, by the least intrusive means possible, that competitive LEC access charges are just and reasonable. The Commission also sought to reduce existing regulatory arbitrage opportunities, spur efficient local competition, and avoid disrupting the development of competition in the local telecommunications market.

25. With this order, the Commission disposes of seven petitions for reconsideration or clarification of these rules, and a related waiver request. Specifically, the Commission rejects each of the reconsideration requests and related request for waiver, but makes

several clarifications. In response to an issue raise by Qwest in a petition for clarification or, in the alternative, reconsideration, the Commission clarifies that the benchmark rate is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. The Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend the current rules in accordance with this finding. The Commission also clarifies that the competing incumbent LEC rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. The Commission concludes that the regulation of these rates is necessary for all the same reasons the Commission identified in the *CLEC Access Reform Order.*

26. The Commission also responds to a request by the Rural Independent Competitive Alliance (RICA) to clarify whether PICCs may be tariffed in addition to the rural exemption rate specified in § 61.26(e) of the Commission's rules and whether PICCs may be tariffed when the competing incumbent LEC does not have a PICC. In this order, the Commission clarifies that any PICC imposed by a competitive LEC qualifying for the rural exemption may be assessed in addition to the rural benchmark rate if and only to the extent that the competing incumbent LEC charges a PICC. In the *CLEC Access Reform Order,* the Commission found that the ability of rural competitive LECs to assess a multi-line business PICC obviated, in part, the need for a CCL charge because the PICC provided a potential revenue source. This clarification will ensure that rural competitive LECs are able to assess a PICC on IXCs as intended by the Commission, but if and only to the extent that the competing incumbent LEC charges a PICC. Further, this clarification is necessary to more closely align tariffed competitive LEC access rates with those of incumbent LECs..

27. In a separate petition for clarification, U.S. TelePacific asks the Commission to clarify and establish a simple methodology by which the benchmark rate will be set where a competitive LEC service area includes territory served by more than a single incumbent LEC. In this order, the Commission confirms that competitive LECs serving an area with multiple incumbent LECs can qualify for the safe harbor by charging different rates for access to particular end-users based on the access rate that would have been charged by the incumbent LEC in whose service area that particular end-user resides. As an alternative method, the Commission will permit a competitive LEC to charge an IXC a blended access rate only if that rate reasonably approximates the rate that an IXC would have paid to the competing incumbent LECs for access to the competitive LEC's customers. By permitting an alternative methodology based on a blended rate, the Commission seeks to ensure that the competitive LEC access rates are just and reasonable, and, at the same time, to minimize the burdens associated with establishing several different rates within a competitive LEC's service area.

Legal Basis

28. These orders are adopted pursuant to sections 1–5, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503.

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

29. 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 adopted herein. 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 the Small Business Act. A small business concern is one which: (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).

30. In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be indirectly affected by rules adopted pursuant to 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 publishes in its *Trends in Telephone Service* 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.

31. We have included small 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 wired telecommunications carrier 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.

32. *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 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

33. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 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, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

34. *Competitive Local Exchange Carriers (CLECs), Competitive Access*

Providers (CAPs), and "Other Local Exchange Carriers." Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive 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 SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission 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. In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most 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.

35. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

36. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission 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 the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

37. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

38. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission 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 the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

39. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses 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 SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

40. *Paging.* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

41. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

42. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-

auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

43. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

44. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

45. *200 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

46. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years. The SBA has approved these size standards. The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than $40 million in each of the three previous calendar years, or that had revenues of no more than $15 million in each of the previous calendar years. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In

the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

47. *Private and Common Carrier Paging.* In the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

48. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

49. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

50. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

51. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

52. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are

not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

54. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

55. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

56. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

57. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

58. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. The SBA has approved these size standards. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

59. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the

18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

60. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

61. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present IRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

62. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 31 carriers reported that they were engaged in the provision of satellite services. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six, alone or in combination with affiliates, have more than 1,500 employees. Consequently, the Commission estimates that there are 31 or fewer satellite service carriers which are small businesses that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

63. In this order, the Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions, and we amend the current rules in accordance with this finding. This amendment requires competitive LECs to review the federal tariff of the competing incumbent LEC to determine the rate charged for various functions or services. Under the current rules, after June 21, 2004, review of the competing incumbent LEC's tariff is required to determine the "competing ILEC rate." Therefore, this amendment does not modify the existing compliance requirement.

64. Pursuant to a rule clarification adopted in this order, if a competitive LEC eligible to charge a higher access rate pursuant to the rural exemption chooses to also charge a PICC, the competitive LEC is required to review the federal tariff of the competing incumbent LEC to see if the incumbent LEC for that particular end-user charges a PICC, and if so, the amount of that incumbent LEC's PICC. Under the current rules, review of the competing incumbent LEC's tariff is required to determine the rural exemption amount. Therefore, this clarification does not modify the existing compliance requirement.

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

65. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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.

66. Throughout this order, we seek to further resolve questions and contentious issues that remain with respect to competitive LEC access services. Because there are both small entity IXCs and small entity competitive LECs—often with conflicting interests in this proceeding—we expect that small entities will be affected by the clarifications adopted in this decision. As discussed below, we conclude, based on a consideration both of the steps needed to minimize significant economic impact on small entities and of significant alternatives, that our clarifications best balance the goals of removing opportunities for regulatory arbitrage and minimizing the burdens placed on carriers.

67. In this order, the Commission clarifies that the benchmark rate is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users. With this clarification, the Commission will minimize the opportunity for regulatory arbitrage, and ensure that small IXCs continue to pay just and reasonable rates for competitive LEC switched access services. This clarification also ensures that IXCs continue to accept and pay for competitive LEC access services, thereby protecting universal connectivity.

68. In adopting this clarification, the Commission considers and rejects the alternative approach advanced by some competitive LECs, which would permit competitive LECs to charge the full benchmark rates when they provide any component of the interstate switched access services used in connecting an end-user to an IXC. We believe that an approach in which rates are not tethered to the provision of particular services would be an invitation to abuse because it would enable multiple competitive LECs to impose the full benchmark rate on a single call. This outcome would be inconsistent with the Commission's goal to ensure just and reasonable competitive LEC access rates. The approach advanced by competitive LECs also would enable competitive LECs to discriminate among IXCs, including small entities, by providing varying levels of service for the same price. Thus, we believe the clarification provided will minimize the impact that excessive rates and discriminatory behavior may have on IXCs, including any small businesses.

69. The Commission finds that the rate that a competitive LEC charges for access components when it is not serving the end-user should be no higher than the rate charged by the competing incumbent LEC for the same functions. We conclude that regulation of these rates is necessary for all the reasons that we identified in the *CLEC Access Reform Order.* Specifically, an IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or

terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power. At the same time, the Commission declines to require a specific rate structure or rate elements for the services provided by a competitive LEC in an effort to minimize the regulatory burdens on competitive LECs, including small businesses.

70. In addition, the Commission clarifies that the competing incumbent LEC rate is the end office switching rate when a competitive LEC originates or terminates calls to end-users and the tandem switching rate when a competitive LEC passes calls between two other carriers. In providing this clarification, the Commission considers and rejects the proposal advanced by NewSouth because it would allow competitive LECs to charge IXCs, including small entities, for services they may not provide. We find that clarification of the competing incumbent LEC rate is necessary to avoid litigation and uncertainty. Eliminating the uncertainty surrounding the existing rules will benefit both competitive LECs and IXCs, including small businesses, by preventing potential billing disputes.

71. The Commission also clarifies the application of the multi-line business PICC under the rural exemption. Although Sprint advances an alternative interpretation of how the PICC is to be calculated under the rural exemption, that interpretation would deprive competitive LECs, including small entities, of additional revenues taken into account when formulating the rural exemption in the *CLEC Access Reform Order*. Under the clarification provided, a competitive LEC seeking to charge a PICC under the rural exemption must determine whether the competing incumbent LEC charges a PICC and the amount of that PICC. Although this imposes a minimal additional burden on competitive LECs, the additional burden is outweighed by the direct benefit of additional access revenues in rural areas in prescribed circumstances.

72. Moreover, in this order, the Commission clarifies what access rate applies when more than one incumbent LEC operates within a competitive LEC's service area. The Commission agrees with competitive LECs that, without such clarification of the current rules, competitive LEC market entry will be delayed or possibly abandoned altogether because of uncertainty about rates and the prospect of IXC refusal to pay, or litigation. Eliminating the uncertainty surrounding the existing rules will benefit both competitive LECs and IXCs, including small businesses, by preventing potential billing disputes.

73. Further, in clarifying the applicable access rate in these circumstances, the Commission determined that it would permit a competitive LEC to charge an IXC a blended access rate if it does not result in revenues that exceed those the competing incumbent LECs would receive from IXCs for access to those customers. The Commission will permit a blended rate in some circumstances because it recognizes that requiring different rates for individual end-users within a service area might be particularly burdensome for small entities. Although the Commission considered specific alternative methods for determining the blended rate, it declines to specify the precise manner in which a competitive LEC must set its access rates when it serves the area of multiple incumbent LECs. Rather, the Commission requires only that the blended access rate reasonably approximate the rate that an IXC would have paid to the competing incumbent LEC for access to the competitive LEC's customers. The adopted approach balances the needs of small entities for flexibility in formulating a blended rate, yet ensures that the blended rate is just and reasonable in accordance with the Act.

74. Overall, we believe that this order best balances the competing goals that we have for our rules governing competitive LEC switched access charges. Neither in *CLEC Access Reform Order* nor in consideration of the petitions for reconsideration and clarification has there been any identification of additional alternatives that would have further limited the impact on all small entities while remaining consistent with Congress' pro-competitive objectives set out in the Act.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

75. None.

Final Regulatory Flexibility Certifications

76. The RFA requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 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 the Small Business Act. A small business concern is one which: (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).

Fifth Order on Reconsideration

Background

77. In this *Fifth Order on Reconsideration*, the Commission clarifies some rules in ways that are not expected to have a significant economic impact on a substantial number of small entities. Specifically, in addition to the clarifications discussed in the supplemental FRFA above, the Commission clarifies the existing relationship between the CLEC new markets rule and the rural exemption. In particular, petitioners seek confirmation that new market rule does not apply if the competitive LEC would otherwise qualify for the rural exemption. The Commission agrees that this is the correct interpretation of the existing rule and amends rule section 61.26(e) to more clearly reflect the Commission's original intent. The Commission also amends rule section 61.26(e) to remove references to rate elements that have been eliminated by the Commission. Further, the Commission clarifies the source of its authority to impose interconnection obligations on IXCs under section 201(a).

Substantive Information

78. The amendment to § 61.26(e) of the Commission rules simply clarifies and codifies the existing relationship between the CLEC new markets rule and the rural exemption, and removes references to rate elements that have since been eliminated by the Commission. Because there is no change to the meaning or impact of the existing rule, this amendment will have no significant economic impact. Similarly, the Commission's clarification concerning the source of its authority does not change the meaning or impact of the existing rule on large and small entities.

79. Therefore, we certify that these requirements will not have a significant economic impact on a substantial number of small entities.

Eighth Report and Order

Background Information

80. In the *Eighth Report and Order*, the Commission declines to set a separate access rate for originating toll free (8YY) traffic and allows it to be

governed by the same declining benchmark that applies to other competitive LEC interstate access traffic. In a further notice of proposed rulemaking issued with the *CLEC Access Reform Order*, the Commission raised questions relating to 8YY traffic originating on competitive LEC networks. The Commission sought this information because AT&T had asserted that abuses surrounding competitive LEC-originated 8YY traffic justified immediately capping the access rate for this category of traffic at the rate of the competing incumbent LEC. The Commission determines that the record does not support IXCs' claims that commission payments to 8YY generators translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls.

Substantive Information

81. Because competitive LECs currently charge IXCs the previously established, declining benchmark rate for 8YY traffic, the Commission's decision results in no change to existing competitive LEC access charges for 8YY traffic. Thus, the Commission's decision will have no significant economic impact on competitive LECs or IXCs, large and small.

82. Therefore, we certify that these requirements will not have a significant economic impact on a substantial number of small entities.

No Regulatory Flexibility Analysis or Certification Required

83. In the *CLEC Access Reform Order*, the Commission provided an FRFA that conformed to the RFA. In this present order, the Commission denies petitions for reconsideration and a petition for waiver. Because the Commission promulgates no additional or revised final rules in response to petitions for reconsideration or the petition for waiver, our present action on these petitions is not an RFA matter.

Final Paperwork Reduction Act Analysis

84. This action contained herein contains no new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

Report to Congress

85. The Commission will send a copy of these orders, including this Supplemental FRFA and FRFCs, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of these orders, including the Supplemental FRFA and FRFCs, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of these orders and Supplemental FRFA (or summaries thereof) and FRFCs will also be published in the **Federal Register.**

Ordering Clauses

86. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1–5, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 214, 218–220, 254, 303(r), 403, 405, 502 and 503, this *eighth report and order and fifth order on reconsideration,* with all attachments, including revisions to part 61 of the Commission's rules, 47 CFR part 61, is hereby *adopted.*

87. *It is further ordered* that these orders and rule revisions adopted in these orders *shall become effective* July 26, 2004.

88. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *eighth report and order and fifth order on reconsideration,* including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

89. *It is further ordered* that the Petitions for Reconsideration and Petitions for Clarification filed by Focal Communications Corp. and U.S. LEC Corp., Qwest Communications International, Inc., TDS Metrocom, Inc., and Time Warner Telecom *are denied.*

90. *It is further ordered* that the Petition for Clarification filed by U.S. TelePacific Corp. *is denied in part and granted in part,* to the extent discussed herein.

91. *It is further ordered* that the Petitions for Reconsideration and/or Clarification filed by the Minnesota CLEC Consortium and Rural Independent Competitive Alliance *are denied in part and granted in part,* to the extent discussed herein.

92. *It is further ordered* that the Petition of Z-Tel Communications Inc., for Temporary Waiver of Commission rule in § 61.26(d) is denied.

93. *It is futher ordered* that the Petition of TDS Metrocom, Inc. for Stay Pending Reconsideration is *denied as moot.*

94. *It is further ordered* that the Emergency Petition of Mpower Communications Corp. and North County Communications, Inc. for Stay of Order is *denied as moot.*

List of Subjects

47 CFR Part 61

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 61 to read as follows:

PART 61—TARIFFS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 2. Section 61.26 is amended by revising paragraphs (a)(1) and (a)(2), revising paragraph (e), and adding paragraph (f) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) * * *

(1) CLEC shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of "incumbent local exchange carrier" in 47 U.S.C. 251(h).

(2) Competing ILEC shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

* * * * *

(e) Rural exemption. Notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge.

(f) If a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the

competing ILEC for the same access services.

[FR Doc. 04–14329 Filed 6–23–04; 8:45 am]
BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827, 1828, 1829, 1830, 1831, 1832, and 1833

RIN 2700–AC68

Re-Issuance of NASA FAR Supplement Subchapter E

AGENCY: National Aeronautics and Space Administration.

ACTION: Final Rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on March 12, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment.

Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

NASA published a proposed rule in the **Federal Register** on March 12, 2004 (69 FR 11828). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this final rule only removes from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1827, 1828, 1829, 1830, 1831, 1832, and 1833

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1827 through 1833 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1827 through 1833 continue to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

■ 2. Amend Part 1827 by removing sections 1827.305–3, 1827.305–370, 1827.305–371, paragraphs (d), (e), (f), (g)(3)(B), (g)(3)(C), (g)(3)(D), (h), and (i) in section 1827.404, sections 1827.405, 1827.406, 1827.408, and paragraphs (b), (c), (d), and (e) in section 1827.409.

PART 1828—BONDS AND INSURANCE

■ 3. Amend Part 1828 by removing sections 1828.106, 1828.106–6, Subpart 1828.2, and sections 1828.307, 1828.307–1, 1828.307–2, and 1828.307–70.

PART 1829—TAXES

■ 4. Remove Part 1829.

PART 1830—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 5. Amend Part 1830 by removing Subpart 1830.2 and removing and reserving sections 1830.7001–1, 1830.7001–2, and 1830.7001–3.

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 6. Amend Part 1831 by removing sections 1831.205–6, 1831.205–670, and 1831.205–32, and removing the phrase "under 1831.205–32" in section 1831.205–70.

PART 1832—CONTRACT FINANCING

■ 7. Amend Part 1832 by —
■ (a) Removing sections 1832.006–2, 1832.007;
■ (b) Removing "(see 1832.402)" in paragraph (b)(6) of section 1832.202–1; and
■ (c) Removing sections 1832.402, 1832.406, 1832.407, 1832.409, 1832.409–1, 1832.409–170, 1832.410, 1832.501–2, 1832.502, 1832.502–2, 1832.503, 1832.503–5, 1832.504, 1832.702, 1832.702–70, 1832.704, 1832.704–70, Subpart 1832.9, and sections 1832.1001, 1832.1004, paragraph (b)(2) in section 1832.1005, and paragraph (c) in section 1832.1110.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

■ 8. Amend Part 1833 by removing paragraph (f) in section 1833.103, and sections 1833.104, 1833.106, 1833.209, 1833.210, and 1833.211.

[FR Doc. 04–14366 Filed 6–23–04; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841

RIN 2700–AC86

Re-Issuance of NASA FAR Supplement Subchapter F

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on March 31, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule modifies the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes. NASA published a proposed rule in the **Federal Register** on March 31, 2004 (69 FR 16886). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this final rule only removes from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1834, 1835, 1836, 1837, 1839, and 1841, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1834—MAJOR SYSTEM ACQUISITION

■ 2. Remove Part 1834.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

■ 3. Amend Part 1835 by—
■ (a) Removing sections 1835.003, 1835.010, 1835.011, 1835.015, 1835.016;
■ (b) In section 1835.016–70, removing paragraph (b);
■ (c) In section 1835.016–71, removing paragraphs (b), (c), (d), (e), and (f); and
■ (d) Removing section 1835.016–72.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 4. Amend Part 1836 by removing sections 1836.209, 1836.213, 1836.213–3, 1836.213–4, 1836.602–2, 1836.602–4, 1836.602–5, 1836.602–70, 1836.603, 1836.605, Subpart 1836.7, 1836.7001, 1836.7002, 1836.7003, and in section 1836.7004 removing "in accordance with 1836.7003".

PART 1837—SERVICE CONTRACTING

■ 5. Amend Part 1837 by removing section 1837.204.

PART 1839—ACQUISITION OF INFORMATION TECHNOLOGY

■ 6. Amend Part 1839 by removing section 1839.105.

PART 1841—ACQUISITION OF UTILITY SERVICES

■ 7. Amend Part 1841 by removing Subparts 1841.2, 1841.3, and 1841.4.

[FR Doc. 04–14365 Filed 6–23–04; 8:45 am]
BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 69, No. 121
Thursday, June 24, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–04–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters. The AD would require certain inspections of the main rotor yoke (yoke) for a crack, fretting, or buffer deterioration. If a crack is found, the AD would require replacing the yoke with an airworthy yoke before further flight. If fretting or buffer deterioration are found, the AD would require further inspecting the main rotor hub assembly (hub assembly) and repairing or replacing any unairworthy parts. Also, the AD would require a torque inspection of the flapping bearing retaining nuts at specified intervals. This proposal is prompted by the discovery of a crack in a yoke. The actions specified by the proposed AD are intended to prevent failure of the yoke and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2004–SW–04–AD." The postcard will be date stamped and returned to the commenter.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises of a fatigue crack being found in a yoke in the area of the flapping bearing bushings.

BHTC has issued Alert Service Bulletin (ASB) Nos. 222–03–97 for the Model 222 and 222B helicopters, 222U–03–68 for the Model 222U helicopters, and 230–03–28 for the Model 230 helicopters, all dated September 23, 2003. The ASB's specify a recurring visual inspection of the yoke for a crack, fretting, or buffer deterioration in the four (4) areas around the flapping bearing attachment bushings and verifying the torque of the main rotor flapping bearing retaining bolts/nuts. Transport Canada classified these service bulletins as mandatory and issued AD No. CF–2003–27, dated November 17, 2003, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are type certificated in Canada for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design registered in the United States. Therefore, the proposed AD would require:

- Initial and recurring visual inspections, using a 10X or higher magnifying glass, of the yoke for a crack, fretting, or buffer deterioration in the four areas around the flapping bearing attachment bushings. If a crack is found, before further flight, replace the yoke with an airworthy yoke. If fretting or buffer deterioration is found, the hub assembly must be further inspected.
- Initially and at specified intervals, assure that there is no movement while torquing the main rotor flapping bearing retaining nuts to 100 ft-lbs. While holding the bolt head, apply 100 foot-pounds (135Nm) of torque to the nut in the tightening direction. If 100 foot-pounds (135Nm) of torque is reached without movement of the nut, before further flight, torque the bolt to 125 foot-pounds. If any nut moves before reaching 100 foot-pounds (135Nm) of torque, remove both flapping bearings from the hub assembly. Repair or replace any unairworthy part with an airworthy part.

The FAA estimates that this proposed AD would affect 105 helicopters of U.S. registry. The FAA also estimates that this proposed AD would:

- Take ½ work hour to inspect the yoke every 25 hours time-in-service (TIS), assuming 8 inspections a year that would equal 4 work hours per year;
- Take ½ work hour to inspect the flapping bearing retaining bolts torque every 50 hours TIS, assuming 4 inspections a year that would equal 2 work hours per year;
- Take 4 work hours to remove, inspect, and replace the yoke if required.
- The average labor rate is $65 per work hour.
- Required parts would cost approximately $32,675.
- Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $3,499,125, assuming all yokes are replaced near the end of the first year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 2004–SW–04–AD.

Applicability: The following helicopter models, certificated in any category:

Model	Serial number (S/N)	With main rotor hub (hub) assembly part number (P/N), installed
(1) 222	47006–47089	222–011–101–ALL or 222–012–101–ALL.
(2) 222B	47131–47156	222–011–101–ALL or 222–012–101–ALL.
(3) 222U	47501–47574	222–011–101–ALL or 222–012–101–ALL.
(4) 230	23001–23038	222–012–101–ALL.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the yoke and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) or by the next scheduled inspection for the hub assembly, whichever occurs first, and thereafter at intervals not to exceed 25 hours TIS, using a 10X or higher magnifying glass, visually inspect the main rotor yoke (yoke) for a crack, fretting or buffer deterioration in the four areas around the flapping bearing attachment bushings as shown in the following Figure 1 of this AD:

BILLING CODE 4910–13–P

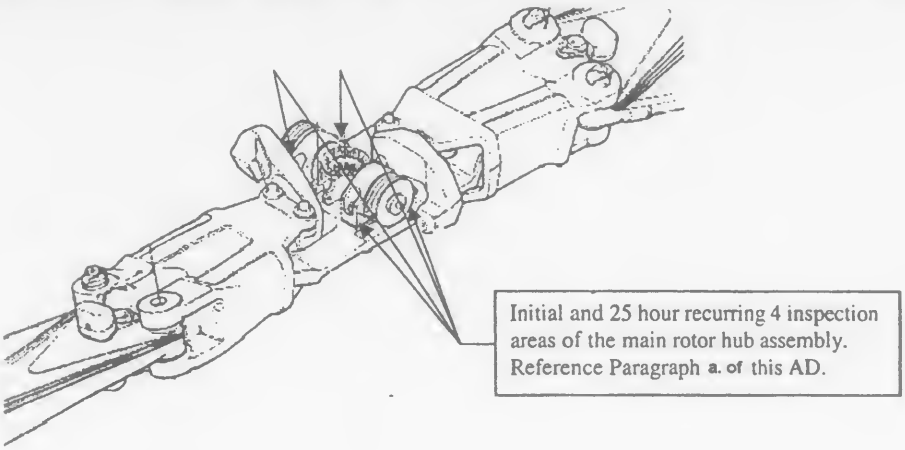

Figure 1. Main Rotor Hub Assembly

Note 1: Bell Helicopter Textron Alert Service Bulletin (ASB) Nos. 222–03–97 for the Model 222 and 222B, 222U–03–68 for the Model 222U, and 230–03–28 for the Model 230, all dated September 23, 2003, pertain to the subject of this AD.

(1) If a crack is found, before further flight, replace the yoke with an airworthy yoke.

(2) If fretting or buffer deterioration is found on the yoke in the areas shown in Figure 1 of this AD, before further flight, disassemble the hub assembly and further inspect the yoke with a 10X or higher magnifying glass in the four areas shown in Figures 2 and 3 of this AD.

(i) If a crack is found on any part, before further flight, replace the part with an airworthy part.

(ii) If fretting or buffer deterioration is found on any part, before further flight, repair any unairworthy part or replace the part with an airworthy part.

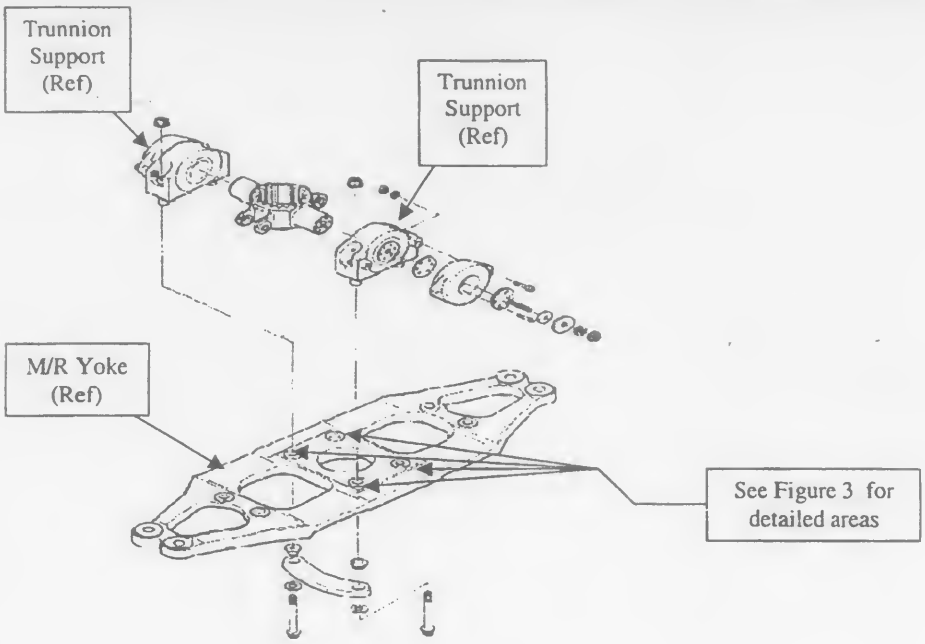

Figure 2. Main Rotor Yoke

Shown with trunnion supports removed.

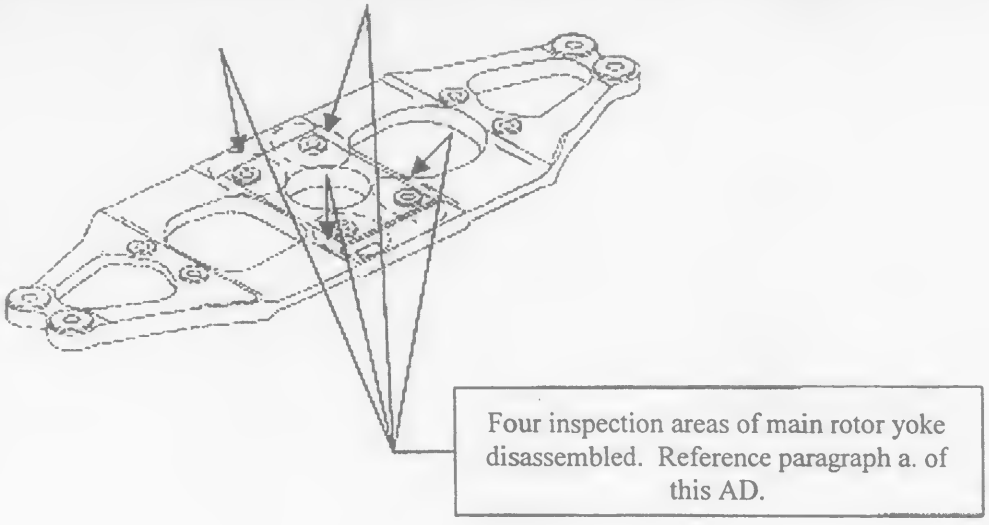

Figure 3. Main Rotor Yoke Inspection Areas

BILLING CODE 4910–13–C

(b) Within 50 hours TIS or by the next scheduled inspection for each hub assembly, whichever occurs first, and thereafter at intervals not to exceed 50 hours TIS, determine the torque of the four main rotor flapping bearing retaining bolts or nuts, While holding the bolt head, apply 100 foot-pounds (135Nm) of torque to the nut in the tightening direction.

(1) If 100 foot-pounds (135Nm) of torque is reached without movement of the nut, before further flight, torque the nut to 125 foot-pounds.

(2) If any nut moves before reaching 100 foot-pounds (135Nm) of torque, before further flight, remove both flapping bearings from the hub assembly. Inspect the yoke, the bolt and nut, and the trunnion supports with a 10X or higher magnifying glass, for a crack, fretting, or buffer deterioration.

(i) If a crack is found on any part, before further flight, replace the part with an airworthy part.

(ii) If fretting or buffer deterioration is found on any part, before further flight, repair any unairworthy part or replace the part with an airworthy part.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, FAA, for information about previously approved alternative methods of compliance.

Note 2: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2003–27, dated November 17, 2003.

Issued in Fort Worth, Texas, on June 16, 2004.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–14315 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. 2004N–0194]

Definition of Primary Mode of Action of a Combination Product

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending until August 20, 2004, the comment period on the primary mode of action proposed rule that appeared in the **Federal Register** of May 7, 2004 (69 FR 25527). In the primary mode of action proposed rule, the agency states its intentions to amend the product jurisdiction regulations to define "mode of action" and "primary mode of action" (PMOA). Along with these definitions, the proposed rule sets forth an algorithm the agency would use to assign combination products to an agency component for regulatory oversight when the agency cannot determine with reasonable certainty which mode of action provides the most important therapeutic action of the combination product. Finally, the proposed rule would also require a sponsor to base its recommendation of the agency component with primary jurisdiction for regulatory oversight of its combination product on the PMOA definition and, if appropriate, the assignment algorithm. The proposed rule is intended to promote the public health by codifying the agency's criteria for the assignment of combination products in transparent, consistent, and predictable terms.

DATES: Submit written or electronic comments no later than August 20, 2004.

ADDRESSES: You may submit comments, identified by Docket 2004N–0194, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*.

Follow the instructions for submitting comments on the agency Web site.

• E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0194 in the subject line of your e-mail message.

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 2004N–0194 or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Leigh Hayes, Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–427–1934.

SUPPLEMENTARY INFORMATION: FDA issued this proposed rule with an opportunity for public comment during a 60-day time period beginning May 7, 2004. On May 18, 2004, FDA received a request from the Advanced Medical Technology Association (AdvaMed) to extend the comment period for an additional 60 days for Docket No. 2004N–0194. According to AdvaMed, the Association needs additional time to advise their members about the proposed rule, and to collect and organize their members' input regarding the proposed rule.

Comments

In response to the request from AdvaMed, FDA is extending the comment period an additional 45 days to close on August 20, 2004. This extension will provide the public with a total of 105 days to submit comments. To be timely, interested persons must submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the proposed rule by August 20, 2004. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–14265 Filed 6–23–04; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA150–5079b; FRL–7777–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia establishing regulations for the control of volatile organic compound (VOC) emissions from mobile equipment repair and refinishing operations in the northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (northern Virginia Area). In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 26, 2004.

ADDRESSES: Submit your comments, identified by VA150–5079 by one of the following methods:

A. Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. E-mail: *morris.makeba@epa.gov*.

C. Mail: Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. VA150–5079. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *lewis.janice@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the

information provided in the direct final action pertaining to Virginia's solvent metal cleaning operations regulation, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 14, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–14215 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7777–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for a partial deletion of the U.S. Radium Corp. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 Office is issuing this notice of intent to delete the property known as 475 South Jefferson Street in Orange, New Jersey, which is part of Operable Unit Two of the U.S. Radium Corp. Superfund Site, from the National Priorities List (NPL) and requests public comment on this action. The U.S. Radium Corp. Site is listed on the NPL as located in Orange, New Jersey, but is composed of contiguous and non-contiguous properties in the municipalities of Orange, West Orange, and South Orange. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions related to the U.S. Radium Corp. Site have been completed at 475 South Jefferson Street and no further fund-financed remedial action at this property is appropriate under CERCLA.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion for the property known as 475 South Jefferson Street without prior notice of this action because we consider this is noncontroversial and anticipate no significant adverse comments. We have explained our basis for this deletion in the preamble to the direct final deletion. If we receive no significant comments on this notice of intent to delete, the direct final deletion, or other notices we will issue, we will not take further action on this notice of intent to delete. If we receive significant adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments. If, after evaluating public comments, EPA decides to proceed with deletion, we will do so in a subsequent final deletion notice based on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the rules section of the **Federal Register**.

DATES: Comments concerning the partial deletion of the U.S. Radium Corp. Superfund Site must be received by July 26, 2004.

ADDRESSES: Written comments should be mailed to: Stephanie Vaughn, Remedial Project Manager, New Jersey Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 19th Floor, New York, New York 10007–1866, phone: (212) 637–3914; fax: (212) 637–4393; e-mail: *vaughn.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O.S 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 10, 2004.

Anthony Cancro,

Acting Regional Administrator—Region 2.

[FR Doc. 04–14217 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–03–15852; Notice 1]

RIN 2137–AD96

Pipeline Safety: Public Education Programs for Hazardous Liquid and Gas Pipeline Operators

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) proposes to require all gas and hazardous liquid pipeline operators to develop and implement public education programs based on the provisions of the American Petroleum Institute's (API) Recommended Practice (RP) 1162, *Public Awareness Programs for Pipeline Operators*.[1]

DATES: Interested persons are invited to submit written comments by August 23, 2004. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number RSPA–03–15852) 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; Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN for this rulemaking. For

[1] API RP 1162 provides guidance on development, implementation, and evaluation of pipeline operator "public awareness" programs. Note that "public education programs," as used in this notice, and "public awareness programs," as used in API RP 1162, are considered to be the same and are used interchangeably for the purposes of this proposed rule.

detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–40 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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

You may obtain copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Carlos Martinez (202) 366–1933, by fax at (202) 366–4566, or by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, regarding the subject matter of this proposed rule. Additional information about this initiative may be obtained by accessing RSPA/OPS' Internet Web page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule addresses pipeline operator programs to enhance awareness of and communications with:

- The affected public (*i.e.,* residents and places of congregation, such as businesses and schools) in the vicinity of the pipeline and associated right-of-way.
- Local and State emergency response and planning officials (*i.e.,* State and county emergency management agencies (EMAs) and local emergency planning committees (LEPCs)).
- Local public officials and governing councils.
- Excavators.

Public education and understanding of pipeline operations is vital to the continued safe operation of pipelines. Pipeline operator public education programs are an important factor in establishing communications and providing information necessary to enhance public understanding of how pipelines function and the public's role in promoting pipeline safety. When effectively and consistently managed, a pipeline operator public education program can provide significant value in enhanced public safety, improved pipeline safety and environmental performance, and enhanced emergency response coordination.

Enhancing requirements for pipeline operator public education programs is part of a broad effort by RSPA/OPS to enhance safety through promoting improved public communications by the pipeline industry and government pipeline regulators.

In proposing new requirements for pipeline operator public education programs, RSPA/OPS is also responding to calls by Congress in the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355; December 17, 2002) for standards prescribing the elements of public education programs. Simultaneously with this mandate, the pipeline industry has been developing recommendations for pipeline operator public education programs, which resulted in the development of API RP 1162. This standard was developed with extensive collaboration by all segments of the industry, input from RSPA/OPS and State pipeline regulators, and an opportunity for public review and comment. RSPA/OPS is taking advantage of the substantial work accomplished in the completion of this standard to adopt its provisions in this rule.[2]

Development of a new rule establishing additional requirements for pipeline operator public education programs is part of RSPA/OPS' broader pipeline safety communications initiative to promote pipeline safety by requiring enhanced communications by the pipeline industry with the public and to increase public awareness of pipeline operations and safety issues. In 2000, RSPA/OPS sponsored a pipeline communications exploratory group under the auspices of the statutorily mandated Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), composed of representatives of RSPA/OPS, pipeline companies, industry groups, and local jurisdictions. The group met to explore the subject of pipeline communications and to identify opportunities for improvement.

Recent rulemaking activities by RSPA/OPS (*e.g.,* Liquid and Gas Pipeline Integrity Management, Operator Qualification) included increased efforts to inform the public regarding pipeline safety and regulation. These efforts have included public meetings and public-access Web sites. For example, the following public meetings on the Integrity Management rulemakings were held:

- November 18–19, 1999, in Herndon, Virginia.
- February 12–14, 2001, in Arlington, Virginia.
- August 7–8, 2001, in Houston, Texas.
- July 23–24, 2002, in Houston, Texas.
- March 14, 2003, in Washington, DC.
- April 25, 2003, in Dulles, Virginia.

The February 2001 public meeting in Arlington, Virginia, included presentations from different stakeholder viewpoints on public communications needs and the nature of additional pipeline information needed by the public, local officials, and emergency responders. Materials from this meeting are available in the electronic docket referenced above.

Current RSPA/OPS public communications initiatives include:

- Development and maintenance of a public information Web site *http://primis.rspa.dot.gov/pipelineinfo).*
- The Community Assistance and Technical Support (CATS) program with new positions at each RSPA/OPS regional office.
- A partnership between RSPA/OPS and the National Association of State Fire Marshals (NASFM) to develop information and training aimed at enhancing the safety of first responders to pipeline accidents and assessing pipeline security risks.
- A partnership between RSPA/OPS and the Transportation Research Board (TRB) of the National Research Council to examine model land use practices by local communities, with an objective of better managing encroachment risks.
- Development of mechanisms to provide information to local officials, such as the location of pipeline integrity assessments and centralized sources for post-accident information.

RSPA/OPS also sponsored meetings held in Bellevue, Washington, and Houston, Texas, on the subject of public communications. The general response from the public to these communications efforts by RSPA/OPS

[2] A link to API RP 1162 on the API standards Web site may be found at *http://primis.rspa.dot.gov/edu/rp1162.htm.*

was an expressed desire to receive more information on specific pipelines.

The Bellevue, Washington, meeting (transcript at *http://primis.rspa.dot.gov/comm/Bellevue_2003_01_29.htm*) included panel discussions during which local and State officials, local emergency planners and responders, and public representatives discussed the types of information that these stakeholders would like to receive from pipeline operators, the groups that should receive the information, and the modes of communication that would be effective in conveying the information. The panel members supported increased information from operators to members of the public in areas near pipeline facilities, to local officials of areas intersected by pipelines and areas that could be affected by releases from pipelines, and to emergency responders in areas that could be impacted by releases. The panel members advocated that operators provide this information through a wide range of communication modes, including published material, electronic media, mailings, and live meetings. The panel indicated a variety of information from operators could be important to understanding pipelines and promoting safety. Comments of other attendees at the meeting echoed the panel's comments.

In response to these comments, RSPA/OPS has supported the pipeline industry's initiatives to develop guidelines for operator public education programs. These initiatives resulted in API RP 1162.

Pipeline Safety Improvement Act of 2002

On December 17, 2002, Congress enacted the Pipeline Safety Improvement Act (PSIA) of 2002, mandating public education activities by pipeline operators and DOT, with a deadline of one year for performing these activities. These mandates require that:

- Each pipeline owner and operator carry out a continuing public education program.
- Each pipeline owner and operator use a one-call notification system prior to excavation and other damage prevention activities.
- Each pipeline owner and operator communicate to the public the possible hazards associated with unintended releases from the pipeline facility, including:
  - —Physical indications that such a release may have occurred,
  - —Steps that should be taken for public safety in the event of a pipeline release, and
  - —How to report a release or other event.
- Each pipeline owner and operator review its existing public education program for effectiveness and modify the program as necessary to include activities to advise affected municipalities, school districts, businesses, and residents of pipeline locations.
- DOT issue standards prescribing the elements of an effective public education program and develop material for use in the program.

As a first step in responding to these mandates, RSPA/OPS prepared a self-assessment form for each operator's use in reviewing its public education program. The draft form was first distributed to attendees at two public workshops held during September 2003 in Houston, Texas, and Baltimore, Maryland. The results of the self-assessment (which is based on a self-assessment process defined in API RP 1162) can serve as the basis for defining any necessary improvements to operator programs. RSPA/OPS issued an advisory notice [3] that required all pipeline operators to complete the self-assessment form and return it to RSPA/OPS by December 17, 2003 (the deadline prescribed in the PSIA).

To more fully implement the mandates of the PSIA, RSPA/OPS encouraged and supported the development of API RP 1162 and is now proposing this rule for pipeline operator public education programs, utilizing the provisions of API RP 1162 for these programs.

American Petroleum Institute (API) Recommended Practice API RP 1162

In 2001, at the request of RSPA/OPS, API began the development of a new standard for pipeline operator public education programs, designated as API Recommended Practice API RP 1162, through formation of an expanded task force that included representation from gas and liquid transmission pipeline operators and gas distribution pipeline operators. Representatives of RSPA/OPS and the National Association of Pipeline Safety Representatives (NAPSR) (representing State pipeline regulatory agencies) attended all meetings of the task force as observers and provided direction and input into both the process and the content of the standard. RSPA/OPS recognized the potential of the new standard to support its efforts to promote safety through improved public communications.

The API RP 1162 task force developed a draft standard for comment, which was presented at a meeting in Houston, Texas, on July 25, 2002. The meeting was attended by public officials and local emergency planning committees (LEPCs), as well as pipeline companies. Comments were also invited through the API Web site. Comments were incorporated in a new draft standard that API presented at a subsequent public meeting on pipeline public communications in Bellevue, Washington on January 29, 2003. This meeting was co-sponsored by RSPA/OPS, State pipeline regulators, and pipeline industry organizations. Additional comments were incorporated and a revised draft was issued on May 29, 2003, for API balloting and the beginning of the American National Standards Institute (ANSI) review process. A final corrected draft was issued on September 2, 2003. This draft was presented at the September 2003, public workshops held in Houston, TX and Baltimore, MD.

Pipeline industry organizations generally agreed with the direction of RSPA/OPS and the work of the API RP 1162 committee. In response, API issued a *Joint Statement on Enhancing Public Awareness Programs for the Pipeline Industry* (May 28, 2003), which committed the industry to adopting "* * * a consensus standard establishing a baseline public awareness program for pipeline operators * * *" and urged RSPA/OPS "* * * to satisfy any need to supplement current requirements for public awareness programs by incorporating [API] RP 1162 into its regulations * * *." The joint statement was signed by executives of the following organizations:

- API;
- Association of Oil Pipelines (AOPL);
- American Gas Association (AGA);
- Interstate Natural Gas Association of America (INGAA);
- American Public Gas Association (APGA).

The Proposed Rule

RSPA/OPS proposes a rule to require each pipeline operator to develop, implement, and maintain a public education program that complies with the requirements of API RP 1162. This proposed rule applies to all pipelines regulated under 49 CFR parts 192 and 195, including:

- Interstate and intrastate hazardous liquid transmission pipelines.
- Interstate and intrastate natural gas transmission pipelines.

[3] 68 FR 66155, *Pipeline Safety: Self-Assessment of Public Education Programs*, November 25, 2003. This notice may be viewed at *http://ops.dot.gov/whatsnew/AdvBulletinADB0308.pdf*.

- Natural gas distribution pipelines.
- Oil and gas gathering lines.

If an operator's current public education program does not comply with API RP 1162, the operator would be required to modify the program to come into compliance. Information on API RP 1162, including a link to the document, may be found at: *http://primis.rspa.dot.gov/edu/rp1162.htm.*

The proposed rule would require all pipeline operators to develop and implement public education programs that address the following stakeholder audiences:

- Affected public.
- Local officials.
- Emergency responders.
- Excavators/Contractors.
- Land Developers.
- One-Call Centers.

For each stakeholder audience, API RP 1162 defines requirements for public education programs, including:

- The message to be delivered to each audience.
- The frequency of message delivery.
- The methods/media to deliver the message.

The requirements include baseline program requirements, which apply throughout the operator's pipeline system, and supplemental requirements, which apply to specific locations along the pipeline system where relevant location-specific factors make additional education activities necessary. Operators are required to consider the following factors when deciding where supplemental program enhancements should be added to the program, what enhancements should be added, and which audience groups should be the target of the enhancements:

- Potential Hazards.
- High Consequence Areas (as defined in 49 CFR parts 192 and 195).
- Population density.
- Land development activity.
- Land farming activity.
- Third party damage incidents.
- Environmental considerations.
- Pipeline history in an area.
- Specific local situations.
- Regulatory requirements.
- Results from previous public education program evaluations.
- Other relevant needs.

Baseline and supplemental program requirements for different pipeline operator types are summarized in a set of tables in API RP 1162 that may be found at: *http://primis.rspa.dot.gov/edu/RP1162/Sect-2_Tables_Prelim_Post-to-Web_090903.pdf.*

Each operator is required to establish and periodically update a written public education program covering all program elements. The written program should include:

- A statement of the company's management commitment to achieving effective public/community education.
- A description of the roles and responsibilities of personnel administering the program.
- Identification of key personnel and their titles (including senior management responsible for the implementation, delivery and ongoing development of the program).
- Identification of the targeted audiences and the information to be communicated to each.
- Identification of the media and methods of communication to be used in the program, as well as the basis for selecting the chosen method and media.
- Documentation of the frequency and the basis for selecting that frequency for communicating with each of the targeted audiences.
- Identification of program enhancements, beyond the baseline program, and the basis for implementing such enhancements.
- The program evaluation process, including the evaluation objectives, methodology to be used to perform the evaluation and analysis of the results, and criteria for program improvement based on the results of the evaluation.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

The Department of Transportation (DOT) does not consider this proposed rule to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). RSPA does not consider this proposed rule significant under DOT's regulatory policies and procedures (44 FR 11034: February 26, 1979). We prepared a Draft Regulatory Evaluation for this proposed rule and placed it in the public docket for review. The evaluation concludes that there will only be minimal additional costs for operators to comply with the proposed rule, as the rule is based on the API RP 1162, which encompasses consensus industry standard practices. Most operators have existing public education programs, some of which may need to be expanded to meet the requirements of API RP 1162, but this is not expected to involve significant cost. A primary benefit of this rulemaking is complying with Congressional mandates. In addition, increased public awareness that is obtained through the expansion of public education programs is expected to have some benefits due to a potential for fewer pipeline accidents from third party damage and improved emergency response. Pipeline industry organizations have already endorsed the use of API RP 1162 as the basis for new regulatory requirements for pipeline operator public education programs.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA/OPS must consider whether a rulemaking would have a significant impact on a substantial number of small entities. This proposed rule has been developed in accordance with Executive Order 13272 (*Proper Consideration of Small Entities in Agency Rulemaking*) and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act. This ensures that the potential impacts of proposed rules on small entities are properly considered. The majority of gas transmission and hazardous liquid pipeline operators are large entities. Of the pipeline operators that are small entities, the majority are gas distribution operators. Two trade associations represent natural gas distribution operators: The AGA and the APGA. The APGA represents municipally-operated gas distribution systems. Conversations between RSPA and APGA indicate that there are approximately 950 municipally operated gas distribution operators. APGA represents 600 of these. Of these 600, APGA estimates that 550 of them would be classified as small entities. The APGA has held two teleconferences for its members concerning implementation of the public education program requirements of API RP 1162. They have indicated that compliance with the provisions of this standard would not represent a significant impact on their members, because of the possibility of flexibility in implementing the standard's requirements. APGA indicated that it would be willing to help small pipeline operators with compliance with this regulation. Based upon the above information showing that the economic impact of this rule on small entities will be minimal, I certify under section 605 of the Regulatory Flexibility Act that this regulation will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains some information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), DOT will submit a copy of the Paperwork Reduction Act analysis to the Office of Management and Budget for its review and to the docket. The requirements for information collection include development by each pipeline operator

of a written public education program in compliance with API RP 1162. In addition, API RP 1162 includes requirements for public education program documentation and recordkeeping. The standard was developed by a pipeline industry group and reflects industry standard practices for these aspects of operator programs. Some operators may have increased required levels of documentation and recordkeeping, but these are not expected to be significant. Therefore, RSPA concludes that this proposed rule contains only a minor additional paperwork burden. RSPA has estimated that it will take each operator an additional 8 hours to submit these programs to RSPA, at a total cost over the industry of $19,200 per year.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (*Consultation and Coordination with Indian Tribal Governments*). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). This proposed rule does not propose any regulation that:

(1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government,

(2) Imposes substantial direct compliance costs on States and local governments, or

(3) Preempts State law.

Therefore, the consultation and funding requirements of Executive Order 13132 (64 FR 43255; August 10, 1999) do not apply. It should be noted that representatives of the National Association of Pipeline Safety Representatives (NAPSR), which includes State pipeline safety regulators, have participated extensively in the development and review of API RP 1162, which forms the basis for this proposed rule.

Unfunded Mandates

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. An industry working group, along with participants from NAPSR, developed API RP 1162, which forms the basis for the rule. Industry organizations have endorsed this approach to setting requirements for operator public education programs. RSPA/OPS believes this to be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

RSPA/OPS has analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have preliminarily determined that this action would not significantly affect the quality of the environment. The rule requires development of pipeline operator public education programs that follow API RP 1162. This may result in expanded public education activities by operators, but will not result in physical disruption of the environment in the vicinity of pipelines. These additional public education activities can have a positive environmental effect, if increased public awareness results in a lower frequency of pipeline accidents due to excavation damage or if increased awareness results in lower consequences of pipeline accidents due to more effective emergency response to accidents. These potential positive benefits are not expected to be significant, however. The Environmental Assessment of this proposed rule is available for review in the docket.

Executive Order 13211

This proposed rulemaking is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects

49 CFR Part 192

Agency procedures, Gas, Natural gas, Pipeline safety, Public education, Reporting and recordkeeping requirements.

49 CFR Part 195

Agency procedures, Hazardous liquid, Oil, Petroleum, Pipeline safety, Public education, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA/OPS proposes to amend parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Section 192.7 is amended to revise the table in paragraph (c)(2) by adding a new item B.(5) to read as follows:

§ 192.7 Incorporation by reference.

* * * * *

(c) * * *

(2) * * *

Source and name of referenced material	49 CFR reference
A. * * *	
B. * * *	
(5) API RP 1162 "Public Awareness Programs for Pipeline Operators" (2003).	§ 192.616
* * * * *	

3. Section 192.616 is revised to read as follows:

§ 192.616 Public education.

Each pipeline operator shall establish a continuing public education program to enable all interested and affected parties to recognize a gas pipeline emergency, to react safely to the emergency, and to report the emergency to the operator or appropriate public officials. Each operator is required to develop, implement, and maintain a public education program that complies

with standard API RP 1162 (*IBR, see* § 192.7).

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

4. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109 and 60118; and 49 CFR 1.53.

5. Section 195.3 is amended to revise the table in paragraph (c) by redesignating items B.(13) through B.(16) as B.(14) through B.(17) and adding a new item B.(13) to read as follows:

§ 195.3 Material incorporated by reference.

* * * * *

(c) * * *

Source and name of referenced material	49 CFR reference
A. * * *	
B. * * *	
(13) API RP 1162 "Public Awareness Programs for Pipeline Operators" (2003)	§ 195.440; 195
(14) API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents" (6th edition, 1998).	§§ 195.134; 195.444; 195.405(a)
(15) API Publication 2026 "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, 1998).	§ 195.405(b)
(16) API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (2nd edition, 1996).	§ 195.428(c)
(17) API Standard 2510 "Design and Construction of LPG Installations" (7th edition, 1995)	§§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c)

* * * * * * *

6. Section 195.440 is revised to read as follows:

§ 195.440 Public education.

Each pipeline operator shall establish a continuing public education program to enable all interested and affected parties to recognize a hazardous liquid pipeline emergency, to react safely to the emergency, and to report the emergency to the operator or appropriate public officials. Each operator is required to develop, implement, and maintain a public education program that complies with the requirements of standard API RP 1162 (*IBR, see* § 195.3).

Issued in Washington, DC, on June 3, 2004.

Stacey L. Gerard,

Associate Administrator, Office of Pipeline Safety.

[FR Doc. 04–12993 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 69, No. 121
Thursday, June 24, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), announced the opening of the Trade Adjustment Assistance for Farmers (TAA) petition period for fiscal year 2005. Petitioners can file their form FAS–930 or other acceptable petitions to FAS from August 16, 2004, through January 31, 2005

Petitioners should file their petition in accordance with 7 CFR 1580.201. The petition must be received by the TAA office by close of business January 31, 2005. The TAA office address is Foreign Agricultural Service, ITP/IPPD, MS–1021, Washington, DC 20250–1021, the facsimile number is (202) 720–0876, and e-mail is *trade.adjustment@fas.usda.gov*. Use of fax or e-mail is recommended.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002 (Pub. L. 107–210) amended the Trade Act of 1974 (19 U.S.C. 2551, *et seq.*) to add a new chapter 6, which established a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers and qualified fishermen. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this program, a group of agricultural commodity producers and qualified fishermen may petition the Administrator for trade adjustment assistance. Petitions will be reviewed for completeness and timeliness. Once the petition is completed in accordance with 7 CFR 1580.201, the acceptance of the petition will be published in the **Federal Register**. Once a petition has been accepted, the Administrator will determine whether the most recent marketing year price for the commodity produced by the group is less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year and whether increases in imports of a like or directly competitive product contributed importantly to the decline in price. If these conditions are met, the Administrator will certify the group as eligible for trade adjustment assistance.

Once a petition has been certified, eligible producers and qualified fishermen will have 90 days to contact the Farm Service Agency to apply for assistance.

FOR FURTHER INFORMATION OR ASSISTANCE IN COMPLETING FORM FAS–930, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov*. Additional program information can be obtained at the TAA Web site. The URL is *www.fas.usda.gov/itp/taa/taaindex.htm*.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–14300 Filed 6–23–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Access Designation for the Ocala National Forest, Lake, and Marion Counties, FL

AGENCY: USDA Forest Service.

ACTION: Revised Notice of Intent to prepare a Draft Environmental Impact Statement for access management on the Ocala National Forest.

SUMMARY: The USDA Forest Service intends to prepare a Draft Environmental Impact Statement for designating a system of roads and trails within portions of the Ocala National Forest in Florida.

DATES: Comments were solicited during public meetings held between 1999 and 2002. A draft environmental impact statement is expected to be completed in June 2004. The final environmental impact statement is scheduled to be completed in December 2004.

ADDRESSES: You may request to be placed on the project mailing list and submit comments by contacting: Marsha Kearney, Forest Supervisor, USDA Forest Service, 325 John Knox Rd., Tallahassee, Florida 32303.

FOR FURTHER INFORMATION CONTACT: Will Ebaugh, Project Team Leader, (850) 523–8557.

Responsible Officials: Jerri Marr, District Ranger, Lake George Ranger District, 17147 Highway 40, Silver Springs, Florida 34488; Jim Thorsen, District Ranger, Seminole Ranger District, 40929 State Road 19, Umatilla, Florida 32784.

SUPPLEMENTARY INFORMATION: This is a revised Notice of Intent for the prior notice promulgated on May 8, 2002, in the **Federal Register** (Volume 67, number 89, page 30865). It is being revised due to the following reasons:

(1) The expected publication dates have been delayed by two years. The original schedule included a DEIS release in August 2002 and FEIS in November 2002. The revised dates include a DEIS release in June 2004 and FEIS in December 2004.

(2) The proposed action as described in the 2002 NOI was to include all three National Forests in Florida. The revised project is to be completed only for the Ocala National Forest. The remaining National Forests in Florida will be analyzed under separate EIS's.

(3) The responsible official has changed. Jerri Marr (District Ranger on the Lake George Ranger District and Jim Thorsen (District Ranger on the Seminole Ranger District will be the responsible officials.

Prior to 1999, vehicles could travel off roads (cross-country) on the National Forests in Florida except in areas specifically posted closed. The policy of allowing cross-country access contributed to a proliferation of travelways in portions of the Forests. As a result of this situation, vehicle access was addressed in the revision of Land and Resource Management Plan for the National Forests in Florida (Forest Plan).

Upon approval in 1999, the Forest Plan changed access for motorized vehicles in two ways: "cross-country" travel on land with no existing roads or trails is prohibited anywhere in the forests; and restricted areas were established where travel will be limited to designated roads and trails. The Forest Plan provided that a system of roads and trails would be designated in

the restricted areas in cooperation with the public and user groups.

In January 2000 a series of public meetings was held near each National Forest in Florida. At these meetings, attendees selected a variety of stakeholder representatives to provide information on access preferences and needs. The group developed a proposed system for consideration by the Forest Service along with a set of guiding principles and designation criteria. This proposed action included approximately 1,300 motorized access opportunities. The Forest Service began an environmental assessment of this proposed action in 2001. During the assessment, it became evident that an accurate inventory of roads, trails and travelways was needed in the restricted areas. An inventory using the global positioning system (GPS) began in August 2001 and was completed in April 2002. It also became evident that the proposed action may have a significant effect on the human environment leading to preparation of an environmental impact statement.

Alternatives to the proposed action developed by the public work groups are currently being developed and analyzed.

The scoping process, as outlined by the Council on Environmental Quality (CEQ), was utilized to involve Federal, State, and local agencies and other. interested persons and organizations. Environmental considerations include potential presence of historical or archaeological resources, aesthetics, recreation demand, wetlands, endangered and threatened species, and fish and wildlife habitats and values.

Release and Review of the EIS: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by June 2004. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the CEQ for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 3, 2004.

Jim Thorsen,

District Ranger, Seminole Ranger District, National Forests in Florida.

Dated: June 15, 2004.

Jerri Marr,

District Ranger, Lake George Ranger District, National Forests in Florida.

[FR Doc. 04–14324 Filed 6–23–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–853

Notice of Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China

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

ACTION: Notice of initiation and preliminary results of changed circumstances review and intent to revoke order.

SUMMARY: In accordance with 19 CFR 351.216(b), Bimeda, Inc., a U.S. importer of the subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on bulk aspirin from the People's Republic of China. In response to this request, the Department of Commerce is initiating a changed circumstances review and issuing a notice of preliminary intent to revoke the order on bulk aspirin from the People's Republic of China. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1279 or (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2000, the Department of Commerce ("the Department") published an antidumping duty order on bulk aspirin from the People's Republic of China ("PRC"). *See Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China,* 65 FR 42673 (July 11, 2000). On April 30, 2004, Bimeda, Inc. ("Bimeda"), an importer of bulk aspirin from the PRC and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on bulk aspirin from the PRC through the initiation of a changed circumstances review.

According to Bimeda, revocation is warranted because there is no longer a producer of bulk aspirin in the United States. Bimeda asserts that Rhodia, Inc., ("Rhodia"), the only petitioner in the original investigation and the only U.S. producer at the time the order was issued, closed its sole production facility related to the manufacture of bulk aspirin in the United States on or about December 20, 2002. Bimeda provided a press release, a news article, an excerpt from Rhodia's 2001 annual report to the Securities and Exchange Commission, and a product datasheet posted on Rhodia's corporate website to support its contention. Accordingly, Bimeda asserts that the order should be revoked effective as of the date the petitioner ceased manufacture of bulk aspirin in the United States (*i.e.*, approximately December 20, 2002).

In response to a request from the Department, on May 25, 2004, Rhodia

stated that it had ceased production at its U.S. aspirin plant on February 28, 2003. Rhodia also indicated that it is still liquidating its inventory of bulk aspirin produced in the United States.

Scope of the Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho–acetylsalicylic acid or as mixed ortho–acetylsalicylic acid. Pure ortho–acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula C9H8O4. It is defined by the official monograph of the United States Pharmacopoeia 23 ("USP"). It is currently classifiable under the *Harmonized Tariff Schedule of the United States* ("HTSUS") subheading 2918.22.1000.

Mixed ortho–acetylsalicylic acid consists of ortho–acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Initiation of Changed Circumstances Review, Preliminary Results, and Intent to Revoke Antidumping Duty Order

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended ("the Act"), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review.

Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation. Furthermore, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice, if the Department concludes that expedited action is warranted.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Therefore, in accordance with sections 751(d)(1) and 782 (h)(2) of the Act, and 19 CFR 351.216 and 351.222(g) based on the information provided by Bimeda, we are initiating this changed circumstances review. Furthermore, since the information on the record indicates there is no longer any evidence of U.S. production of the domestic like product, we determine that expedited action is warranted and we preliminarily find that the continued relief provided by the order with respect to bulk aspirin from the PRC is no longer of interest to the domestic interested party in these proceedings. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we preliminarily find that the request from Bimeda meets all of the criteria under 19 CFR 351.222(g) and thus, we intend to revoke the order with respect to imports of bulk aspirin from the PRC.

If the final revocation occurs, we intend to instruct U.S. Customs and Border Protection ("CBP") to liquidate without regard to antidumping duties all unliquidated entries of bulk aspirin, and to refund any estimated antidumping duties collected on all entries of bulk aspirin entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, the earliest date for which entries of bulk aspirin have not been subject to an administrative review. We will also instruct CBP to pay interest on such refunds with respect to the subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on bulk aspirin from the PRC will continue unless and until we publish a final decision to revoke.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication. All written comments shall be submitted in accordance with 19 CFR 351.303. Consistent with section 351.216(e), the Department will publish the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.216 of the Department's regulations.

Dated: June 18, 2004..

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14359 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From the People's Republic of China

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

ACTION: Preliminary determination of sales at less than fair value and postponement of final determination.

EFFECTIVE DATE: June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Welty or Tisha Loeper-Viti at (202) 482–0186 or (202) 482–7425, respectively; AD/CVD Enforcement, Office 5, Group II, 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 carbazole violet pigment 23 (CVP–23) from the People's Republic of China 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 estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

Case History

This investigation was initiated on December 11, 2003.[1] *See Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China*, 68 FR 70761 (December 19, 2003) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

The U.S. Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 68 FR at 70762. We received no comments.

On January 5, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the domestic industry producing CVP–23 is materially injured by reason of imports from the People's Republic of China (PRC). *See Determinations and Views of the Commission*, USITC Publication No. 3662 (January 2004); *see also Carbazole Violet Pigment 23 from China and India*, 69 FR 2002 (January 13, 2004).

On January 9, 2004, the Department issued its antidumping questionnaire [2] to the PRC Bureau of Fair Trade for Imports and Exports (BOFT). The Department requested that BOFT send the questionnaire to all companies that manufacture and export CVP–23 to the United States, as well as manufacturers that produce CVP–23 for companies that were engaged in exporting subject merchandise to the United States during the period of investigation (POI). Seven companies filed responses to section A of the questionnaire on February 6, 2004. On February 18, 2004, the Department informed the PRC companies that the Department was not considering limiting the number of respondents, and that the Department intended to investigate all seven companies that had filed a response to section A.[3] On March 2, 2004, the following companies responded to sections C and D of the Department's questionnaire: GoldLink Industries Co., Ltd. (GoldLink), Nantong Haidi Chemical Co., Ltd. (Haidi), Trust Chem Co., Ltd. (Trust Chem) and Tianjin Hanchem Int'l Trading Co., Ltd. (Hanchem).[4]

On March 23, 2004, the petitioners alleged that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of CVP–23 from the PRC. On June 18, 2004, the Department preliminarily determined that critical circumstances exist with regard to imports of CVP–23 from the PRC for three of the four respondent exporters. See Memorandum from Jeffery A. May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary, concerning Antidumping Duty Investigation of Carbazole Violet Pigment 23 from the People's Republic of China—Preliminary Determinations on Critical Circumstances, dated June 18, 2004.

The Department issued supplemental questionnaires on March 23, 2004. On April 20, 2004, the four respondents listed above filed responses to the Department's supplemental questionnaires.

Postponement of Final Determination

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, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months. On May 26, 2004, GoldLink, Haidi, Trust Chem, and Hanchem requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. The respondent companies also included a request to extend the provisional measures from a four-month period to not more than six months. Accordingly, because we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of investigation is April 1, 2003, through September 30, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-;dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[5] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not

[1] The petitioners in this investigation are Sun Chemical Corporation and Nation Ford Chemical Company.

[2] Section of A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

[3] *See* February 18, 2004 Memo to the File from Charles Riggle.

[4] Hanchem was established subsequent to the POI out of the U.S. sales department of a company named Tianjin Heng An Trading Co., Ltd. (Heng An). During the POI, sales of subject merchandise to the United States were made by Heng An. We have preliminarily determined that it is appropriate to treat Heng An and Hanchem as a single entity for the purposes of the margin calculations for this antidumping duty investigation and for the application of the antidumping law. *See* Memorandum from Marin Weaver, International Trade Compliance Analyst, to Jeffrey A. May, Deputy Assistant Secretary, concerning the Analysis of Successorship and Assignment of Separate Rate for Respondents in the Antidumping Duty Investigation of Carbazole Violet Pigment 23 from the People's Republic of China, dated June 18, 2004.

[5] Please note that the bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition at 8.

included within the scope of the investigation.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its previous antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China,* 68 FR 7765 (February 18, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China,* 68 FR 46577 (August 6,2003). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party in this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a market economy at a comparable level of development that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the *Normal Value* section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19027 (April 30, 1996). GoldLink, Haidi, Hanchem, and Trust Chem have provided the requested company-specific separate rate information and have indicated that there is no element of government ownership or control over their operations.

We have determined, according to the criteria identified in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22587 (May 2, 1994), that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by GoldLink, Haidi, Trust Chem, and Hanchem, and these companies are, therefore, entitled to separate rates. For a complete discussion of the Department's determination, *see* the June 18, 2004 memorandum, Analysis of Successorship and Assignment of Separate Rates for Respondents in the Antidumping Duty Investigation of Carbazole Violet Pigment 23 from the People's Republic of China, which is on file in the CRU.

The PRC-Wide Rate

Although the Department provided BOFT and all PRC exporters of the subject merchandise, including those companies identified in the petition, with the opportunity to respond to its questionnaire, only GoldLink, Haidi, Trust Chem, and Hanchem submitted complete responses thereto. After filing responses to section A, manufacturer Hangzhou Baihe Chemical Co. Ltd., exporter Oriental Color Co. Ltd., and exporter Shanghai Jiehong Color Int'l Trading Co. Ltd. failed to respond to sections C or D. In addition, our review of U.S. import statistics reveals that there are other PRC companies, not identified in the petition, that exported CVP–23 to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have applied the Department's presumption, which is rebuttable, that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to the PRC exporters that comprise this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, 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. As explained above, GoldLink and its manufacturer Jiangsu Multicolor Fine Chemical Co., Ltd. (Multicolor),[6] Haidi and its manufacturer Jiangsu Haimen Industrial Chemical Factory (Haimen), Trust Chem and its manufacturer Nantong Longteng Chemical Co. Ltd. (Longteng), and Hanchem provided us with the information we requested, but no other Chinese manufacturer or exporter of the subject merchandise responded completely to the Department's requests for information. The curative provisions of section 782(e) of the Act are not applicable because there is no information on the record of this investigation on which the Department can determine separate rates for those manufacturers and exporters. Accordingly, the Department is applying the PRC-wide rate to all PRC exporters of the subject merchandise except for the four respondents listed above.

As explained above, we are unable to calculate a PRC-wide rate based on the questionnaire responses because several respondents failed to comply with our requests for information. The failure of the parties at issue to respond significantly impedes this proceeding because the Department cannot accurately determine a margin for these parties. Thus, pursuant to section 776(a)(2)(A) and (C) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on the facts available.

In applying facts otherwise available, 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. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to

[6] GoldLink indicated in its initial response that it purchased the subject merchandise from a producer named Wuxi Xinguang Chemical Industry Co., Ltd. (Xinguang). However, in its supplemental response, GoldLink stated that Xinguang had not produced the subject merchandise itself but had purchased it from its own parent company, Multicolor. Nevertheless, GoldLink stated that the factors originally reported to the Department were those of the actual producer, Multicolor.

cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the 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). In this case, the complete failure of several parties to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. Since the information is within the sole possession of the parties at issue, the Department is precluded from determining an accurate margin for the other producers and exporters and must therefore resort to the use of adverse facts available.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Independent sources may include published price lists, official import statistics and Customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870 and 19 CFR 351.308(d). "Corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

To determine the probative value of the petition margin for use as AFA, for purposes of the preliminary determination in this investigation, we have examined the evidence supporting the petition calculations. *See Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China*, 68 FR 70761 (December 19, 2003) (*Initiation Notice*). We have relied on the information in the petition, as amended, to establish the facts available rate. Evidence from the relevant time period such as customs statistics or market studies not generated for purposes of the trade action are considered to be reliable because they are based on actual independent trade data and analysis. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999), at Comment 13. Invoices for actual sales and expenses from the relevant time period are also considered probative because they reflect the actual commercial activity at issue. *Id.*

Therefore, in accordance with section 776(c) of the Act, to the extent practicable, we re-examined the export price (EP) and normal value (NV) calculations on which the petition margin was based and compared them to the EPs and NVs calculated by the Department for purposes of this investigation as described below.

For EP, the petitioners calculated a single average gross unit price, $4.23 per pound, by using average unit values (AUV) from import statistics for CVP–23 from the PRC to the United States, under HTSUS subheading 3204.17.9040. *See* petition at 19–20 and amendment at Exhibit 3. The petitioners based the calculation on import quantities and values reported on the U.S. International Trade Commission (ITC) Interactive Tariff and Trade DataWeb. *See* Web site: *http://dataweb.usitc.gov/scripts/user_set.asp*. We confirmed that the AUV data used by the petitioners accurately reflects ITC import statistics for CVP–23 and we converted the average unit value for the six month period of investigation to a price per kilogram, $9.31, based on the quantity unit of measure reported by the respondents. The publicly available import statistics on which we base the AUV reflect CVP–23 prices net of international freight for all Chinese exporters, including those who did not respond to our questionnaire. Furthermore, we observe that for those companies that did respond, the combined AUV based on Customs entry data is $25.08 per kilogram. This value falls within the range of U.S. prices reported by these companies to the Department in their questionnaire responses. Therefore, we consider the AUV data to be reliable and to have probative value for purposes of calculating the PRC-wide rate.

Because the Department considers the PRC to be a non-market economy, the petitioners calculated NV based on factors of production (FOP) methodology, as defined by section 773(c)(3) of the Act. The petitioners used the consumption rates of materials, energy, and labor of an Indian producer because, the petitioners asserted, information regarding the Chinese producers' consumption rates were not available. For those inputs for which Indian consumption rates were not available, the petitioners used their own consumption rates. The petitioners calculated a single margin using a weighted average of the calculated normal values for crude CVP–23, $18.26 per pound or $40.16 per kilogram, and finished (presscake/dry powder) CVP–23, $21.58 per pound or $47.47 per kilogram.

We compared the normal values calculated by the petitioners to the normal values the Department calculated for the respondent companies using the respondents' own consumption rates and publicly available surrogate values. We found that the normal values in the petition were within the range of those calculated by the Department. Therefore, we consider the normal values within the petition to be reliable and of probative value.

As detailed above, to the extent practicable, we have corroborated the export price and normal values used in the petition, as amended. The PRC-wide rate is, for the preliminary determination, 370.06 percent. For the purpose of determining the most appropriate final PRC-wide margin, the Department will consider all information on the record at the time of the final determination.

Fair Value Comparisons

To determine whether respondents' sales of CVP–23 to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described below 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.

Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise 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 (c).

GoldLink

Pursuant to section 772(a) of the Act, we used EP for GoldLink because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated.

We calculated EP for GoldLink based on packed CIF prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight, brokerage and handling, international freight, and marine insurance, where applicable. Because transportation for all sales was provided by an NME company, we based movement expenses associated with these sales on surrogate values. *See* FOP Memo.

Haidi

Pursuant to section 772(a) of the Act, we used EP for Haidi because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated.

We calculated EP for Haidi based on packed FOB prices to unaffiliated purchasers in the United States. We made deductions for movement expenses (domestic inland freight) in accordance with section 772(c)(2)(A) of the Act. Because transportation for all sales was provided by an NME company, we based movement expenses associated with these sales on surrogate values. *See id.* Haidi's producer, Haimen, purchased two of its inputs from market economy suppliers. We used Haimen's market economy purchase to value one of the inputs; however, because the purchase of the other input was from a market economy affiliate of Haidi we valued that input using a surrogate value.

Trust Chem

Pursuant to section 772(a) of the Act, we used EP for Trust Chem because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated.

We calculated EP for Trust Chem based on packed CIF prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight, brokerage and handling, international freight, and marine insurance, where applicable. Because domestic inland freight and marine insurance transportation for all sales were provided by an NME company, we based movement expenses associated with these sales on surrogate values. *See id.*

Hanchem

Pursuant to section 772(a) of the Act, we used EP for Hanchem because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated.

We calculated EP for Hanchem based on packed CIF prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight, brokerage and handling, international freight, and marine insurance, where applicable. Where transportation was provided by an NME company, we based movement expenses associated with these sales on surrogate values. *See id.* Where it was provided by a market economy company and Hanchem paid in U.S. dollars, we used Hanchem's actual transportation expense.

We also made deductions for commissions.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department's Office of Policy identified six countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Indonesia, Sri Lanka, the Philippines, Morocco and Egypt (*see* the memorandum from Ron Lorentzen, Acting Director, Office of Policy to Gary Taverman, Director, Office 5, regarding Request for a List of Surrogate Countries, dated March 9, 2004). Based on the companion antidumping duty investigation on CVP–23 from India, we know that India is a significant producer of the subject merchandise. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. Of the six potential surrogate countries, India had the best available financial data on specific CVP–23 producers. Therefore, for purposes of the preliminary determination, we have selected India as the surrogate country.

2. Factors of Production

In their questionnaire responses, Haimen, Multicolor/Xinguang and Longteng reported factors of production for the manufacture of the subject merchandise during the POI. The factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* section 773(c)(3) of the Act. To calculate NV, we multiplied the reported quantities by publicly available surrogate per-unit values from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using the applicable price indices published in the International Monetary Fund's *International Financial Statistics* (April 2004, February 2002, and December 1999). We inflated the values denominated in Indian rupees using Indian wholesale price indices. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic input supplier to the factory processing subject merchandise or the distance from the nearest seaport to the relevant factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

With the exception of four material inputs sourced from NME suppliers, we applied a surrogate value using Indian import prices during the POI reported in the *Monthly Statistics of the Foreign Trade of India*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and available from *World Trade Atlas*. We valued the remaining four material inputs using domestic prices contemporaneous with the POI, excluding sales and excise tax where appropriate, as listed in the Indian publication *Chemical Weekly*. We valued water based on an average of several rates for metropolitan areas in

India, published by the Asian Development Bank in the *Second Water Utilities Data Book: Asian and Pacific Region* in 1997.

For energy, we valued steam coal using Indian imports contemporaneous with the POI as reported in the *World Trade Atlas*. We valued electricity using Indian retail prices found in the International Energy Agency's *Key World Energy Statistics 2003* covering the fourth quarter of 2002. We have declined to value one energy input, steam, for this preliminary determination as we are unable to find an appropriate surrogate value.

We valued labor using the latest regression-based wage rate for China found on Import Administration's Web page (*http://www.ia.ita.doc.gov/wages/01wages/01wages.html*) as described in 19 CFR 351.408(c)(3).

To value foreign inland truck freight costs, we relied upon per-kilometer, per-kilogram price quotes obtained from the web-based Indian Freight Exchange. *See http://infreight.com*. We valued ocean freight based on publicly available rates from a large liner shipping company, Maersk Sealand. *See http://www.maersksealand.com*. The Department valued marine insurance using the transaction-specific Indian information that was reported in the public versions of the questionnaire responses placed on the record by Pidilite Industries Ltd. (Pidilite) and Alpanil Industries (Alpanil) in the companion case for India. *See* Pidilite's and Alpanil's April 16, 2004 Sections B and C Supplemental Questionnaire responses at Exhibit Supp—2 and page 9 respectively.

In the companion countervailing duty case for India, the Department preliminarily determined that countervailable subsidies are being provided to producers and exporters of CVP–23 from India. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 22763 (April 27, 2004). However, as the Department has stated in previous cases, the fact that it has been preliminarily determined that a company receives government subsidies does not necessarily mean that its financial ratios are unuseable. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China*, 66 FR 33522 (June 22, 2001) and the accompanying Issues and Decision Memorandum at Comment 8. Therefore, to value factory overhead, selling, general and administrative expenses (SG&A) and profit for the preliminary determination, we used the audited financial statements for Pidilite from its 2002–2003 annual report.

For a complete analysis of surrogate values used in the preliminary determination, *see* the FOP Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances in this case when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 135 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because we have made a preliminary affirmative critical circumstances finding for GoldLink, Haidi, and Hanchem, we are directing the U.S. Customs and Border Protection (CBP) to suspend liquidation of any unliquidated entries of CVP–23 from the PRC exported by these companies, entered or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. For all other exporters, including Trust Chem, we are directing the CBP to suspend liquidation of entries that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In addition, we are instructing 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, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
GoldLink Industries Co., Ltd	76.50
Nantong Haidi Chemical Co., Ltd	124.71
Trust Chem Co., Ltd	168.01
Tianjin Hanchem Int'l Trading Co	53.22
PRC-Wide Rate	370.06

The PRC-wide rate applies to all entries of the subject merchandise except for entries from the four exporters listed above.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations performed in the preliminary determination.

ITC 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 CVP–23 from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration on the later of 50 days after the date of publication of this notice or one week after 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 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 he 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 in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14362 Filed 6–23–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbazole Violet Pigment 23 From India

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination.

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650, AD/CVD Enforcement Office 5, Group II, Import Administration, 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 carbazole violet pigment 23 (CVP–23) from India is being sold, or is likely to he 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 margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

Case History

This investigation was initiated on December 11, 2003.[1] *See Notice of Initiation of Antidumping Duty Investigations: Carbazole Violet Pigment 23 from India and the People's Republic of China*, 68 FR 70761 (December 19, 2003) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

The U.S. Department of Commerce (the Department) set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 68 FR at 70762. We received no comments.

On January 5, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that the domestic industry producing CVP–23 is materially injured by reason of imports from India. *See Determinations and Views of the Commission*, USITC Publication No. 3662 (January 2004); *see also Carbazole Violet Pigment 23 from China and India*, 69 FR 2002 (January 13, 2004).

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 us 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 their petition, the petitioners identified 12 producers of CVP–23 in India. We examined company-specific export data obtained from U.S. Customs and Border Protection (CBP), which indicated that only four companies exported the subject merchandise to the United States during the period of investigation (POI). Due to resource constraints, we selected the two largest companies, Alpanil Industries Ltd. (Alpanil) and Pidilite Industries Ltd. (Pidilite), as respondents. For a more detailed discussion of respondent selection in this investigation, see the January 9, 2004, Respondent Selection Memorandum from David Layton and Monica Gallardo, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, on file in the Central Records Unit, Room B–099 of the main Commerce building.

On January 15, 2004, the Department issued the complete antidumping questionnaire to Alpanil and Pidilite.[2] We received responses to sections A–C of the antidumping questionnaire from both companies and issued supplementary questionnaires where appropriate.[3]

Postponement of Final Determination

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, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months. On May 26, 2004, Alpanil and Pidilite requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Alpanil and Pidilite also included a request to extend the provisional measures from a four-month period to not more than six-months.

[1] The petitioners in this investigation are Sun Chemical Corporation and Nation Ford Chemical Company.

[2] 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 (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

[3] Neither respondent was required to respond to section D of the questionnaire because an allegation of sales below cost had not been made. Section E of the questionnaire was not applicable to either respondent as neither had sales of further-manufactured merchandise.

Accordingly, because we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The POI is October 1, 2002, through September 30, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, November 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is carbazole violet 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2-b:3',2'-m]triphenodioxazine, 8,18-dichloro-5, 15-diethy-5,15-dihydro-, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[4] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.* pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the investigation.

The merchandise subject to this investigation is classifiable under subheading 3204.17.9040 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Product Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: form, stability, dispersion, and tone. Where there was not an identical comparison, we compared the products sold to the United States with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

[4] Please note that the bracketed section of the product description, [3,2-b:3',2'-m], is not business proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* December 4, 2003, amendment to petition at 8.

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 (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States.

For both respondents, we calculated EP based on the packed prices charged to the first unaffiliated customer in the United States because the merchandise was sold directly by both Alpanil and Pidilite outside the United States to the first unaffiliated purchaser in the United States prior to importation, and constructed export price was not otherwise indicated. In accordance with section 772(c)(2) of the Act, we calculated the EP by deducting movement expenses from the starting price, where appropriate. We determined the EP for each company as follows:

Alpanil

We calculated EP based on the packed FOB or CIF price, as appropriate, to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including inland freight, brokerage and handling, international freight, and marine insurance). *See Analysis Memorandum for Alpanil Industries Ltd.*, dated June 18, 2004.

Pidilite

We calculated EP based on the packed FOB or CIF price, as appropriate, to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for foreign movement expenses (including inland freight, brokerage and handling, international freight, and marine insurance). *See Analysis Memorandum for Pidilite Industries Ltd.*, dated June 18, 2004.

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 or CEP, and that there is no particular market situation that prevents a proper comparison with the EP or CEP. According to the statute, 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 both Alpanil and Pidilite had viable home markets for CVP–23. As such, the respondents each submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* section below.

B. Calculation of Normal Value Based on Home Market Prices

We determined price-based NVs for the respondent companies as follows. For both respondents we made adjustments to the home market net price 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, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act by deducting direct selling expenses incurred for home market sales and adding U.S. direct selling expenses.

Alpanil

We based home market prices on the packed, delivered or FOB prices, as appropriate, to unaffiliated purchasers in India. We deducted from the starting price billing adjustments, as reported by Alpanil. We adjusted for foreign inland freight. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Pidilite

We based home market prices on the packed, delivered or FOB prices, as appropriate, to unaffiliated purchasers in India. We adjusted for foreign inland freight and warehousing. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

C. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP

transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles in this investigation, we obtained information from Alpanil and Pidilite about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for home market sales we considered the selling functions reflected in the starting price before any adjustments.

In conducting our level of trade analyses, we examined the specific types of customers, the channels of distribution, and the selling practices of each respondent. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar. We found the following.

Alpanil

For home market sales Alpanil reported two customer categories—end users and distributors. Alpanil reported that these customer categories constitute distinct levels of trade, and that prices to end users are generally higher than those to distributors because Alpanil performs additional selling functions in making sales to end user customers.

We have preliminarily determined that Apanil has two levels of trade in the home market. For sales to the end user customer category, Alpanil reported that it performs additional selling functions, including advertising, sales promotion, technical assistance and after sales service, none of which it performed for home market sales to distributors.

Alpanil has reported one channel of distribution for sales to the United States, direct sales from the factory to U.S. distributors. We preliminarily determine that Alpanil's EP sales to the United States were made at a single level of trade, and that this level of trade was equivalent to the home market level of trade of Alpanil's sales to distributors.

Pidilite

Pidilite has reported two channels of distribution in the home market and one channel of distribution in the U.S. market. Pidilite defined these channels of distribution based on customer category: Distributors and end users in the home market and solely distributors in the U.S. market.

However, Pidilite has not established that the two channels of distribution in the home market constitute more than one level of trade. There are inconsistencies between the information regarding selling functions provided in Pidilite's supplemental response and that in its original submission. For purposes of this preliminary determination, we have concluded that there is insufficient information on the record to establish more than one level of trade in the home market. Furthermore, we have determined that Pidilite's EP sales to the United States were made at a single level of trade and, for lack of unambiguous and consistent information indicating the contrary, that these sales were made at a level of trade equivalent to that of the home market sales.

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.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the CBP to suspend liquidation of all entries of CVP–23 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 equal to the dumping margins indicated in the chart below, adjusted for export subsidies found in the preliminary determination of the companion countervailing duty investigation. Specifically, consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct 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. Accordingly, for cash deposit purposes, we are subtracting from the applicable cash deposit rate that portion of the rate attributable to the export subsidies found in the affirmative countervailing duty determination for each respondent (*i.e.*, 17.91 percent for Alpanil, 17.93 percent for Pidilite, and 17.92 for "All Others"). After the adjustment for the cash deposit rates attributed to export subsidies, the resulting cash deposit rates will be 9.70 percent for Alpanil, 47.68 percent for Pidilite, and 27.14 percent for "All Others." These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Producer/Exporter	Weighted-average margin (percentage)
Alpanil Industries Ltd	27.61
Pidilite Industries Ltd	66.69
All Others	45.06

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations performed in the preliminary determination.

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 CVP–23 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. 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 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 in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14363 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Notice of Final Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China

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

ACTION: Notice of final determination of sales at less than fair value.

DATES: *Effective Date:* June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0651 or (202) 482–4195, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Final Determination of Investigation" section of this notice.

Case History

On February 3, 2004, the Department of Commerce (the Department) published the preliminary determination of sales at LTFV in the antidumping duty investigation of ironing tables from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 5127 (February 3, 2004) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

On February 3, 2004, Shunde Yongjian Housewares Co. Ltd. (Yongjian), a mandatory respondent in this investigation, requested a full postponement of the final determination. Accordingly, on February 19, 2004, the Department published the postponement of the final determination from April 10, 2003, until June 13, 2004. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Postponement of Final Antidumping Determination*, 69 FR 8625 (February 25, 2004). From February 23, 2004, through March 8, 2004, the Department conducted a sales and factors of production verification of Yongjian and Since Hardware (Guangzhou) Co., Ltd. (Since Hardware), the other mandatory respondent in this investigation. On March 4, 2004, the petitioner [1] filed a request for a public hearing in this investigation, but then withdrew its request on May 5, 2004. Since Hardware and Yongjian filed publicly available surrogate value information and data on March 29, 2004. The respondents filed case briefs on April 29, 2004, and the petitioner filed its case brief on April 30, 2004. The respondents filed rebuttal briefs on May 4, 2004, and the petitioner filed its rebuttal brief on May 5, 2004.

Due to the unexpected closure of the main Commerce building on Friday, June, 11, 2004, the Department has tolled the deadline for this final determination by two days to June 15, 2004.

Period of Investigation

The period of investigation (POI) is October 1, 2002, through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this investigation.

Furthermore, this investigation specifically covers imports of ironing

[1] The petitioner in this case is Home Products International, Inc. (HPI).

tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this investigation, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means a product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term "incomplete" ironing table means a product shipped or sold as a "bare board"—*i.e.*, a metal-top table only, without the pad and cover—with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this investigation under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The investigation covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or counter top models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under the new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding, and to which we have responded, are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. *See* Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Office II, to James Jochum, Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated concurrently with this notice, (Issues and Decision Memorandum) on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.) and accessible on the Internet at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value: Structured Steel Beams from the People's Republic of China*, 67 FR 35479, 35480 (May 20, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value Certain: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country. For further details, see the *Preliminary Determination*.

Separate Rates

In our *Preliminary Determination*, we found that both mandatory responding companies, Since Hardware and Yongjian, and three of the four companies responding to Section A of the Department's questionnaire, Forever Holdings Ltd. (Forever Holdings), Gaoming Lihe Daily Necessities Co., Ltd. (Gaoming Lihe), and Harvest International Housewares Ltd. (Harvest International), met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the preliminary determination which would warrant reconsideration of our separates rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to a separate rate, see the *Preliminary Determination*.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the "NME entity." *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996) (*Bicycles from the PRC*). Although the Department provided all known PRC exporters of the subject merchandise with the opportunity to respond to our initial questionnaire, only Since Hardware, Yongjian, Forever Holdings, Gaoming Lihe, Harvest International, and Lerado responded. However, because other PRC companies did not submit a response to the Department's Section A quantity and value question, as discussed above in the "Case History" section of the *Preliminary Determination*, and did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government. Accordingly, we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the *Preliminary Determination*.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the "Changes Since the Preliminary Determination" section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. These adjustments are listed below and discussed in detail in the: (1) Issues and Decision Memorandum; (2) Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, Group II, Office 4, to the File, "Surrogate Country Factors of Production Values in the Final Determination of the Antidumping Duty Investigation on Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated concurrently with this notice, (Surrogate Factors Valuation Memo); and, (3) Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, Group II, Office 4, to the File, "Since Hardware's Margin Calculation Analysis for the Final Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated concurrently with this notice (Since Hardware's Calculation Memorandum), and Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, Group II, Office 4, to the File, "Yongjian's Margin Calculation Analysis for the Final Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated concurrently with this notice (Yongjian's Calculation Memorandum).

1. We revised the PRC labor rate. *See* Issues and Decision Memorandum, at Comment 2.
2. We revised the calculation of inland truck freight. *See* Issues and Decision Memorandum, at Comment 3.
3. We revised our surrogate value for PE septa. *See* Issues and Decision Memorandum, at Comment 4–B.
4. We revised our surrogate value of stainless steel. *See* Issues and Decision Memorandum, at Comment 4–C.
5. We revised our surrogate value of welding wire. *See* Issues and Decision Memorandum, at Comment 4–D.
6. We revised our surrogate value of pigment. *See* Issues and Decision Memorandum, at Comment 4–E.
7. We revised our surrogate value for silica gel parts. *See* Issues and Decision Memorandum, at Comment 4–F.
8. We revised our surrogate value for cotton rope. *See* Issues and Decision Memorandum, at Comment 4–H.
9. We revised our surrogate value for glue. *See* Issues and Decision Memorandum, at Comment 4–J.
10. We revised our surrogate value for cotton fixing strips. *See* Issues and Decision Memorandum, at Comment 4–K.
11. We revised our surrogate value for cold rolled steel. *See* Issues and Decision Memorandum, at Comment 6 and Comment 6–A.
12. We revised our surrogate value for hot rolled steel. *See* Issues and Decision Memorandum, at Comment 6–B.
13. We revised our surrogate value for steel wire rod. *See* Issues and Decision Memorandum, at Comment 6–C.
14. We revised our surrogate value for powder coating. *See* Issues and Decision Memorandum, at Comment 6–F.
15. We did not grant Since Hardware's billing adjustment. *See* Issues and Decision Memorandum, at Comment 9.
16. We revised the surrogate financial ratios for overhead, SG&A, and profit. *See* Issues and Decision Memorandum, at Comment 10.
17. We revised the data contained in Yongjian's factors of production database, based on our findings at verification. *See* Issues and Decision Memorandum, at Comment 11.
18. We revised the inland freight distances for the materials whose values were either not reported or mis-reported at the preliminary determination. *See* Surrogate Factors Valuation Memo.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue suspension liquidation of entries of subject merchandise from the PRC that are entered, or withdrawn from warehouse, for consumption on or after February 3, 2004 (the date of publication of the *Preliminary Determination* 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 NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period October 1, 2002, through March 31, 2003:

Manufacturer/exporter	Weighted-average margin (percent)
Since Hardware (Guangzhou) Co., Ltd	6.60
Shunde Yongjian Housewares Co., Ltd	113.80
Forever Holdings Ltd	52.04
Gaoming Lihe Daily Necessities Co., Ltd	52.04
Harvest International Housewares Ltd	52.04
PRC-Wide Rate	113.80

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Since Hardware, Yongjian, Forever Holdings, Harvest International, and Gaoming Lihe.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 15, 2004.

James J. Jochum,

Assistant Secretary, for Import Administration.

Appendix—Issues and Decision Memorandum

Comment 1: Whether the Department Should Correct Alleged Ministerial Errors in the Preliminary Determination
Comment 2: Whether the Department Should Use the Most Current Wage Rate for China
Comment 3: Whether the Department Should Correct Surrogate Values for Inland Freight and Brokerage and Handling
Comment 4: Whether the Department Should Use Different Harmonized Tariff Classifications for Certain Material Inputs
Comment 5: Whether the Department Used the Best Available Data Source To Value Certain Material Inputs
Comment 6: Whether the Department Used Aberrant Surrogate Values for Certain Material Inputs
Comment 7: Whether the Department Should Accept Since Hardware's Market Economy Purchases That Were Not Verified by the Department
Comment 8: Whether the Department Should Use the Market Economy Price to Value Cold-Rolled Steel Inputs
Comment 9: Whether the Department Should Consider Billing Adjustments in the Calculation of Since Hardware's U.S. Price
Comment 10: Whether the Department Selected the Proper Data Source for its Calculation of Surrogate Overhead, SG&A, and Profit Ratios
Comment 11: Corrections Arising From Verification

A–570–888, Investigation, POI: 10/01/2002–3/31/2003, Public Document, GIIO4:SZ.
Memorandum to: James Jochum, Assistant Secretary for Import Administration.
From: Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Office II.
Subject: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China.

Summary: We have analyzed the comments and rebuttal comments of the interested parties in the antidumping duty investigation of floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). As a result of our analysis of the preliminary determination, we have made changes in the margin calculations, including corrections of certain inadvertent errors. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for this final determination.

Below is the complete list of issues in this investigation for which we received comments and rebuttal comments from Home Products International, Inc. (the petitioner), and the respondents, Since Hardware (Guangzhou) Co., Ltd., (Since Hardware), and Shunde Yongjian Housewares Co., Ltd. (Yongjian):

Comment 1: Whether the Department Should Correct Alleged Ministerial Errors in the Preliminary Determination
Comment 2: Whether the Department Should Use the Most Current Wage Rate for China
Comment 3: Whether the Department Should Correct Surrogate Values for Inland Freight and Brokerage and Handling
Comment 4: Whether the Department Should Use Different Harmonized Tariff Classifications for Certain Material Inputs
Comment 5: Whether the Department Used the Best Available Data Source to Value Certain Material Inputs
Comment 6: Whether the Department Used Aberrant Surrogate Values for Certain Material Inputs
Comment 7: Whether the Department Should Accept Since Hardware's Market Economy Purchases That Were Not Verified by the Department
Comment 8: Whether the Department Should Use the Market Economy Price To Value Cold-Rolled Steel Inputs
Comment 9: Whether the Department Should Consider Billing Adjustments in the Calculation of Since Hardware's U.S. Price
Comment 10: Whether the Department Selected the Proper Data Source for its Calculation of Surrogate Overhead, SG&A, and Profit Ratios
Comment 11: Corrections Arising From Verification

Background

On February 3, 2004, the Department of Commerce (the Department) published the preliminary determination in the less-than-fair-value investigation of ironing tables from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 69 FR 5127 (February 3, 2004) (*Preliminary Determination*). The products covered by this investigation are certain ironing tables. The period of investigation (POI) is October 1, 2002, through March 31, 2003.

We invited parties to comment on the preliminary determination. The respondents filed case briefs on April 29, 2004, and the petitioner filed its case brief on April 30, 2004. The respondents filed rebuttal briefs on May 4, 2004, and the petitioner filed its rebuttal brief on May 5, 2004. On June 2, 2004, we received additional comments from Yongjian. On June 10, 2004, we returned the comments to Yongjian as untimely submitted and removed the submission from the official record. Based on our analysis of the comments received, as well as our findings at verification, we have changed the weighted-average margins from those presented in the preliminary determination.

Discussion of the Issues

Comment 1: Whether the Department Should Correct Alleged Ministerial Errors in the Preliminary Determination

Since Hardware claims that in the *Preliminary Determination*, the Department made two ministerial errors in the margin calculation program that must be corrected for the final determination. *See* Comments from Adams C. Lee, Counsel to Since Hardware, to the Honorable Donald L. Evans, Secretary of Commerce, "Since Hardware's Case Brief," dated April 29, 2004 (Since Hardware's Case Brief), at 1–3.

First, Since Hardware contends that, in calculating the deduction for domestic inland freight and brokerage and handling, the Department inadvertently added the weight for the pads and covers inputs to the reported WEIGHT variable. Since Hardware states that, at verification, the Department confirmed that the total weight of each product reported in the field WEIGHT includes both the weight of the material inputs used for the metal ironing board and, also, the inputs used to produce the ironing board pad and cover. *See* Since Hardware's Case Brief, at 2, citing to *Since Hardware Factors of Production Verification Exhibits*, Exhibit 5, page 1, including handwritten notes from the Department's verifier stating that the reported product weight for production code SFT28-I–1454 is reported "w/ pad, cover, string." Since Hardware urges that the Department correct this error for the purposes of the final determination.

Second, Since Hardware and Yongjian allege that the Department improperly added the cost of packing materials to the total cost of manufacturing prior to the application of the surrogate overhead ratio. Since Hardware notes that it has been the Department's practice to add packing costs in its normal value calculation after the application of the surrogate financial ratios. *See* Since Hardware's Case Brief, at 2 and 3; *See* Rebuttal Comments from Francis J. Sailer, Counsel for Shunde Yongjian Housewares Co., Ltd., to the Honorable Donald L. Evans, Secretary of Commerce, "Yongjian's Rebuttal Brief," dated May 4, 2004 (Yongjian's Rebuttal Brief), at 3 and 4. Since Hardware and Yongjian urge that the Department correct this error for the purposes of the final determination.

In rebuttal, the petitioner claims that various errors alleged by Since Hardware do not warrant correction by the Department. The petitioner notes that the Department was justified in adding pad and cover materials to Since Hardware's reported WEIGHT variable for purposes of calculating adjustments for domestic inland freight and brokerage and handling. The petitioner claims that the record does not show that Since Hardware included the pad and cover weights in the reported WEIGHT values. The petitioner points out that the only product unit weight reference by Since Hardware with respect to the factors of production data is the "unit steel weight of each product" used to derive a steel consumption ratio and recovered steel scrap figure. Id., at 45 and 46. Moreover, the petitioner states that the Since Hardware Cost Verification Report does not

support Since Hardware's claim that the reported total weights include the weight of pads and covers. In fact, the petitioner claims that, with respect to component weights (not the reported total product weight), the Since Hardware Cost Verification Report states that the verifiers "took apart the selected ironing boards model * * * and weighed the actual weight of the above-mentioned materials and compared the weights to the weights reported * * *." Therefore, the petitioner argues, the materials were weighed separately and not included in the weight of the bare board. According to the petitioner, Since Hardware's allegation of double-counting the pad and cover weights should be disregarded. *See* Comments from Roberta Kinsela Daghir, Counsel to Home Products International Inc., to the Honorable Donald L. Evans, Secretary of Commerce, "Petitioner's Case Brief," dated April 30, 2004 (Petitioner's Case Brief).

Department's Position: We agree with the petitioner. In the *Preliminary Determination*, the Department (1) properly added pad and cover weights to Since Hardware's WEIGHT variable, in order to achieve a proper full weight for purposes of calculating adjustments for domestic inland freight and brokerage and handling, and (2) appropriately added packing to each of the respondent's total cost of manufacturing in the build up to normal value. Therefore, the Department did not make two ministerial errors in the margin calculation program.

In order to calculate the deduction for domestic inland freight and brokerage and handling, the Department must use the total weight of the merchandise being transported and handled. The record indicates that "Since Hardware has reported the weight of the bare board product (*i.e.* without pad and cover) * * *." *See* Since Hardware's Sections C and D Questionnaire Response, dated October 14, 2003, at 5. For the calculation of Since Hardware's margin in the preliminary determination, the Department stated that Since Hardware's WEIGHT field represents the "bare weight of the ironing board* * *." *See* Memorandum to the File from Sam Zengotitabengoa, Import Compliance Specialist, to the File, "Since Hardware's Margin Calculation Analysis for the Preliminary Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated January 26, 2004. As a result of Since Hardware's response that its WEIGHT variable includes only the bare weight of the ironing board, the Department added the pad, cover, and packing material weights to the WEIGHT variable. Therefore, by adding the weight of the pad, cover, and packing materials to the weight of the bare board weight reported in the field WEIGHT, the Department obtained the total weight of the ironing board, which is required in order to calculate the selling expense deductions for domestic inland freight and brokerage and handling.

At verification, the Department's verifiers found no discrepancies in Since Hardware's questionnaire response with regard to the weight of the bare board reported in the field WEIGHT. *See* Memorandum from Paige Rivas and Sam Zengotitabengoa, Import Compliance Specialists, to Tom Futtner, Acting Office Director, "Report on the Verification of the Questionnaire Responses of Since Hardware," dated April 20, 2004. With respect to Since Hardware's allegation that the verifiers' handwritten note confirms that the weight reported in the field WEIGHT includes the pad and cover weight, we disagree. The handwritten note does not verify that Since Hardware's reported product weight for production code SFT28–I–1454 includes "* * *pad, cover, string." In this note, the verifiers were referring, instead, to the verifiers' methodology. The verifiers measured the reported WEIGHT of the bare board, as well as the other components associated with production code SFT28–I–1454. The verifiers' note indicates that the pad, cover, and string were also measured but the verified weights were not taken as an exhibit. As the final verification report indicates, the Department's verifiers noted no discrepancies in Since Hardware's bare board WEIGHT questionnaire response. Therefore, for this final determination, the Department will continue to calculate Since Hardware's adjustment for domestic inland freight and brokerage and handling by adding the pad and cover weights with the weight of the bare board reported in the field WEIGHT.

Second, Since Hardware alleges that the Department mistakenly added packing costs to the normal value calculation before the application of the surrogate financial ratios. We disagree that this methodology is incorrect. In this case, the Department was not able to separately identify packing costs in the financial statements of Godrej & Boyce Manufacturing Co., Ltd. (Godrej), the company used to calculate the financial ratios used in our calculation of normal value. Because it is reasonable to assume that all expenses are included in any income statement, we know that packing costs are included in the Godrej data. Although packing is not presented as a separate line item within the Godrej's data, the primary line item used by the Department in calculating the cost of manufacture is "raw materials consumed." Furthermore, we note that Schedule T of the income statement provides a list of the items that constitute new materials consumed, one of which is titled "others." Since companies frequently include packing materials in the cost of manufacturing, it is reasonable to assume that packing costs are included in this line item. In the *Preliminary Determination* calculation build up to normal value, the Department added the cost of packing materials to the cost of manufacturing prior to the application of the surrogate financial ratio in order to apply these ratios in a manner consistent with how the ratios were calculated. Therefore, for this final determination, the Department continues to add packing to the cost of manufacturing in the calculation build up to normal value.

Comment 2: Whether the Department Should Use the Most Current Wage Rate for China

The petitioner contends that the data source used to derive the PRC's labor wage rate was last updated on May 14, 2003, subsequent to the *Preliminary Determination*. As such, for this final determination, the petitioner urges the Department to value the wage rate for the PRC by incorporating the most current and contemporaneous data available. *See* Petitioner's Case Brief, at 11.

Department's Position: We agree with the petitioner. The Department will value the PRC's labor wage rate using the most current labor rate of USD 0.90/hr. *See* "Expected Wages of Selected Non-market Economy Countries, 2001 Income Data," Revised September 2003, as published by the Department at *http://ia.ita.doc.gov/wages/01wages/01wages.html*.

Comment 3: Whether the Department Should Correct Surrogate Values for Inland Truck Freight and Brokerage and Handling

Yongjian argues that the surrogates that the Department used to value inland truck freight and brokerage and handling in the *Preliminary Determination* are based on stale and unreliable data. For this final determination, Yongjian urges the Department to use the data it submitted in calculating the surrogate values for inland truck freight and brokerage and handling. *See* Comments from Francis J. Sailer, Counsel for Shunde Yongjian Housewares Co., Ltd., to the Honorable Donald L. Evans, Secretary of Commerce, "Yongjian's Case Brief," dated April 29, 2004 (Yongjian's Case Brief), at 21 and 22.

Yongjian contends that, for the final determination, the Department should value inland truck freight using data from InFreight.com, rather than the 17 Indian freight company quotes, for shipping tapered roller bearings, from November 1999 that were used in the *Preliminary Determination*. Yongjian notes that the data from InFreight.com were originally used by the Department in the preliminary determination of *Carrier Bags from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 3544, 3546 (January 26, 2004) (*Carrier Bags Prelim*).

Yongjian also notes that, in the *Preliminary Determination*, the Department relied on data derived from *Certain Stainless Steel Wire Rod from India: Final Results of Administrative Review and New Shipper Review*, 64 FR 856 (January 6, 1999) (*Indian Wire Rod*) to calculate surrogate values for brokerage and handling. The surrogate value from *Indian Wire Rod* is from 1997 and was obtained from an Indian broker. Yongjian asserts there are two reasons to reject these data in the final determination: (1) They are stale compared to alternative and nearly contemporaneous data; and (2) they are improper for use in this case since they are premised on a high value product. Therefore, Yongjian urges the Department to use the data it submitted, which the Department used in *Carrier Bags Prelim*, to value brokerage and handling in the final determination. *See* Yongjian's Case Brief, at 22.

Department's Position: We agree with Yongjian, in part.

With regard to inland truck freight, we agree with Yongjian that the Department

should calculate the surrogate value using data obtained from InFreight.com. According to the InFreight.com Web site, we note that "InFreight.com is a privately held Limited Liability Company," which provides "a vertical {business-to-business} portal that covers all the critical aspects of the Indian road transport industry* * *." *See http://InFreight.com/*. InFreight.com provides publicly available Indian truck freight rates as a flat fee for transportation between specified cities. Based on an InFreight.com data query, we were able to obtain Indian inland freight rates from/to six major Indian cities for the week of January 8, 2003. Because the POI is October 2002 to March 2003, we find InFreight.com data is contemporaneous with the POI whereas the 17 Indian freight company quotes from November 1999 are not. Furthermore, the inland truck freight surrogate value is used in our calculations to value the freight for many different raw material inputs, in addition to complete ironing boards. For this reason, we also find the truck freight surrogate value from InFreight.com, which is not limited to only a shipment of one product, to be the better surrogate value than the November 1999 Indian freight company quotes, which are only for shipments of tapered roller bearings. Therefore, for this final determination, the Department will rely on the data from InFreight.com to value inland freight. *See* "Yongjian's Margin Calculation Analysis for the Final Determination in the Antidumping Duty Investigation of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated June 15, 2004.

With regard to brokerage and handling, we disagree with Yongjian that the Department should value brokerage and handling based on the surrogate value used in the *Carrier Bags Prelim*. In choosing the appropriate surrogate value for the final determination, we examined whether the surrogate data are both product-specific and contemporaneous. The surrogate value used for brokerage and handling in the *Preliminary Determination* is based on a 1997 brokerage and handling charge for a shipment of stainless steel wire rod. *See* Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, to the File, "Surrogate Country Factors of Production Values," dated January 26, 2004, at Exhibit 72, containing the original source documentation. In Yongjian's surrogate value submission, Yongjian suggests that the Department use the 1999–2000 surrogate value for brokerage and handling from the *Carrier Bags Prelim*. However, in its submission, Yongjian did not include a copy of its source documents that support its brokerage and handling value. Without source documents that substantiate the surrogate value advocated by Yongjian (*e.g.*, source documents that identify how the value was calculated and that confirm the reported units), we find the surrogate value used in the *Preliminary Determination* to be more reliable than Yongjian's suggested value. Furthermore, although Yongjian claims that the surrogate value used in the *Preliminary Determination* is inappropriate because it is based on brokerage and handling charges for a shipment of stainless steel wire rod, which is a high value product, Yongjian provided no evidence to demonstrate that the surrogate value is based on ad valorem charges. Therefore, we have continued to value brokerage and handling using brokerage and handling charges reported in *Indian Wire Rod*.

Comment 4: Whether the Department Should Modify Harmonized System Tariff Classifications for Certain Material Inputs

A. Muriate of Potash

For the *Preliminary Determination*, the Department valued muriate of potash using HS 2815.2000, the subheading for potassium hydroxide (caustic potash). The petitioner alleges that potash muriate is actually defined as potassium chloride. Therefore, the petitioner urges the Department to value muriate of potash using HS 2827.3909, the classification for other chlorides, not elsewhere specified.

In rebuttal, Since Hardware contends that there is no evidence on the record to support the view that potassium hydroxide (caustic potash) is not an appropriate surrogate for muriate of potash. Since Hardware states that although the Department did not specifically examine the type or grade of muriate of potash that it consumes in the ordinary course of business, it is reasonable to assume from the Department's overall verification findings that Since Hardware does consume muriate of potash, as reported. Therefore, the surrogate value used in the *Preliminary Determination* is a reasonable and accurate basis on which to value Since Hardware's consumption of muriate of potash for the final determination. *See* Rebuttal Comments from Adams C. Lee, Counsel to Since Hardware, to the Honorable Donald L. Evans, Secretary of Commerce, "Since Hardware's Rebuttal Brief," dated May 4, 2004 (Since Hardware's Rebuttal Brief), at 4–7.

Department's Position: We agree with Since Hardware. We find that HS 2815.2000, the subheading which covers potassium hydroxide (caustic potash), is more appropriate for Since Hardware's production process than the petitioner's suggested subheading HS 2827.3909, which covers other chlorides not elsewhere specified. Throughout this proceeding, Since Hardware has consistently reported HS 2815.2000 as the appropriate subheading to calculate the surrogate value for its input labeled muriate of potash. We find, via internet research, that one of the general uses of potassium hydroxide (caustic potash), which is covered under HS 2815.2000, is as a component of certain plating processes, which is consistent with Since Hardware's manufacturing process. *See* Memorandum from Paige Rivas to the File: "Surrogate Valuation Research" dated June 15, 2004 (Research Memo). On the other hand, the petitioner's suggestion of HS 2827.3909, other chlorides, not elsewhere specified, is not specific enough for the Department to make a similar finding with respect to the general uses of the products covered under that subheading. Therefore, we continue to find that HS 2815.2000 is the most appropriate classification to value the muriate of potash consumed by Since Hardware during the POI.

B. PE Septa

For the *Preliminary Determination*, the Department stated in the surrogate value memorandum that it used HS 3907.6000, which covers PE terephthalate (PET) in primary forms (limited to liquids and pastes, including dispersions and solutions, and blocks of irregular shape, lumps, powders, granules, flakes and similar bulk forms), to calculate the surrogate value for PE septa. The petitioner contends that PET in primary forms cannot serve as a septum or membrane. However, while the Department states that it used HS 3907.6000, the petitioner alleges that the Department based its calculations of the surrogate value for PE septa using data from HS 3920.1001, the classification for plastic sheets of PET. As such, the petitioner urges the Department to continue to value PE septa using HS 3920.1001, the subheading for sheets of PE, for the final determination. *See* Petitioner's Case Brief, at 14.

Since Hardware did not comment on this issue.

Department's Position: We agree with the petitioner. In the *Preliminary Determination*, we mistakenly stated in the narrative of the surrogate value memorandum that we used HS 3907.6000, which covers PET in primary forms, to calculate the surrogate value for PE septa. *See* Memorandum from Sam Zengotitabengoa to the File: "Surrogate Country Factors of Production Values in the Preliminary Determination of the Antidumping Duty Investigation on Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China," dated January 26, 2004 (Prelim Factors Memo). However, in Exhibit 25 of the Prelim Factors Memo, we actually used HS 3920.1001, which includes plates, sheets, film consisting of PET, to calculate the surrogate value for PE septa.

In considering which HS subheading is appropriate, we find that the definition of septa is a thin membrane or sheet. Therefore, it is not appropriate to value PE septa with HS 3907.6000, which covers PET in primary forms. Instead, the Department finds that HS 3920.1001, which covers other plates, sheets, film consisting of PET, is the appropriate surrogate value for PE septa. Therefore, for this final determination, we have continued to use HS 3920.1001 to value PE septa.

C. Stainless Steel

For the *Preliminary Determination*, the Department classified stainless steel using HS 7210.1202, the subheading for flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated, with tin, of a thickness of less than 0.5 mm (tin plated stainless steel). The petitioner argues that there is no evidence on the administrative record indicating that the stainless steel used by the respondents is tin plated. Therefore, the petitioner urges the Department to value stainless steel using HS 7220.1202, the subheading covering stainless steel in strips for making pipes and tubes. Alternatively, on the basis of material dimensions provided by Since Hardware and its chemical content, including nickel and chromium, the petitioner urges the Department to use the weighted average value for HS 7219.3401 and HS 7219.3402,

the subheadings covering flat-rolled products of stainless steel, of a width equal to or greater than 600 mm, cold-rolled, of a thickness equal to or greater than 0.5 mm but less than 1 mm. For the final determination, the petitioner urges the Department to revise the material input values according to the HS subheadings listed above. *See* Petitioner's Case Brief, at 14 and 15.

In rebuttal, Since Hardware contends that there is no evidence on the record to suggest that tin-plated stainless steel is not an appropriate surrogate for stainless steel. In fact, Since Hardware states that although the Department did not specifically examine the type or grade of stainless steel that Since Hardware consumes in the ordinary course of business, it is reasonable to assume from the Department's overall verification findings that Since Hardware consumes the type or grade of stainless steel that it reported, which is close or identical to the stainless steel covered by HS 7210.1202. For the final determination, Since Hardware stresses that the Department has no basis or justification for altering the *Preliminary Determination's* surrogate value used to value Since Hardware's consumption of stainless steel. *See* Since Hardware's Rebuttal Brief, at 5 and 6.

Department's Position: We agree with the petitioner. A review of the record indicates that there is no evidence that Since Hardware's stainless steel input is plated. As a result, we find that a surrogate value calculated from HS 7219.34 better represents Since Hardware's stainless steel than subheading HS 7210.1202, which covers plated or coated material. Moreover, subheading HS 7219.34 covers flat-rolled products of stainless steel, which are comparable to the description in Exhibit 7 of the input materials being valued in Since Hardware submission, dated January 12, 2004 (the actual product description is business proprietary information). Because there is no evidence on the record of the specific nickel and chromium content of Since Hardware's stainless steel input, we have not used a weighted-average of HS 7219.3401 and HS 7219.3402, as suggested by the petitioner. Instead, we find that the broader HS 7219.34, which encompasses both HS 7219.3401 and HS 7219.3402, is more appropriate given the lack of information on the record concerning the chemical content of stainless steel. In addition, we have not used the petitioner's suggested stainless steel in strips subheading, HS 7220.1202, because it covers flat-rolled products of stainless steel of a width of less than 600 mm and does not match Since Hardware's product description of its stainless steel input. Therefore, for this final determination, we find that HS 7219.34 is appropriate to value the stainless steel consumed by Since Hardware during the POI.

D. Welding Wire

For the *Preliminary Determination*, the Department classified welding wire under HS 7408.1902, the subheading for copper wire. However, the petitioner alleges that there is no evidence on the record indicating that the welding wire used by Since Hardware is made of copper. The petitioner urges the Department to value welding wire using HS 8311.2000, the classification covering cored wire of base metal for electric arc welding. For the final determination, the petitioner urges the Department to revise the material input values according to the HS subheadings provided. *See* Petitioner's Case Brief, at 15 and 16.

In rebuttal, Since Hardware contends that there is no evidence on the record to suggest that welding wire of copper is not an appropriate surrogate for welding wire. In fact, Since Hardware states that although the Department did not specifically examine the type or grade of welding wire that Since Hardware consumes in the ordinary course of business, it is reasonable to assume from the Department's overall verification findings that Since Hardware consumes the type or grade of welding wire that it reported, which is close or identical to the welding wire covered by HS 7408.1902. As such, for the final determination, Since Hardware stresses that the Department has no basis or justification for altering the *Preliminary Determination's* surrogate value used to value Since Hardware's consumption of welding wire. *See* Since Hardware's Rebuttal Brief, at 6 and 7.

Department's Position: We agree with the petitioner. A review of the record indicates that there is no evidence that Since Hardware uses welding wire made of copper. In fact, Since Hardware indicates that the welding wire it uses is made out of a material other than copper. See Since Hardware's fourth supplemental questionnaire response, dated February 11, 2004, at Exhibit 2 (Since Hardware's Fourth Supplemental). Based on that information, we find that HS 8311.2000, the subheading for cored wire of base metal for electric arc welding, is more representative of Since Hardware's welding wire than HS 7408.1902, the subheading for copper wire. Therefore, for the final determination, we find that HS 8311.2000 is appropriate to value the welding wire consumed by Since Hardware during the POI.

E. Pigment

For the *Preliminary Determination*, the Department classified pigment under HS 3801.9000, the subheading for other graphite-based preparations. However, Since Hardware alleges that this subheading does not reflect the physical characteristics of the pigment that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 2803.0009, the subheading for carbon black, a form of pigment or dye used in common manufacturing applications, to value pigment in the final determination. *See* Since Hardware's Case Brief, at 3 and 4.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for the valuation of pigment are unwarranted. The petitioner notes that Since Hardware's submissions, dated December 17, 2003, and January 12, 2004, indicated that HS 3801.9000 is the classification applicable to Since Hardware's pigment. In addition, the petitioner states that Since Hardware's submission on surrogate values, dated March 29, 2004, was made subsequent to the *Preliminary Determination*. The petitioner notes that the data submitted by Since Hardware were not drawn from the period covered by the POI and were submitted with no explanation as to the material which Since Hardware considered them relevant.

Department's Position: We agree with Since Hardware. We find, via internet research, that the carbon black covered under subheading HS 2803.0009 is considered a common pigment. In addition, our internet research indicates that graphite, which is covered by subheading 3801.9000, can be used in paints and pigments but is not used for its color. Instead, graphite is typically used as lubrication to spread the pigment more quickly. *See* Research Memo. In Since Hardware's Fourth Supplemental, Exhibit 1, Since Hardware includes a description of its inputs that is more consistent with carbon black (the specific product description is business proprietary information). Therefore, for the final determination, we have used HS 2803.0009 to value pigment using Indian import statistics.

With respect to the petitioner's statement that Since Hardware's March 29, 2004, submission was made after the Department's *Preliminary Determination*, we note that Since Hardware's submission was timely and in accordance with the Department's regulations. According to section 351.301(c)(3)(i) of the Department's regulations, parties have until 40 days after the publication of the *Preliminary Determination* to submit publicly available information to value factors of production. Since Hardware's submission was within this 40 day time limit.

F. Silica Gel Parts

For the *Preliminary Determination*, the Department valued silica gel parts using HS 2811.2200, the subheading for silicon dioxide. However, Since Hardware alleges that this subheading does not reflect the physical characteristics of the silica gel parts that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 3824.9015 to value silica gel parts in the final determination. HS 3824.9015 is the subheading for mixed PE glycols, which Since Hardware alleges are chemicals commonly used in the production of rubber or plastic parts used in manufacturing and assembly operations. *See* Since Hardware's Case Brief, at 4.

The petitioner did not comment on this issue.

Department's Position: We agree with Since Hardware. We confirmed via internet research that silica gel, which is a form of silicon dioxide covered under HS 2811.2200, is commonly used as an absorbent. Mixed PE glycols, covered by HS 3824.9015, on the other hand, are materials that are used with plastic parts processing. *See* Research Memo. In fact, PE is specifically identified as a component of Since Hardware's plastic parts processing segment of its production process in the Production Flowchart in Since Hardware's section C and D questionnaire response at Exhibit 2, dated October 14, 2003

(Since Hardware's October 14, 2003, response). Therefore, for the final determination, the Department will use HS 3824.9015 to value Since Hardware's consumption of silica gel parts.

G. Cotton Thread

In the *Preliminary Determination* the Department valued cotton thread using HS 5204.1101, the subheading for cotton thread. Since Hardware claims that this subheading does not reflect the physical characteristics of the cotton thread that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 5204.2009, the subheading for other cotton sewing thread offered for retail sale, to value cotton in the final determination. *See* Since Hardware's Case Brief, at 4.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for cotton thread are lacking in merit. The petitioner states that the HS 5204.1101, the subheading used by the Department in the *Preliminary Determination* covers cotton sewing thread, containing 85 percent or more by weight of cotton, not offered for retail sale. The petitioner notes that the subheading advocated by Since Hardware as providing "a more appropriate basis" covers other cotton sewing thread offered for retail sale. The petitioner questions whether Since Hardware is acquiring its cotton thread in a configuration offered for retail sale, noting that the respondent has proffered no evidence to support such an improbable claim.

Department's Position: We agree with the petitioner. We find that HS 5204.1101 identifies cotton thread, containing 85 percent or more of cotton, not offered for retail sale, to be an appropriate subheading in calculating the surrogate value for cotton thread. Since Hardware's suggested subheading, HS 5204.2009, covers other cotton sewing thread offered for retail sale. Because Since Hardware is a manufacturing company that purchases cotton thread as one of many inputs used to produce ironing boards, it is reasonable to assume that it purchases cotton thread in bulk from a wholesaler, rather than purchasing this material at retail. In addition, Since Hardware has provided no evidence that its reported cotton thread input contains less than 85 percent by weight of cotton and does not state why HS 5204.2009, the subheading for other cotton sewing thread offered for retail sale, better reflects Since Hardware's cotton thread input. Therefore, for the final determination, we continue to find that HS 5204.1101 is the appropriate subheading to value Since Hardware's consumption of cotton thread.

H. Cotton Rope

For the *Preliminary Determination*, the Department classified cotton rope using HS 5604.9000, the subheading for other rubber thread and cord. However, Since Hardware alleges that this classification does not reflect the physical characteristics of the cotton rope that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 5607.9002, the subheading for cordage, cable ropes, and twine of cotton, to value cotton rope in the final determination. See Since Hardware's Case Brief, at 5.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for cotton rope are unwarranted. The petitioner notes that Since Hardware's submissions, dated December 17, 2003, and January 12, 2004, indicated that HS 5604.9000 is the subheading applicable to Since Hardware's cotton rope. This is the subheading that the Department applied in its *Preliminary Determination*. In addition, the petitioner states that Since Hardware's March 29, 2004, submission, was made subsequent to the *Preliminary Determination*. Furthermore, the petitioner notes that the data submitted by Since Hardware were not drawn from the period covered by the POI and were submitted with no explanation as to the material which Since Hardware considered them relevant.

Department's Position: We agree with Since Hardware. The subheading HS 5604.9000 that the Department used in the *Preliminary Determination* covers rubber thread and cord, textile covered; textile yarn and strip and the like of headings 5404 and 5405 (which cover man-made materials), impregnated, coated, covered or sheathed with rubber or plastics. The materials under this subheading appear to be predominantly man-made. Item number HS 5607.9002, which covers cordage, cable ropes, and twine of cotton, includes materials more similar to the material reported by Since Hardware. As a result, we find that HS 5607.9002 is appropriate for the valuation of cotton rope in this final determination. For the timing of Since Hardware's submission, see the Department's Position under comment 4-E.

I. Zinc Galvanized Iron Clips

For the *Preliminary Determination*, the Department valued zinc galvanized iron clips using HS 7318.2400, the subheading for non-threaded cotters and cotter pins. However, Since Hardware alleges that this classification does not reflect the physical characteristics of the zinc galvanized iron clips that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 7210.4900, the subheading for other products of iron/non-alloy steel otherwise plated/coated with zinc, to value zinc galvanized iron clips in the final determination. *See* Since Hardware's Case Brief, at 5.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for galvanized iron clips are unwarranted. The petitioner notes that Since Hardware's submissions, dated December 17, 2003, and January 12, 2004, indicated that HS 7318.2400 is the subheading applicable to Since Hardware's zinc galvanized iron clips. In addition, the petitioner states that Since Hardware's March 29, 2004, submission was made subsequent to the *Preliminary Determination*. Furthermore, the petitioner notes that the data submitted by Since Hardware were not drawn from a period covered by the POI and were submitted with no explanation as to the material which Since Hardware considered them relevant. The petitioner also states that in its January 15, 2004, submission, it provided explanatory information on "circlips," which might describe the galvanized iron clips used by Since Hardware.

Department's Position: We agree with the petitioner. We find that Since Hardware's surrogate value suggestion on HS 7210.4900 is not appropriate to value zinc galvanized iron clips because subheading HS 7210 refers to flat rolled steel products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated, or coated. There is no indication that this subheading refers to any type of clip, or any article employed in a clip-like application, similar to that used in the production of ironing boards. In fact, the width of 600 mm or more indicates that it is not used in an application similar to a clip, but is much larger in size. HS subheading 7318.2400 is a more appropriate surrogate for zinc galvanized iron clips for the following reasons: (1) HS subheading 73 is the subheading for articles of iron or steel, some plated and coated (a zinc galvanized iron clip is an article of iron); and (2) HS subheading 7318 refers to screws, nuts, bolts, coach screws, screw hooks, rivets, cotters, cotter pins, washers, and similar articles of iron and steel. Although zinc galvanized clips are not specifically mentioned, the above-listed items perform functions similar to the function a clip performs, or at least are more similar than a flat-rolled iron sheet. Therefore, the Department continues to value zinc galvanized iron clips using HS 7318.2400. For the timing of Since Hardware's submission, see the Department's Position under comment 4–E.

J. Glue

For the *Preliminary Determination*, the Department valued glue using subheading HS 3214.1000, the subheading for glaziers putty, grafting putty, resin cements, and caulking. Since Hardware alleges that this subheading does not reflect the physical characteristics of the glue that Since Hardware consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use HS 3505.2000, the subheading for glues to value glue in the final determination. *See* Since Hardware's Case Brief, at 5.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for glue are unwarranted. The petitioner notes that Since Hardware's submissions, dated December 17, 2003, and January 12, 2004, indicated that HS 3214.1000 is the classification applicable to Since Hardware's glue. This is the classification that the Department applied in its *Preliminary Determination*. In addition, the petitioner states that Since Hardware's March 29, 2004, submission was made subsequent to the *Preliminary Determination*. Furthermore, the petitioner notes that the data submitted by Since Hardware were not drawn from the period covered by the POI and were submitted with no explanation as to the material which Since Hardware considered them relevant.

Department's Position: We agree with Since Hardware. Upon further review of the HS subheadings, we find that the subheading

initially suggested by the respondent, HS 3214.1000, does not include glue or glue-like materials. The HS subheading suggested by Since Hardware in its last surrogate value submission, HS 3505.2000, however, does cover glue. Therefore, for the final determination, we find that subheading HS 3505.2000 is appropriate for calculating a surrogate value for glue. For the timing of Since Hardware's submission, see the Department's Position under comment 4–E.

K. Cotton Fixing Strips

For the *Preliminary Determination*, the Department classified cotton fixing strips using HS 5604.9000, the subheading for other rubber thread and cord. Since Hardware alleges that this subheading does not reflect the physical characteristics of the cotton fixing strips that it consumes in the ordinary course of business. Instead, Since Hardware urges the Department to use for the final determination its market-economy purchase price for cotton fabric or, alternatively, the surrogate value that the Department used in the *Preliminary Determination* to value Yongjian's consumption of cloth strip, HS 5208.1901. Since Hardware argues that Yongjian's cloth strip is an input that is presumably identical to cotton fixing strips. *See* Since Hardware's Case Brief, at 6.

The petitioner claims that Since Hardware's criticisms of the Department's choice of HS subheading for cotton fixing strips are unwarranted. The petitioner notes that Since Hardware's submissions, dated December 17, 2003, and January 12, 2004, indicated that HS 5604.9000 is the subheading applicable to Since Hardware's cotton fixing strips. In addition, the petitioner states that Since Hardware's March 29, 2004, submission was made subsequent to the *Preliminary Determination*. Furthermore, the petitioner notes that the data submitted by Since Hardware were not drawn from the period covered by the POI and were submitted with no explanation as to the material which Since Hardware considered them relevant.

Department's Position: We agree with Since Hardware, in part. Regarding Since Hardware's assertion that the Department should value cotton fixing strips with its reported market economy price of cotton fabric, Since Hardware does not claim that it uses the cotton fabric it purchases from a market economy supplier as cotton fixing strips. In fact, Since Hardware reports cotton fabric as a separate material input altogether. *See* Since Hardware's Fourth Supplemental at Exhibit 1. Therefore, we have not valued cotton fixing strips with the market economy price it reported for cloth fabric.

However, with respect to Since Hardware's argument that we should value cotton fixing strips using HS 5208.1901, we agree. In the *Preliminary Determination*, the Department valued Since Hardware's cotton fixing strips using HS 5604.9000, which covers rubber thread and cord, textile covered; textile yarn and strip and the like of heading 5404 and 5405 (which cover man-made materials), impregnated, coated, covered or sheathed with rubber or plastics. The materials under this subheading are predominantly man-made. The name of the material input, cotton fixing strips, indicates that it is a strip made out of cotton. Item number HS 5208.1901 covers other fabrics of woven fabrics containing 85% or more by weight of cotton. As a result, we find that HS 5208.1901 is appropriate for the valuation of cotton fixing strips in this final determination. For the timing of Since Hardware's submission, see the Department's Position under comment 4–E.

Comment 5: Whether the Department Used the Best Available Data Source To Value Certain Material Inputs

Yongjian notes that the Department relied on the Government of India, Ministry of Commerce & Industry, Director General, Commercial Intelligence and Statistics data, published in the WTA, to calculate the values for hot-rolled steel, and cold-rolled steel. As an alternative, Yongjian submitted various data taken from InfodriveIndia.com that, according to Yongjian, reports official Indian government import statistics on an entry by entry basis. *See* Yongjian's Surrogate Value Submission, dated March 29, 2004. Yongjian states that the Department in other proceedings used certain data derived from InfodriveIndia.com. *See, e.g.*, Memorandum from the Team to the File, "Certain Color Television Receivers from the People's Republic of China: Preliminary Determination Factors Valuation Memorandum," dated November 21, 2003. Therefore, for the final determination, Yongjian urges the Department to use the data it submitted from InfodriveIndia.com to calculate surrogate values for certain material inputs. *See* Yongjian's Case Brief, at 2, 3, and 8.

The petitioner argues that Yongjian's position lacks merit and should be dismissed by the Department. The petitioner notes that Yongjian is the only party in this proceeding raising an objection to the Indian import statistics. The petitioner claims that the Department should continue to value Yongjian's material inputs on the basis of WTA data (also referred to as Indian import statistics). In addition, the petitioner states the only assistance that Yongjian offered the Department with respect to the surrogate valuation of inputs consisted of data based exclusively upon India's official import statistics. The petitioner argues that the values utilized by the Department in the *Preliminary Determination* have been available to Yongjian throughout this proceeding and yet the respondent offered no rebuttal to the petitioner's surrogate valuation submission dated October 24, 2003, nor did Yongjian submit any comment at any time in opposition to the WTA data.

In addition, the petitioner argues that Yongjian provides no valid basis for a departure from surrogate valuation on the basis of WTA data. The petitioner states that the Department has previously used Indian import statistics published by the WTA for surrogate valuation purposes in numerous nonmarket economy (NME) cases. The petitioner argues that Yongjian provides no data that are superior in reliability, nor does it provide any data that are usable as benchmarks, which can be used to judge the WTA data. The petitioner claims that the WTA figures are official government statistics maintained by the Government of India, they are matched exactly to the POI, and are based upon commodity descriptions detailed to an 8-digit level of specificity. In addition, the petitioner states that the WTA data are demonstrably internally consistent in terms of economic and commercial logic. According to the petitioner, the Department should continue to use the WTA data to value all of Yongjian's material inputs because the Indian import statistics meet the Department's criteria of availability, contemporaneity, specificity and reliability.

The petitioner claims that Yongjian fails to demonstrate that the surrogate values based upon the Indian import statistics used by the Department are aberrant or unreliable. On the contrary, the petitioner argues that the data relied upon by Yongjian are inapposite or unreliable. The petitioner argues that Yongjian's comparison sources for cold-rolled steel, InfodriveIndia.com is an unofficial and non-governmental source and has been used only once for the surrogate valuation of inputs. The petitioner further states that, in that case, the Department states that its preferred source of surrogate value data continues to be the WTA data because it represents the best information available, but the Department would not be precluded from turning to InfodriveIndia.com data where the Indian import classification categories "are overly broad." Concerning specificity, the petitioner argues that the HS categories are extremely precise with respect to the inputs at issue in this case.

The petitioner argues that InfodriveIndia.com information submitted by Yongjian is not drawn from Indian customs entry forms but from commodity descriptions appearing on bills of lading and/or vessel manifests. The petitioner claims that these descriptions reflect exporter subjectivity and the HS classifications associated with them would be subject to no official verification and thus are inherently unreliable. For example, the petitioner points out that the InfodriveIndia.com printout identifies the "Foreign Country" only intermittently. According to the petitioner, Yongjian tells us that it is able to identify shipments that would be excluded as sourced from NME or export-subsidy countries on the basis of the name of the exporter. The petitioner adds that the Department may question whether such an approach is reliable or sustainable, or whether it may be subject to inconsistency.

The petitioner contends that each of the values selected or concocted by Yongjian for purposes of demonstrating that the value used by the Department may be aberrant is: (1) Inapposite with respect to the input at issue (with respect to the input-specific value that Yongjian seeks to challenge), (2) inappropriate for the purposes of valuation, (3) unreliable or patently inaccurate, or (4) so generic as to have no utility in an input-specific context.

Department's Position: We agree with the petitioner. In the *Preliminary Determination*, in accordance with past practice, we utilized WTA data (more specifically, Indian import statistics) in order to calculate surrogate values for many of Yongjian's material

inputs. In selecting the best available information for valuing factors of production, in accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), we selected values which are: (1) Non-export average values; (2) most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. *See Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441, 12442 (Mar. 13, 1998). While we recognize that both Indian import statistics and InfodriveIndia.com: (1) Represents import data; (2) are contemporaneous with the POI; (3) are product-specific; and (4) are tax exclusive, we find that Indian import statistics represent the best available information in this case.

With regard to Yongjian's assertion that the Department has used InfodriveIndia.com in previous cases, we note that the Department has used this source only once in a final determination. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) (*CTVs from the PRC*). For the inputs valued using InfodriveIndia.com, we used this source because it provided the most product-specific information available and not because Indian import statistics were aberrational or unreliable. In addition, we clearly stated in this case our preference for Indian import statistics over InfodriveIndia.com except in instances where the HS categories are overly broad. *See CTV's from the PRC*, Issues and Decision Memorandum at Comment 9. In the current proceeding, there is no evidence on the record that the HS subheadings used by the Department to calculate surrogate values for cold-rolled steel coil and hot-rolled steel coil are overly broad.

Regarding Yongjian's argument that the HS subheadings used to value its steel inputs are too broad, we note that there is no evidence on the record of this investigation to support that contention. With respect to cold-rolled steel, in its October 15, 2003, section D questionnaire response, Yongjian states that it uses cold-rolled steel sheet with a thickness of 0.8 millimeters and cold-rolled steel sheet with a thickness of 1 mm to form meshes. In its case brief, Yongjian claims that HS 7209.1700 is too broad. HS 7209.1700 covers flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled, (cold-reduced), not clad, plated or coiled; in coils, not further worked than cold-rolled (cold-reduced) of a thickness of 0.5 or more but not exceeding 1 mm. This description matches the cold-rolled steel characteristics of the material input that Yongjian reported in its questionnaire responses.

With respect to hot-rolled steel, in its October 15, 2003, section D questionnaire response, Yongjian states that it uses hot-rolled steel with a thickness ranging from 0.6 millimeters to 2.5 millimeters. In its case brief, Yongjian claims that HS 7208.3900, used in the *Preliminary Determination*, is too broad. HS 7208.3900 covers flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coiled; in coils, of a thickness less than 3 mm. This description matches the hot-rolled steel characteristics reported of the material input that Yongjian reported in its questionnaire responses.

As a result of verification, we found that Yongjian used cold-rolled steel coil and hot-rolled steel coil instead of the cold-rolled and hot-rolled steel sheet it reported in its section D questionnaire responses. Therefore, for the final determination, we have valued Yongjian's cold-rolled steel coil using HS 7209.1700 and hot-rolled coil using HS 7208.3900. For additional discussion of this issue, *see* Comments 7 and 12.

Although Yongjian states that the Department relied on data that "clearly included further processed products from those used in Yongjian's production * * *" to calculate its surrogate value for cold-rolled steel coil and hot-rolled steel coil, Yongjian provided no information to indicate why it considered certain materials listed in InfodriveIndia.com to be inappropriate for comparison to the above-listed steel inputs. For example, for cold-rolled steel coil, Yongjian suggests that automotive steel blanks are not comparable to the steel coil used in ironing table production but does not justify that assertion with evidence or facts. *See* Yongjian's Case Brief at 24. With respect to hot-rolled steel coil, Yongjian generally states that much of the materials imported under HS 7208.3900, which the Department used to value hot-rolled steel coil in the final determination, is of a semi-finished or otherwise processed material. However, Yongjian fails to state in its case brief which specific materials are semi-finished and otherwise processed material and does not cite any evidence in support of its claim. In addition, even if semi-finished or otherwise processed materials are included in HS 7208.3900, Yongjian fails to demonstrate why such materials do not reflect the same steel used in Yongjian's production of ironing tables. The Department prefers to use surrogate values that are representative of a range of prices in effect during the period under consideration. Thus, using only a portion of the imports under HS 7209.1700 and HS 7208.3900 to calculate the surrogate values for cold-rolled and hot-rolled steel, respectively, without evidence to support this approach, is inconsistent with the criteria the Department uses to select surrogate values.

As a result, the Department does not find that the HS subheadings used in the final determination are overly broad and continues to rely on WTA to calculate surrogate values for cold-rolled and hot-rolled steel coil.

Comment 6: Whether the Department's Used Aberrant Surrogate Values for Certain Material Inputs

Yongjian contends that it is Department practice that unreasonable and aberrational surrogate values will not be used in the calculation of normal value. *See Refined Antimony Trioxide from the PRC: Final Determination of Sales at Less Than Fair Value*, 57 FR 6801, 6803 (February 28, 1992). Yongjian argues that although the Department stated that "the surrogate values employed in the valuation of the factors of production were selected because of their quality, specificity, and contemporaneity" (*See Preliminary Determination*, at 5131), the record evidence demonstrates the aberrant nature of the surrogate values used in the *Preliminary Determination*. *See* Yongjian's Case Brief, at 3–5.

A. Cold-Rolled Steel

For the *Preliminary Determination*, the Department relied upon WTA data to calculate the surrogate value for cold-rolled steel sheet. As discussed above, Yongjian asserts that the InfodriveIndia.com data demonstrate that the majority of cold-rolled steel imported under HS 7209.1700 is a semi-finished or otherwise processed material that does not reflect the input used in the production of ironing boards. Therefore, Yongjian contends that the Department's *Preliminary Determination* surrogate value of cold-rolled steel sheet is based on aberrant data as compared with Yongjian's surrogate value filing of InfodriveIndia.com for cold-rolled steel coil, Since Hardware's market value of cold-rolled steel coil, CRU Monitor export prices of cold-rolled steel coil, and the American Metal Market (AMM) price for cold-rolled steel coil. See Yongjian's Case Brief, at 9 and 10. In addition, Yongjian contends, in a footnote, that the surrogate value for cold-rolled steel used by the Department in the *Preliminary Determination* for Since Hardware also yields an aberrant value.

The petitioner argues that it is not aberrational but entirely logical and predictable that cold-rolled steel coil would carry a lower average value than steel that has been subjected to a capital-intensive slitting process, like cold-rolled steel sheet. The petitioner also notes that a comparison to Since Hardware's claimed market economy purchases reflects an apple to oranges approach because Since Hardware's inputs are vastly different from Yongjian's inputs. With respect to Yongjian's AMM prices, the petitioner argues that the sources provide no meaningful specificity whatsoever with respect to the commodity addressed in relation to the input valued by the Department and notes that Yonjian acknowledges the lack of utility these prices have for valuation purposes. In addition, the petitioner notes that the AMM does not disclose the quantities upon which the reported average prices are based, which makes it impossible to assess the breadth of the data sample.

Department's Position: We agree with the petitioner. Consistent with the material reported in Yongjian's questionnaire responses, the Department used HS 7211.2300, or cold-rolled steel sheet, to calculate a surrogate value for Yongjian's cold-rolled steel inputs in the *Preliminary Determination*. In its case brief, Yongjian compares the cold-rolled sheet surrogate value to data using the prices of cold-rolled coil, which is either listed as HS 7209.1700 or labeled cold-rolled steel coil to demonstrate that the sheet prices are aberrational. However, as discussed above, the Department found at verification that

Yongjian actually used cold-rolled coil in its production process instead of the cold-rolled sheet it previously reported. *See* Yongjian's sections C and D questionnaire response dated October 15, 2003. *See also*, Comment 11.

Consequently, for the final determination, we valued Yongjian's cold-rolled steel input based on HS 7209.1700. The appropriate HS subheading for cold-rolled steel coil is HS 7209.1700, and discussed in Comment 5, we do not believe this HS subheading is overly broad. However, we have re-examined the surrogate value data on the record of this investigation for this HS subheading in order to determine whether any of the data falling under this HS subheading are, in fact, aberrational.

Based on this examination, we have excluded from our calculations certain imports under this HS subheading which we determined were aberrationally high in relation to the other Indian import data contained in this HS subheading. *See* the June 15, 2004, memorandum to the File from Sam Zengotitabengoa entitled, "Final Determination Factors Valuation Memorandum" (Final Factors Memo). Therefore, with these adjustments, for the final determination, we have continued to use HS 7209.1700 to value cold-rolled steel coil.

B. Hot-Rolled Steel

For the *Preliminary Determination*, the Department relied on WTA data to calculate the surrogate value for hot-rolled steel. As discussed above, Yongjian asserts that the InfodriveIndia.com data demonstrate that the majority of hot-rolled steel imported under HS 7208.3900 is a semi-finished or otherwise processed material that does not reflect the input used in the production of ironing boards. As such, Yongjian contends that the Department's *Preliminary Determination* valuation of hot-rolled steel is based on aberrant data as compared with Yongjian's surrogate value filing of InfodriveIndia.com, Since Hardware's market economy prices of hot-rolled steel coil purchases, Essar Steel home market price of hot-rolled steel coil, CRU export prices, and AMM price. *See* Yongjian's Case Brief, at 11 and 12.

The petitioner states that Yongjian's comparison of hot-rolled steel values is faulty. The petitioner argues that Yongjian's summary of a database submitted in another case by a single respondent (Essar Steel) selected by Yongjian, providing only ranged price and quantity data for a sampling of home market sales in a non-contemporaneous period and for a product of undisclosed description or specification cannot be taken seriously. In addition, the petitioner states that Since Hardware's claimed market economy purchase prices do not relate to Yongjian's input; therefore they would not be appropriate for use in valuing Yongjian's inputs, while other suitable surrogate value information is available. In this instance, the petitioner continues, the Since Hardware value detracts directly from Yongjian's assertion that its comparison values represent "export pricing that would have been available to Indian and Chinese importers." The petitioner notes that, if this were the case, and Yongjian's values had validity, one would expect that Since Hardware would have purchased at the InfodriveIndia price rather than at a higher cost.

Department's Position: We agree with the petitioner. Consistent with the material reported in Yongjian's questionnaire responses, the Department used HS 7211.1900, the subheading for hot-rolled steel sheet, to calculate a surrogate value for Yongjian's hot-rolled steel inputs in the *Preliminary Determination*. In its case brief, Yongjian compares the hot-rolled steel sheet surrogate value to data based on prices of hot-rolled steel coil, which is either listed as HS 7208.3900 or labeled hot-rolled steel coil to demonstrate that the sheet prices were aberrational. However, as discussed above, the Department found at verification that Yongjian actually used hot-rolled steel coil in its production process instead of the hot-rolled steel sheet it previously reported. *See* Yongjian's sections C and D questionnaire response dated October 15, 2003. *See also*, Comment 11.

Because the Department is using a surrogate value for hot-rolled steel coil in the final determination, we examined imports under the HS subheading to determine if any imports under this category were aberrational. We also examined whether the Department's surrogate value for hot-rolled steel coil, is aberrational as compared to Yongjian's alternative pricing data contained in its case brief. We find that the surrogate value used in final determination is not aberrationally high. For the final determination, we have calculated a surrogate value for hot-rolled coil of $.28/kg. In comparing the surrogate value calculated by the Department to the range of prices contained in Yongjian's case brief ($0.28/kg to $0.35/kg), we find that the Department's surrogate value for hot-rolled steel coil is appropriate for the final determination.

C. Steel Wire Rod

For the *Preliminary Determination*, the Department relied on WTA data to calculate the surrogate value for steel wire.[1] Yongjian contends that the valuation of steel wire is based on aberrant data as compared with the steel wire rod prices from InfodriveIndia.com, Since Hardware's market economy purchase price, P.T. Ispat Indo's home market price, and AMM prices. *See* Yongjian's Case Brief, at 12–14.

With respect to wire rod, the petitioner claims that Yongjian's comparison is not reliable because Since Hardware's claimed market economy purchase price of steel wire rod was at a price higher than Yongjian's comparison prices from InfodriveIndia.com and AMM prices. The petitioner contends that if such low prices of steel wire rod were available, Since Hardware would have purchased steel wire rod at that price. The petitioner also states that the comparison is not meaningful because the material used by Yongjian is substantially different from Since Hardware's steel wire rod input. In addition, the petitioner claims that Yongjian's use of another case, in which Yongjian summarized the public version of another respondent's home market database, to compare to the Department's surrogate value for steel wire rod in this investigation, is unacceptable because it abandons contemporaneity and involves products of undisclosed description and specification.

Department's Position: We disagree with Yongjian and the petitioner. Consistent with the material reported in Yongjian's questionnaire responses, the Department used HS 7217.1001, the subheading for steel wire, to calculate a surrogate value for Yongjian's steel wire inputs in the *Preliminary Determination*. In its case brief, Yongjian compares the steel wire surrogate value to data using prices of steel wire rod, which is either listed as HS 7217.1001 or labeled steel wire rod to demonstrate that the sheet prices are aberrational. However, as discussed above, the Department found at verification that Yongjian actually used steel wire rod in its production process instead of the steel wire it previously reported. *See* Yongjian's sections C and D questionnaire response dated October 15, 2003. *See also* Comment 11.

Because the Department is using a surrogate value for steel wire rod in the final determination, we examined imports under the HS subheading to determine if any imports under this category were aberrational. Therefore, for the final determination, we have calculated a surrogate value for steel wire rod based on HS 7213.9109.

D. Circular Pipe and Tube and Non-Circular (Rectangular) Pipe and Tube

For the *Preliminary Determination*, the Department relied on WTA data to calculate the surrogate value for circular and non-circular (rectangular) cross-section pipe and tube. Yongjian contends that the Department's valuation of circular and non-circular (rectangular) pipe and tube in the *Preliminary Determination* is based on aberrant data compared with net prices contained in the home market databases for four companies that were respondents in U.S. antidumping duty proceedings involving certain types of pipe and tube from Mexico, Turkey, Thailand, and Taiwan. For circular pipe and tube, Yongjian used prices from the publicly ranged home market databases for two companies, Saha Thai from Thailand, and Yieh Hsing from Taiwan. For non-circular pipe and tube, Yongjian used prices from the publicly ranged home market databases from a Mexican company, Regiomontana, and a Turkish company, MMZ. *See* Yongjian's Case Brief, at 14 and 15. Although Yongjian provided the Department with pricing information as a benchmark, it did not suggest which surrogate value to use.

The petitioner argues that Yongjian relies solely upon summarized, sampled data from selected respondents in other antidumping cases. The petitioner also claims that the data obtained from these other cases are not contemporaneous with the POI, and are from markets having no economic comparability to

[1] We note that Yongjian reported steel wire in its section D questionnaire responses. However, at verification, we found that Yongjian consumed steel wire rod. For the final determination, we are valuing this input as steel wire rod.

the PRC. In addition, the petitioner asserts that Yongjian fails to explain how the respondents' production in these antidumping cases involves merchandise comparable to the material inputs for ironing tables.

Department's Position: We agree with the petitioner. For both of these material inputs, we find that the WTA data used in the *Preliminary Determination* are reasonable to use in the final determination for the following reasons: (1) There is no evidence on the record that the merchandise in the other antidumping cases cited in Yongjian's case brief are more similar to the material inputs used in this investigation by Yongjian; (2) gross prices are more appropriate for comparison to Indian import statistics, not net prices; and (3) the other respondents' data are not contemporaneous to the POI.. We note that neither the respondents in this case nor the petitioner is arguing the Department used incorrect HS subheadings in the *Preliminary Determination* and we have no evidence on the record that indicates that HS 7306.300 (circular pipe and tube) or HS 7306.6000 (non-circular pipe and tube) are overly broad or otherwise inappropriate subheadings for these material inputs. In addition we examined imports under the HS subheading to determine if any imports under these categories were aberrational and we do not find that the information contained in these HS subheadings are aberrational. Since the HS is not overly broad and the Indian import statistics are not aberrant, we continue to find that the WTA data represent the best available information for calculating surrogate values for circular and non-circular pipe and tube for the final determination.

E. Powder Coating

For the *Preliminary Determination*, the Department used WTA data for HS 3208.1009 to calculate the surrogate value for powder coating, the subheading for paints and varnishes (including enamels and laquers), based on polyesters. However, Yongjian alleges that this classification does not reflect the physical characteristics of the powder coating that it uses to produce subject merchandise. Instead, Yongjian asserts that the Department verified that the powder coating used by Yongjian is not in liquid form, like standard paint or varnish, but rather is in the form of a dry powder, and the powder coating is not solely based on polyesters, but rather on a 1:1 mixture of polyester and epoxy resins. As such, for the final determination, Yongjian urges the Department to use HS 3907.3001 and HS 3907.9102 to value powder coating.

The petitioner states that it agrees with Yongjian that Indian import statistics should be used to value powder coating but questions why the respondent provided import data covering the whole year rather than the POI. The petitioner argues that, in view of the respondent's failure to provide data contemporaneous to the POI, the Department should value powder coating as it did in the *Preliminary Determination* as the best information available.

Department's Position: We agree with Yongjian. During verification, we found that the powder coating Yongjian uses is a dry mixture of polyester and epoxy resins. We are using HS 3907.3001, the subheading for epoxide resins, and HS 3907.9102, the subheading for polyester resins, to calculate a surrogate value for powder coating. However, we find that it is not appropriate to calculate the surrogate value for this material input based on a full year's data, as suggested by Yongjian. Therefore, we have valued powder coating with surrogate values using data for the POI based on HS 3907.3001 and HS 3907.9102 for the purposes of the final determination. *See* Comment 11.

F. Cardboard Cartons

For the *Preliminary Determination*, the Department relied on Indian import statistics for HS 4819.1009 to calculate the surrogate value for cardboard cartons. Yongjian contends that this value is aberrant compared with a domestic Indian price quote from Aakritee Packaging, which was cited in the *Carrier Bags Prelim*, and Since Hardware's market economy purchase price for cardboard cartons.

Yongjian claims that the Department has expressed a preference for the use of domestic prices from the surrogate country rather than import values. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3087 (January 21, 1998) (*Pure Magnesium*). Moreover, Yongjian contends that the Department has rejected Indian import statistics in favor of domestic prices based on the relative specificity of the data to the input being valued. *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Rescission of Review*, 67 FR 68987 (November 14, 2002), Issues and Decision Memo at Comment 1. Therefore, Yongjian argues that where the Department has the choice between domestic and import prices, it should select the price derived from the source that is more reliable and product-specific. *See* Yongjian's Case Brief, at 18–20.

The petitioner argues that there is nothing to indicate error in the Department's valuation of this input. The petitioner contends that the data sources that are used by Yongjian confirm that the Indian import statistics are to be relied upon more heavily than domestic price quotations. In this instance, according to the petitioner, because the dimensions of the cardboard cartons are not appropriate for a product similar to ironing boards, the domestic sales price quote proposed by Yongjian could not have applied to an input of the same size that is used by Yongjian. Therefore, the Department should retain the surrogate value for cardboard cartons that it used for the *Preliminary Determination*. The petitioner states that Yongjian offers no valid reason to change the surrogate value and the Department should retain the surrogate value it employed for purposes of the *Preliminary Determination*.

Department's Position: We agree with the petitioner. In the *Preliminary Determination*, we used HS 4909.1009, the subheading for cartons, boxes and cases of corrugated paper or paperboard, to calculate a surrogate value of cardboard cartons. There is no information on the record of this investigation that indicates that the domestic price from Aakritee Packaging[2] is more reliable and specific to the product being valued than the surrogate value calculated using Indian import statistics. We acknowledge the fact that the Department may have in a particular case expressed a preference for domestic prices instead of Indian import statistics. However, this is a case-by-case determination. In *Pure Magnesium*, for example, the domestic prices that were selected were more representative and closer in time to the period of review than other sources. *See Pure Magnesium*. In this case, Yongjian does not provide any evidence that the cardboard cartons sold by Aarkritee Packing are the same or more similar to the type of cardboard carton used by ironing board manufacturers than the cartons imported under HS 4909.1009. Therefore, we have continued to use the Indian import statistics in the final determination.

G. Filler Pads

For the *Preliminary Determination*, the Department calculated the surrogate value for filler pads using Indian import statistics for HS 4808.1000, which covers corrugated paper and paperboard, whether or not perforated. Yongjian contends that the Department's *Preliminary Determination* valuation of filler pads is based on aberrant data as compared with Yongjian's surrogate value derived from Indian import statistics under HS 4805.2901, which covered cardboard and was used in the *Carrier Bags Prelim*. Yongjian claims that the surrogate value calculated for HS 4805.2901 is corroborated by Since Hardware's market economy purchase price of corrugated paper. *See* Yongjian's Case Brief, at 20.

The petitioner states that Yongjian offers no support for its claim that the filler pads are specific or even similar to the specific input that Since Hardware uses. Moreover, the petitioner argues that Yonjian selected the lower value, without justification, of the two HS subheadings used to value filler pads in the *Carrier Bags Prelim*. The petitioner states that Yongjian offers no valid reason to change this surrogate value and the Department should continue the surrogate value treatment it employed for purposes of the *Preliminary Determination*.

Department's Position: We agree with the petitioner. Nowhere on the record of this investigation has Yongjian stated that the filler pads it used during the POI are similar to the separating corrugated paper reported by Since Hardware or the products covered under HS 4805.2901, which the Department used in *Carrier Bags from China* to value cardboard inserts as cited in Yongjian's March 29, 2004, submission. Yongjian classifies filler pads as a part of its packing materials but does not fully explain their use. HS 4808.1000, which covers corrugated paper and paperboard, whether or not

[2] Furthermore, we note that the Department did not use the domestic price of Aakritee Packaging in the *Carrier Bags Prelim*. Instead, the Department used a weighted-average of HS subheadings 4919.1001 and 4819.1009.

perforated and HS 4805.2901, which covers cardboard, are two distinct products and there is no evidence on the record that indicates it is appropriate to compare the two products to determine if the price of one is aberrational. We note that Yongjian has not argued that the HS subheading that the Department used in the *Preliminary Determination* is inappropriate to calculate a surrogate value for filler pads. We have examined imports under the HS subheading to determine if any imports under this category were aberrational and found that they were not. Therefore, for the final determination, we have continued to use HS subheading 4808.1000 to calculate a surrogate value for filler pads.

H. Labels and Bar Code Labels

For the *Preliminary Determination*, the Department relied on the Indian import statistics for HS 4821.9000, which covers paper labels (not printed), self-adhesive or not, to calculate the surrogate value for labels and bar code labels. However, Yongjian contends that the labels and bar code labels used by Yongjian are printed, some self-adhesive and some not. Yongjian contends that the Department's *Preliminary Determination* valuation of labels and bar code labels is excessive as compared with Yongjian's surrogate value derived from Indian import statistics for the four-digit HS 4821, which covers labels of paper or paperboard, printed or not. Yongjian states that the surrogate value of HS 4821 is in line with Since Hardware's ranged market economy purchase price for its manual labels. *See* Yongjian's Case Brief, at 20 and 21.

Department's Position: We disagree with Yongjian. Despite Yongjian's assertion in its Case Brief, there is nothing on the record of this investigation that demonstrates that Yongjian uses labels other than the paper labels (not printed), self-adhesive or not, that are classified under HS 4821.9000. In addition, in stating that the Department's surrogate value for labels and bar code labels are aberrant compared to Since Hardware's market economy purchase price of manual labels, we note that Yongjian made no effort to document that the two types of labels are similar or are classified under the same HS number. In fact, Since Hardware itself distinguishes between the two types of labels that it purchases, one type is valued with a market economy price (*i.e.*, manual labels) and the other type (*i.e.*, marking label) is valued using the same HS number used to value Yongjian's labels and bar code labels, HS 4821.9000. Therefore, for the final determination, the Department has continued to value Yongjian's labels and bar code labels using HS 4821.9000.

Comment 7: Whether the Department Should Accept Since Hardware's Market Economy Purchases That Were Not Verified by the Department

The petitioner argues that for the *Preliminary Determination* the Department erred by using market-economy purchase prices for cold-rolled steel coil and hot-rolled steel coil used by Since Hardware. *See* Petitioner's Case Brief, at 18–24. The petitioner states that it submitted pre-verification comments to the Department where it challenged the authenticity of certain market economy purchases because (1) the material input prices appeared to be inconsistent with regional commodity trends and (2) the HS codes submitted to Chinese customs do not represent the materials that Since Hardware claimed to have imported. These comments emphasized that all market economy transactions warranted close scrutiny by the Department during verification. The petitioner acknowledges that the Department verified market economy purchases made in December 2002, but notes that the Department did not verify transactions made in 2003. Therefore, the petitioner urges the Department to reject Since Hardware's 2003 purchase values of market economy materials as unverified and inherently unreliable. *See* Petitioner's Case Brief, at 18–24.

In rebuttal, Since Hardware states that the Department should not revise any of the market-economy input pricing data reported by Since Hardware in the *Preliminary Determination*. *See* Since Hardware's Rebuttal Brief, at 9–11. Since Hardware contends that it is the Department's practice to verify information contained in a company's responses on the basis of the sampling of submitted data. Since Hardware states that the Court of International Trade (CIT) concluded that the Department "has the discretion to choose which items it will verify, and so long as Commerce has not uncovered facts in the process of verification that point to an improper accounting * * *. Commerce is not compelled to search further." *See PMC Specialities Group, Inc.* v. *United States*, 20 C.I.T. 1130, 1134–35 (1996). Since Hardware states that because the Department verified Since Hardware's market-economy material purchases of cold-rolled steel coil and hot-rolled steel coil and noted no discrepancies, there was no evidence of improper accounting, or evasion, and there was no reason for the Department to search further. As such, Since Hardware urges the Department not to revise any of the market-economy input pricing data reported by Since Hardware for the final determination. *See* Since Hardware's Rebuttal Brief, at 9–11.

Department's Position: We agree with Since Hardware. When conducting verification, the Department is not required to test every single sale or purchase reported by the respondent during the course of an investigation. To do so would be an almost impossible task. Instead, the Department verifies samples of submitted data. The CIT has affirmed this approach, observing:

> Verification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness. Normally an audit entails selective examination rather than testing of an entire universe. Hence, evasion is a common possibility, but only when audits uncover facts indicating the actuality thereof are auditors compelled to search further * * * Commerce has the discretion in choosing which items it will verify, and so long as Commerce has not uncovered facts in the process of verification that point to an improper accounting * * * Commerce is not compelled to search further."

See PMC Specialities Group, Inc. v. *United States*, 20 CIT 1130, 1134–35 (1996). *See Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 65 FR 60910 (October 13, 2000).

We note that the petitioner's pre-verification comments were extensive and voluminous. In the limited amount of time allotted to verification, the verifiers covered a vast portion of the petitioner's concerns while still completing a full and detailed verification following the procedures explained in the verification outline. At verification, we looked at a number of market economy purchases and found no discrepancies. For example, we examined cold-rolled steel and hot-rolled steel market economy purchases. Based upon the information gathered at verification, the Department has no reason to question Since Hardware's reported market economy purchases. The Department found no discrepancies in Since Hardware's methodology in reporting market economy prices for its market economy purchases. 19 CFR 351.307(b) and (d) provide for flexibility in conducting verifications by permitting the examination of a sample of expenses, adjustments, and other topics that we consider relevant to factual information submitted. This reflects the fact that verification is like a sampling exercise and is not intended to be an exhaustive examination of every topic. *See Certain Internal-Combustion Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review*, 62 FR 5592, 5602 (February 6, 1997). In this case, the Department followed its verification procedures and thoroughly examined the market economy purchases of cold-rolled and hot-rolled steel coil for certain months and found no discrepancies.

However, we note that the petitioner's argument with respect to the market economy purchase price of cold-rolled steel coil is moot. For the final determination, we have continued to use a surrogate value for Since Hardware's cold-rolled steel coil input. *See* Comment 8. With respect to Since Hardware's market economy purchase price for hot-rolled steel coil, we do not think that the purchase price is aberrationally low. According to Since Hardware's March 31, 2004 public version of ranged prices for its hot-rolled steel coil purchases, Since Hardware's purchase price of hot-rolled steel coil is $0.32/kg. By comparing Since Hardware's publicly ranged price of $0.32/kg to the Department's surrogate value for hot-rolled steel coil of $.028/kg, the Department finds that Since Hardware's market economy purchase price is reasonable. Because Indian import statistics are based on the sum of all imports into India during the POI, we regard that figure as a reliable benchmark. Nowhere in this investigation has the petitioner suggested that the WTA data that the Department used in calculating the surrogate value for hot-rolled steel coil is aberrational. Therefore, for the final determination, we have continued to use Since Hardware's market economy price to value hot-rolled steel coil.

Comment 8: Whether the Department Should Use the Market Economy Price To Value Cold-Rolled Steel Inputs

Since Hardware urges the Department to use the actual market economy prices paid to a Hong Kong supplier to value Since Hardware's cold-rolled steel inputs. *See* Since Hardware's Case Brief, at 6–10. Citing section 351.408(c)(1) of the Department's regulations, Since Hardware states that "where a factor is purchased from a market economy supplier and paid for in a market economy currency, the Secretary normally will use the price paid to the market economy supplier" to value the factors of production. However, for the *Preliminary Determination*, Since Hardware alleges that the Department disregarded the actual prices paid by Since Hardware for Hong Kong purchases of cold-rolled steel. Instead, Since Hardware asserts that the Department indicated that it had "reason to believe or suspect that cold-rolled steel from the country in question {was} being dumped," and thus the Department "disregarded prices for cold-rolled steel from this country, and instead used the Indian surrogate value * * *." *See Preliminary Determination*, at 5131. *See* Since Hardware's Case Brief, at 6 and 7.

Since Hardware argues that while the cold-rolled steel it purchased might have been manufactured in a country subject to a PRC antidumping duty order, Since Hardware did not purchase the cold-rolled steel directly from that country. Instead, Since Hardware claims that it purchased the cold-rolled steel sheet directly from its Hong Kong reseller supplier, that, in turn, may have purchased the cold-rolled steel either directly or indirectly from a country subject to the PRC antidumping duty order. *See* Since Hardware's Case Brief, at 7 and 8.

Furthermore, Since Hardware notes that, in *CTVs from the PRC*, the Department considered whether to accept the prices for inputs purchased through Hong Kong trading companies that originated in a country with broadly available non-industry-specific export subsidies that might be distorted due to subsidies. In comparing *CTVs from the PRC* to the current investigation, Since Hardware explains that its cold-rolled steel supplier is located in Hong Kong. Since Hardware states that this trading company was not subject to any PRC government dumping investigation, and cannot be presumed to have benefitted from any input price distortion caused by dumping. Therefore, Since Hardware concludes that the Department has no reason to believe or suspect that the sales prices from this Hong Kong supplier to Since Hardware are distorted. Because there is no record evidence that Since Hardware's Hong Kong supplier of cold-rolled steel purchased the input at dumped prices, or that it "passed" any distortion on to Since Hardware, Since Hardware contends that there is no reason for the Department to deviate from its normal practice of using the prices paid to a market economy supplier to value Since Hardware's factors of production. As such, for the final determination, Since Hardware urges the Department to follow its practice in *CTVs from the PRC*, and not reject prices of goods purchased in Hong Kong based on the country of origin of the goods. *See* Since Hardware's Case Brief, at 9 and 10.

The petitioner argues that Since Hardware's purchases of cold-rolled steel produced in the market economy country should be valued using surrogate prices. The petitioner states that Since Hardware's suggestion in its Case Brief that it was not certain of the origin of the cold-rolled steel that it purchased is hardly the case. The petitioner notes that in Since Hardware's own questionnaire response, Since Hardware acknowledged that it purchased the steel from the market economy country subject to the PRC dumping case. In addition, the petitioner points out that the sales confirmations, which ultimately complete the contract of sale, clearly record the country of origin of certain cold-rolled steel and it is undisputed that cold-rolled steel from its market economy country is subject to a Chinese antidumping order.

The petitioner states that Since Hardware's argument that there is no evidence on the record to suggest that the prices paid by Since Hardware's Hong Kong supplier, or paid by Since Hardware to its Hong Kong supplier, for cold-rolled steel were distortive, ignores the body of authority squarely against its position. The petitioner argues that the existence of the PRC antidumping duty order alone provides the Department with a reason to believe or suspect that the input is being dumped and no formal investigation into costs or pricing is required. The petitioner states that it can in no way matter whether the dumped input is imported into the NME country directly from the country of origin or, indirectly, through a trading company in a third country: country of origin, not the country of exportation, determines whether a product is subject to an antidumping duty order.

Additionally, the petitioner disagrees with Since Hardware's argument that the Department should accept its market economy prices for cold-rolled steel because the Department chose to accept the prices for inputs purchased through Hong Kong trading companies that originated in a country with broadly available, potentially price-distorting non-industry-specific export subsidies. *See CTVs from the PRC*. The petitioner argues that *CTVs from the PRC* is directed specifically at subsidies (based on information regarding general availability), rather than at dumped inputs (based specifically on a Chinese antidumping duty order). The petitioner notes that the Department noted the difference between findings of dumping and countervailable subsidies and it stated that it will disregard market economy prices for imported inputs as dumped "when the importing country has an antidumping duty order in effect for the products in question." *See Final Determination of Sales at Less than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002) (*Folding Metal Tables and Chairs*). The petitioner points out that a subsidy finding may not necessarily be based on an action taken in the importing NME country, but could be based on a CVD order issued anywhere in the world, or even simply information tending to show the existence of generally available, non-industry specific export subsidies. *See Id; See also Automotive Replacement Glass Windshield from the People's Republic of China*, 67 FR 6482 (February 12, 2002). The petitioner argues that, in this case, the importing country, China, conducted an investigation and entered an antidumping order against the product and Since Hardware offers no evidence, nor does it even suggest that China would permit its trade remedies to be so easily circumvented by excluding products subject to a dumping order from dumping duties if they were shipped through a third country seller.

Finally, the petitioner states that, while the existence of the Chinese antidumping duty order is sufficient to presume dumping or distorted prices of products covered by that order, the record contains evidence of distorted and aberrational pricing of the cold-rolled steel purchased by Since Hardware. The petitioner claims that the prices reportedly paid by Since Hardware during the POI for cold-rolled steel from the market economy country are not comparable to the product imported into China or produced in China or other cold-rolled steel prices in the administrative record. The petitioner states that the record shows that the prices paid by Since Hardware are aberrational and unreliable and should not be considered by the Department. The petitioner argues that the Department should reject Since Hardware's alleged market economy prices for cold-rolled steel sheet from the market economy country, as it has done in the *Preliminary Determination*, and value this input based on surrogate prices from India.

Department's Position: We agree with the petitioner. In this case, Since Hardware reported that it purchased from a Hong Kong reseller cold-rolled steel that was produced in the market economy country (the name of the market economy country is business proprietary information). *See* Since Hardware's Section C and D questionnaire response at Exhibit 4, dated October 14, 2003. However, in contrast to *CTVs from the PRC*, the Department has generally available public information indicating that the PRC government has imposed an antidumping duty order on cold-rolled steel originating in Kazakhstan, the Republic of Korea, Ukraine, Russia, and Taiwan (PRC Antidumping Order). *See* Memorandum from Sam Zengotitabengoa, International Trade Compliance Analyst, to the File, "PRC AD Final Determination," dated January 26, 2003. The country and products covered by the PRC Antidumping Order correspond to the cold-rolled steel purchases made by Since Hardware during the POI. Thus, we know that Since Hardware purchased cold-rolled steel covered by a PRC Antidumping Order. The Department has said that when an importing country has an antidumping duty order in effect for the products in question, it will disregard the market economy prices for these imported inputs as dumped. *See Synthetic Indigo From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 53711 (September 12, 2003) and accompanying Decision Memorandum at Comments 4 and 8.

Regarding Since Hardware's argument that there is no evidence on the record to suggest that the prices it paid for cold-rolled steel were dumped or distorted, we find that no specific evidence is necessary. The Department only needs to have a reason to believe or suspect that this input is being dumped. *See Final Determination for the 1998–99 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 66 FR 1953 (January 10, 2001), Issues and Decision Memorandum at Comment 1. In this case, the PRC Antidumping Order provides the Department with a reason to believe or suspect that cold-rolled steel produced in a covered market economy country may be dumped. Therefore, for the final determination, we have continued to use Indian import statistics to value Since Hardware's cold rolled steel coil input.

Comment 9: Whether the Department Should Consider Billing Adjustments in the Calculation of Since Hardware's U.S. Price

The petitioner argues that for the *Preliminary Determination* the Department erred by granting Since Hardware a billing adjustment for extra inland freight and origin receiving charges (ORCs) incurred on behalf of Since Hardware's customers and for which Since Hardware was reimbursed. *See* Petitioner's Case Brief, at 17 and 18. The petitioner emphasizes that Since Hardware distinguishes these costs from the "general inland freight and port handling charges for all sales of the subject merchandise." *See* Petitioner's Case Brief at 17. The petitioner states that because "these fixed charges are incurred at the request of the customer, are paid initially by Since Hardware but are reimbursed directly by the customer, and quite logically are not included in the price of the merchandise, there is no need for the Department to devise an adjustment to account for such "extra costs"—but there also is no need for the extra costs to be added, as billing adjustments, to the sales price (since they are not any part of such price)." *See* Petitioner's Case Brief, at 18. Instead, the petitioner believes that these extra charges should be appropriately treated as a separate item, not affecting the price of the subject merchandise. As such, for the final determination, the petitioner urges the Department not to consider these extra costs for purposes of a billing adjustment in the calculation of Since Hardware's export value. *See* Petitioner's Case Brief, at 17 and 18.

In rebuttal, Since Hardware states that the Department should not adjust the treatment of Since Hardware's claimed and verified billing adjustment as incorporated in the *Preliminary Determination*. *See* Since Hardware's Rebuttal Brief, at 7–9. In justifying the billing adjustment, Since Hardware claims that the price used to establish export price and constructed export price shall be "(1) increased by (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States." *See* section 772(c) of the Act. Since Hardware alleges that the Department has interpreted the "charges" as requiring that U.S. price be increased by the amount of any freight, packing, and handling revenue that is charged to the U.S. customer. *See, e.g., Ball Bearings (Other Than Tapered Roller Bearings) and Parts Thereof, From Germany: Preliminary Results of New Shipper Antidumping Duty Administrative Review*, 61 FR 4763, 4764 (February 8, 1996). *See, also, Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 68341, 68344 (December 8, 2003). *See, also, Wax and Wax/Resin Thermal Transfer Ribbons From the Republic of Korea*, 68 FR 71078, 71080 (December 22, 2003). In addition, Since Hardware claims that the Department noted that "where freight and movement charges are not included in the price, but are invoiced to the customer at the same time as the charge for the merchandise, the Department considers the transaction to be similar to a delivered price transaction since the seller may consider its return on both transactions in setting price." *See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) (*Stainless Steel Wire Rod*), at Issues and Decisions Memorandum, Comment 9. For this final determination Since Hardware urges the Department to add to the gross unit price Since Hardware's ORC revenue associated with each sale (reported in "BILLADJU"), and subtract from the gross unit price the brokerage and handling expense incurred by Since Hardware to ship the subject merchandise to the United States. *See* Since Hardware's Rebuttal Brief, at 7–9.

Department's Position: We agree with the petitioner. In the *Preliminary Determination*, the Department granted Since Hardware's billing adjustment by adding the billing adjustment to the U.S. gross unit price. At verification, the Department verified that Since Hardware did, indeed, charge certain U.S. customers for an expense incurred at the port called the ORC. This charge was reported as a billing adjustment. However, we disagree with Since Hardware's characterization of this expense as freight or handling revenue. The amount that Since Hardware charged the U.S. customer is merely a reimbursement for an expense Since Hardware incurred. In this case, the customer elects to bear this extra cost when it requests that Since Hardware ship merchandise out of certain ports where the ORC is assessed. Since Hardware initially pays for this expense on behalf of the customer and then charges the customer for the fixed amount as a separate line item on the invoice. It is not part of the negotiated price of the merchandise and there is no indication that it is part of the surrogate value for brokerage and handling.

Additionally, we note that Since Hardware's reliance on *Stainless Steel Wire Rod* is misplaced. In *Stainless Steel Wire Rod*, the delivery terms were part of the terms of sale and, hence, can be expected to have a direct impact on the negotiated sales price. However, in this case, Since Hardware clearly indicated that the ORC charges are "extra costs borne by Since Hardware's customers" and, as extra costs, are not a part of the delivery terms and should have no impact on the negotiated sales price. Therefore, for the Final Determination, we have not included the billing adjustment in the calculation of export price.

Comment 10: Whether the Department Selected the Proper Data Source for its Calculation of Surrogate Overhead, SG&A, and Profit Ratios

The petitioner contends that the administrative record does not contain information from a producer of merchandise identical or comparable to the producer of the subject merchandise. As such, the petitioner urges the Department to calculate the surrogate ratios for factory overhead, selling, general, and administrative (SG&A) expenses, and profit (collectively financial ratios) by using data published in the Reserve Bank of India Bulletin (RBI Bulletin). Specifically, the petitioner urges the Department to use the data for 997 companies, as published in the April 2004 RBI Bulletin, because these are the most contemporaneous data of companies that have a paid-up capital that are similar to the capitalization of the respondents. *See* HPI's Case Brief, at 2–11.

Since Hardware contends that in the *Preliminary Determination*, the Department erred in using the data for 2,024 companies, as published in the October 2003 RBI Bulletin, to calculate the financial ratios. Since Hardware asserts that the Department will normally use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to calculate financial ratios. *See* 19 CFR 351.408(c)(4). Since Hardware alleges that the Department has a preference for using data from individual producers of identical or comparable merchandise rather than data having a more generalized industry-wide basis. *See Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 18, 2003), Issues and Decision Memorandum, at Comment 4. Moreover, Since Hardware suggests that the Department rely on Import Administration's Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process" (Surrogate Country Selection Policy Bulletin), dated March 1, 2004, as a guide to determine what is identical or comparable merchandise.

Since Hardware states that Godrej & Boyce Manufacturing Co., Ltd. (Godrej) is a company that produces metal-fabricated cabinets, shelves, and wardrobes. Since Hardware contends that Godrej produces products that are comparable to the subject merchandise because: (1) They have similar physical characteristics, and use the same material inputs (*e.g.* steel/cold-rolled steel); (2) the production processes for ironing tables and the metal-fabricated shelving and cabinets are similar in that both involve relatively simple metal-fabrication and assembly production processes; and (3) in terms of end uses, ironing tables are comparable to the metal-fabricated shelving.

and cabinets in that both are finished consumer goods. Since Hardware contends that data published in the RBI Bulletin are based on a broad spectrum of Indian manufacturers, agricultural companies, and service providers. Moreover, Since Hardware claims that the Department has rejected RBI data when data from a producer of comparable merchandise were available. *See, e.g., Lawn and Garden Fence Posts from the People's Republic of China*, 67 FR 72141 (December 4, 2002); *Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review*, 66 FR 8383 (January 31, 2001) (*Glycine*), 66 FR 8383 (January 31, 2001); and *Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 48,612 (July 25, 2002) (*Cased Pencils*), and accompanying Issues and Decision Memorandum, at Comment 5. In addition, Since Hardware alleges that the CIT has acknowledged that the RBI data are not an appropriate surrogate value source because of their generalized nature. *See Shanghai Foreign Trade Enterprises Co., Ltd. and Shanghai Pudong Malleable Iron Plant, v. the United States and Anvil International, Inc. and Ward Manufacturing, Inc.*, No. 03–00218, Slip Op. 04–33 (CIT April 9, 2004) (*Non-Malleable Remand*); and *Yantai Oriental Juice Co. v. United States*, Slip Op. 02–56, at 27 (CIT June 18, 2002) (*Yantai Oriental*). Lastly, since the Department previously accepted Godrej financial data to calculate surrogate financial ratios in *Folding Chairs*, Since Hardware urges the Department to also accept the Godrej financial data in this investigation given the nearly identical physical characteristics shared by folding metal tables and chairs and ironing boards. As such, Since Hardware contends that the data published in the RBI Bulletin cannot be more appropriate than the Godrej data for purposes of calculating the financial ratios. As such, Since Hardware urges the Department to use the financial data from Godrej. *See* Since Hardware's Case Brief, at 10–15; *See* Since Hardware's Rebuttal Brief, at 1–4.

Yongjian contends that the valuation of financial ratios needs to be based on the experience of market economy producers of "identical or comparable merchandise." *See* Section 351.408(c)(4) of the Department's regulations. Yongjian asserts that to determine whether merchandise is identical or comparable to the subject merchandise, the Department should consider "whether the products have similar physical characteristics, end uses, and production processes. When evaluating production processes, the Department [should consider] the complexity and duration of the processes and types of equipment used in production." *See Cased Pencils*, Issues and Decision Memorandum, at Comment 5. Yongjian asserts that in *Glycine* the Department states that it is its "practice to use financial data that are more narrowly limited to a producer of comparable merchandise than data based on a wider range of products when the former data are available. In addition, Yongjian claims that in the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000) (*Bulk Aspirin*), Issues and Decision Memorandum, at Comment 4, the Department states that "because we seek information that pertains as narrowly as possible to the subject merchandise, the Department, in most cases, has used the producer-specific data since industry-specific data available to the Department tends to be broad in terms of the merchandise included. This, however, does not mean that we would always prefer the producer-specific data, if we were presented with industry and producer data that were equally specific in terms of the merchandise produced." *Id.*

Yongjian alleges that Godrej's fabricated metal merchandise and the subject merchandise are two slightly different classes of fabricated metal products that are comparable to one another because they are: (1) Made of steel sheet, flat steel products, metal fasteners and the like, probably steel pipe/tube (as garment hanging rods in wardrobes), various plastic and rubber components, and oven baked luster enamel coatings; and (2) joined together with the same general production process (*i.e.*, welding and assembly of moving parts). Yongjian asserts that the data published in the RBI Bulletin are insignificantly impacted by the fabricated metal products companies. In addition, Yongjian points out that the gross profits and profits after tax in 2002–2003 were negative for the fabricated metal products industry. As such, Yongjian contends that, because the data published in the RBI Bulletin are too generic to withstand serious scrutiny in view of the Department's stated policy, its specific regulation, and recent and consistent pronouncements of the CIT, the Department should use the financial data from Godrej, that allegedly operates in the same fabricated metals industry as ironing table producers, to calculate the surrogate financial ratios. *See* Yongjian's Case Brief, at 25–32; Yongjian's Rebuttal Brief, at 2 and 3.

Yongjian summarizes that in the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71,204 (December 20, 1999) (*Creatine Monohydrate*), Issues and Decision Memorandum, at Comment 1, the Department "eschewed" the use of data published in the RBI where information relating to a narrower category of comparable products was available. As prior examples of how the Department analyzed comparability, Yongjian points to the following notices: *Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from the Russian Federation*, 68 FR 9977 (March 3, 2003) (*Urea Ammonium Nitrate Solutions*), Issues and Decision Memorandum, at Comment 6, where the Department considered ammonium nitrate and urea to be comparable to the urea ammonium nitrate solutions under investigation; *Cased Pencils*, Issues and Decision Memorandum, at Comment 5, where the Department considered wooden cabinets, doors, and handicrafts to be comparable to the cased pencils under review. In *Cased Pencils*, Yongjian cites that the Department "did not have industry sector-specific RBI data for an industry more comparable to pencil production." *Id.*; *Glycine*, Issues and Decision Memorandum, at Issue f, where the Department considered phenylglycine to be comparable to the glycine under investigation, because the products appeared to have similar raw materials, similar production equipment, and similar production processes; *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium in Granular Form from the Russian Federation*, 66 FR 49,347 (September 27, 2001) (*Pure Magnesium*), Issues and Decision Memorandum, at Comment 1, where the Department determined zinc to be comparable to the pure magnesium under investigation. *See* Yongjian's Case Brief, at 25 and 27; *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25,706 (May 3, 2000) (*Synthetic Indigo*), Issues and Decision Memorandum, at Comment 6, where Yongjian first states that the Department considered general chemical and hydrogen peroxide not to be comparable to the synthetic indigo under investigation (*See* Yongjian's Case Brief, at 26, footnote 44) but then states that the Department found that phenylglycine and synthetic indigo used some of the same raw materials and had similar production processes (*See* Yongjian's Case Brief, at 28). *See* Yongjian's Case Brief, at 25 and 27–28.

In rebuttal, the petitioner explains that Godrej is a conglomerate of companies that does not produce merchandise that is identical or comparable to the subject merchandise. Instead, the petitioner argues that Godrej's data are based upon so diverse a product mix that they cannot reflect data from a producer of ironing tables. The petitioner also contends that the Godrej financials are not as contemporaneous as the data published in the RBI Bulletin. Furthermore, the petitioner argues that Godrej's 2003 financial data is aberrational and distortive because of Godrej's changes in structure and operations, as well as changes in accounting methods that affect the surrogate financial ratios. Lastly, the petitioner contends that Godrej's 2002–2003 performance represents an extreme divergence from the preceding year and is an outlier with respect to all of the Godrej data on this record. Moreover, the petitioner argues that the data published in the RBI Bulletin represent a year-to-year reliably stable source for surrogate financial ratios. Comparatively, the petitioner argues, Godrej's aggregate ratios vary widely, with year-to-year performances exceeding 10 percentage points between single years which can hardly be viewed as reliable. As such, the petitioner claims that the Department turned to data published in the RBI Bulletin well within its authority.

In its rebuttal, Since Hardware argues that the Department's regulations and practice do not recognize the level of capitalization as a determinant for selecting appropriate surrogate value information. *See Bulk Aspirin*, Issues and Decision Memorandum, at Comment 4, (where the Department states that "[r]egarding the petitioner's arguments

about capacity, we do not believe that size or capacity of the surrogate producer always poses a necessary consideration. In this case, unlike *Sigma* v. *United States*, 117 F. 3d 1401, 1414 (Fed. Cir. July 7, 1997) (*Sigma*), we have no evidence demonstrating that overhead rates vary directly with the scale or capacity of Indian aspirin (or other chemical) producers."). *See* Since Hardware's Rebuttal Brief, at 1–3.

Department's Position: We agree with the respondents. The Department's regulations directs the Department to "normally * * * use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." *See* 19 CFR 351.408(c)(4). To determine whether merchandise is identical or comparable to the subject merchandise, the Department compares physical characteristics, end uses, and production processes between the merchandise produced by a company and the subject merchandise. *See Cased Pencils*, Issues and Decision Memorandum, at Comment 5. If the record contains reliable and contemporaneous data from a company that produces merchandise that is identical or comparable to the subject merchandise, then the Department will use that company's financial data to calculate the surrogate financial ratios.

In this instance, Godrej's 2002–2003 Annual Report indicates that Godrej manufactures a variety of products, a significant portion of which is steel furniture. *See* Information from Keir A. Whitson, to the Honorable Donald L. Evans, Secretary of Commerce, "Publicly Available Information," dated March 29, 2004, at exhibit 2 "Godrej's Annual Report & Accounts for the Year Ended 31st March, 2003." We find that steel furniture is more comparable to ironing boards than the broad industry groupings provided in the RBI Bulletin, which reflect an unknown, but likely substantially smaller, portion of comparable merchandise. The Department uses broader industry averages as published in the RBI Bulletin when no usable financial data from producers of comparable merchandise are available. In this case, the Department does not need to rely upon surrogate information derived from broader industry groupings (*i.e.* data published in the RBI Bulletin) to calculate surrogate financial ratios. Instead, in accordance with section 351.408(c)(4) of the Department's regulations, we find that Godrej's 2002–2003 Annual Report provides non-proprietary information gathered from a producer of comparable merchandise in the surrogate country that is suitable for purposes of calculating surrogate financial ratios.

In response to the petitioner's argument that Godrej's financial data is aberrational and distortive, we disagree. Godrej's 2002–2003 Annual Report states that Godrej acquired two companies and accounted for them in accordance with "auditing standards generally accepted in India * * * and relevant requirements under the Companies Act of 1956." *See* Godrej's 2002–2003 Annual Report, at 12 and 29. Notwithstanding Godrej's acquisitions, the 2002–2003 Annual Report states that steel furniture sales increased significantly from the previous year, and that steel furniture sales remain at the top of Godrej's product mix. Therefore, although we recognize that Godrej did undergo a change in corporate structure, we find that the change did not substantially impact the production or sales of steel furniture.

Because data published in the RBI Bulletin represents the average experience of companies from broad industry groupings, we find that Godrej's financial statements offer more product-specific financial information than RBI data. Although Grodrej manufactures other products besides steel furniture, we are able to discern that a significant portion of its production is devoted to steel furniture. In contrast, we are unable to find whether or not comparable merchandise represents a significant portion of the data published in the RBI Bulletin.

Therefore, for the reasons mentioned above, and consistent with prior practice, the Department is relying on Godrej's 2002–2003 financial information to calculate surrogate financial ratios.

Comment 11: Corrections to Yongjian's Database Presented at Verification

Yongjian noted that at verification it presented the Department with a revised factors of production chart containing corrections and clarifications for cold-rolled steel, hot-rolled steel, steel wire, and powder coating. Yongjian states that these corrected materials should be used in the calculation of Yongjian's normal value. *See* Yongjian's Case Brief, at 6 and 7.

The petitioner did not comment on this issue.

Department's Position: On the first day of verification, Yongjian provided the Department with a list of minor corrections. During the course of verification, we reviewed these corrections and verified that they were accurately submitted. *See* Yongjian's FOP Verification Exhibits, Exhibit 1. Therefore, we have included Yongjian's corrections in the final determination.

Recommendation: Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in this investigation and the final weighted-average dumping margins in the **Federal Register**.

Agree _____

Disagree _____

Dated: June 15, 2004.

James Jochum,
Assistant Secretary for Import Administration.

[FR Doc. 04–14360 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture From the People's Republic of China

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

EFFECTIVE DATE: June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207, or 482–3434, respectively.

Preliminary Determination

We preliminarily determine that wooden bedroom furniture from the People's Republic of China ("PRC") is being, 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 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.

Case History

On October 31, 2003, the Department of Commerce ("Department") received a petition for the Imposition of Antidumping Duties: Wooden Bedroom Furniture from the People's Republic of China ("Petition"), filed in proper form by the American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker's Local Union 2305, United Steel Workers of American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991 (collectively "Petitioners") on behalf of the domestic industry and workers producing wooden bedroom furniture. This investigation was initiated on December 17, 2003. *See Notice of Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China*, 68 FR 70228 (December 17, 2003) ("*Notice of*

Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation*, 68 FR at 70229. We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope of the Investigation" section below.

On January 9, 2004, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of wooden bedroom furniture, which was published in the **Federal Register** on January 28, 2004. *See Wooden Bedroom Furniture from China*, 69 FR 4178 (January 28, 2004).

On December 30, 2003, the Department requested quantity and value ("Q&V") information from a total of 211 producers of wooden bedroom furniture in the PRC which were identified in the Petition and other sources and for which the Department was able to locate contact information. On December 30, 2003, the Department also sent a letter to the Government of the PRC requesting assistance locating all known producers/exporters of wooden bedroom furniture in the PRC which exported wooden bedroom furniture to the United States during the period April 1, 2003, through September 30, 2003.

On January 7, 8, and 9, 2004, the Department received Q&V responses from 137 Chinese producers/exporters of wooden bedroom furniture. The Department did not receive any type of communication from the Government of the PRC in response to the letter of December 30, 2003.

On January 14, 2004, PRC government officials and furniture industry representatives met with Department officials to discuss respondent selection and the criteria the Department considers regarding whether an industry is market-oriented.

On January 15, 2004, Markor International Furniture (Tianjin) Manufacture Co., Ltd. ("Markor Tianjin"), and Lacquer Craft Manufacturing Company, Ltd. ("Lacquer Craft"), notified the Department that they intend to seek market-oriented-industry ("MOI") status on behalf of the wooden bedroom furniture industry in the PRC. For a further discussion of MOI status for this investigation, please see the "Market-Oriented Industry" section below. On January 22, 2004, the Department requested comments on surrogate-country and factor-valuation information in order to have sufficient time to consider such information for the preliminary determination. On January 30, 2004, the Department requested comments on its draft proposed product-control number ("CONNUM") characteristics.

On January 14, 2004, Fine Furniture Limited ("Fine Furniture") requested that the Department select it as a mandatory respondent. Also, on January 15, 2004, Petitioners stated that the Department should select Dalian Huafeng Furniture Co., Ltd. ("Dalian"), as a mandatory respondent. The Department received several letters regarding the selection of mandatory respondents. On February 17, 2004, Dalian requested designation as a voluntary respondent in this investigation. On March 11, 2004, Sanmu Wooden Furniture Group requested designation as a voluntary respondent in this investigation.

On January 30, 2004, the Department issued its respondent-selection memorandum, selecting the following seven companies as mandatory respondents in this investigation: Dongguan Lung Dong Furniture Co., Ltd., and Dongguan Dong He Furniture Co., Ltd. (collectively "Dongguan Lung Dong"); Rui Feng Woodwork Co., Ltd., Rui Feng Lumber Development Co., Ltd., and Dorbest Limited (collectively "Dorbest Group"); Lacquer Craft; Markor Tianjin; Shing Mark Enterprise Co., Ltd., Carven Industries Limited (BVI), Carven Industries Limited (HK), Dongguan Zhenxin Furniture Co., Ltd., and Dongguan Yongpeng Furniture Co., Ltd. (collectively "Shing Mark"); Starcorp Furniture (Shanghai) Co., Ltd., Orin Furniture (Shanghai) Co., Ltd., and Shanghai Starcorp Furniture Co., Ltd. (collectively "Starcorp"); and Tech Lane Wood Mfg. and Kee Jia Wood Mfg. (collectively "Tech Lane"). *See Memorandum from Edward Yang, Director, Office IX, to Joseph Spetrini, Deputy Assistant Secretary, Group III, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Selection of Respondents ("Respondent Selection Memo")*, dated January 30, 2004.

On January 20, 21, 23, 26, and 30, the Department received comments from Markor Tianjin, Lacquer Craft, and Petitioners regarding product-matching CONNUM characteristics. On January 30, 2004, the Department requested comments on its proposed product CONNUM characteristics from all interested parties. On February 4 and 9, 2004, we received comments on our product-matching CONNUM characteristics from Lacquer Craft, Markor Tianjin, Shing Mark, and Petitioners.

On February 2, 2004, the Department issued its Section A questionnaire to Dongguan Lung Dong, the Dorbest Group, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Tech Lane. On February 2, 2004, we also issued a Section A questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce).

On February 3, 2004, the Department received a letter from Sunforce Furniture Co., Ltd. ("Sunforce"), requesting that the Department reconsider its decision with respect to the selection of mandatory respondents and designate Sunforce a mandatory respondent.

On February 5, 2004, we received comments regarding our selection of a surrogate country from Lacquer Craft, Markor Tianjin, Furniture Brands International, Inc. ("Furniture Brands"), an interested party, and Petitioners. Both Lacquer Craft and Markor Tianjin stated that Indonesia would be the appropriate surrogate country. Also, Furniture Brands stated that the bedroom furniture industry in Indonesia is more comparable to the PRC industry than the Indian industry and a possible candidate to be a surrogate country. Petitioners stated the Department should select India as the surrogate country.

On February 11, 2004, the Department issued its Section C, D, and E, as appropriate, questionnaire to Dongguan Lung Dong, the Dorbest Group, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Tech Lane. On February 11, 2004, we also issued a Section C, D, and E questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce). On February 18, 2004, we issued a letter to all seven mandatory respondents and the Chinese Government in which we clarified and corrected (*i.e.*, minor corrections in) only our Section C questionnaire.

On February 19, 2004, Yihua Timber Industries, Shenyang Shining Dongxing Furniture Co., Ltd. ("Shining Dongxing"), Fuzhou Huan Mei Furniture Co., Ltd. ("Fuzhou Huan Mei"), and Power Dekor Group Co. Ltd. ("Power Dekor") requested selection as voluntary respondents.

For all interested parties that requested an extension for submitting a response to our Section A questionnaire, we provided a one-week extension until March 1, 2004. Additionally, we provided a two-week extension until March 26, 2004, to all mandatory respondents to respond to Sections C, D, and E of our questionnaire. On March 1, 2004, we received 126 Section A

responses, including those from the mandatory respondents.

On March 5, 2004, the Department determined that India was the appropriate surrogate country to use in this investigation. *See Memorandum to Edward C. Yang, Director, Office IX, from Jon Freed, Case Analyst, through Robert Bolling, Program Manager: Antidumping Duty Investigation on Wooden Bedroom Furniture from the People's Republic of China ("Surrogate-Country Memorandum")*, dated March 5, 2004. We received comments regarding our selection of India as the surrogate country from interested parties. For a detailed discussion of the comments regarding the surrogate country, please see the "Surrogate Country" section below. Additionally, on March 5, 2004, we extended the time period for interested parties to provide surrogate values for the factors of production until March 26, 2004. On March 1 and 5, 2004, we received a request from Lacquer Craft, Markor Tianjin, and Furniture Brands, respectively, to extend the deadline for supplying surrogate-value information. On March 17, 2004, we informed all interested parties that we were again extending the time period for then to provide surrogate-value information until April 2, 2004. On March 31, 2004, Petitioners requested an additional extension. The Department extended the due date again until April 16, 2004.

On March 29, 2004, Petitioners requested that the Department remove from the record all untimely filed responses to the Department's Q&V questionnaire and its Section A questionnaire and apply total facts available to the PRC producers and exporters which have been less than fully cooperative. Also, on March 29, 2004, Petitioners filed two additional submissions; one submission contained a list of potential Indian surrogate companies and the other provided comments on the Section A only responses.

On March 31, 2004, Petitioners made a timely request pursuant to 19 CFR 351.205(e) for a fifty-day postponement of the preliminary determination, or until June 17, 2004. On April 13, 2004, the Department published a postponement of the preliminary antidumping duty determination on wooden bedroom furniture from the PRC. *See Notice of Postponement of the Preliminary Determination of Wooded Bedroom Furniture from the People's Republic of China Antidumping Duty Investigation*, 69 FR 19390 (April 13, 2004).

On April 16, 2004, we received surrogate-value information from the Dorbest Group, Dongguan Lung Dong, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, Furniture Brands, and Petitioners. The Dorbest Group, Dongguan Lung Dong, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Petitioners submitted surrogate-value information and financial data on India. Additionally, Lacquer Craft, Markor Tianjin, and Furniture Brands submitted surrogate-value information and financial data on Indonesia and requested that the Department revisit its decision on whether India is the appropriate surrogate country. On April 29, 2004, Petitioners submitted rebuttal comments to the surrogate values proposed by the mandatory respondents and Furniture Brands, claiming India is the appropriate surrogate country. Additionally, in this submission Petitioners provided additional Indian financial statements. Also, on April 29, 2004, the Dorbest Group, Lacquer Craft, Markor Tianjin, Dongguan Lung Dong, and Shing Mark submitted additional arguments and surrogate-value information.

On May 10, 2004, Lacquer Craft and Markor Tianjin rebutted Petitioners' submission of April 29, 2004, by stating that the submission does not challenge the accuracy of the values that they submitted on the record by Indian or Indonesian producers and Petitioners have put forth no evidence stating that these values are distortive of actual costs. Also, on May 10, 2004, Petitioners rebutted the April 29, 2004, submissions of Lacquer Craft, Markor Tianjin, Dongguan Lung Dong, and Shing Mark.

On May 13, 2004, Shing Mark submitted additional comments on the surrogate values of its April 16, 2004, submission and also responded to Petitioners' April 29, 2004, submission. Shing Mark stated that the Department should have a hierarchical approach when selecting from among the various surrogate values (*i.e.*, independent sources, entry-specific import information, and the Monthly Statistics of the Foreign Trade of India ("MSFTI") data). On May 20, 2004, Petitioners rebutted Lacquer Craft and Markor Tianjin's May 10, 2004, submission. On May 24, 2004, Petitioners responded to Shing Mark's May 13, 2004, surrogate-value submission by stating this submission was untimely and the Department should use the MSFTI data to value the mandatory respondents' factors of production and reject Shing Mark's proposal to use data from *http://www.InfodriveIndia.com* ("Infodrive") and International Business Information Services ("IBIS").

On May 26, 2004, the Dorbest Group submitted comments to Petitioners' April 29, 2004, surrogate-value rebuttal comments. In this submission the Dorbest Group stated that six of the seven financial statements submitted by Petitioners are not appropriate for the Department to use in its preliminary determination for a variety of reasons (*e.g.*, not contemporaneous with POI, sick company, etc.). Further, on May 27, 2004, Tech Lane submitted comments to Petitioners' April 29, 2004, submission in which it stated that the Department should reject six of the seven financial statements submitted by Petitioners due to numerous problems with these financial statements and urged the Department not use them in its preliminary determination for a variety of reasons (*e.g.*, sales were made on a retail basis, company is not a significant producer of wooden bedroom furniture, etc.). On June 2, 2004, Furniture Brands responded to Petitioners' rebuttal surrogate-value comments of May 10, 2004. On June 3, 2004, Shing Mark responded to Petitioners' rebuttal surrogate-value comments of May 24, 2004. On June 7, 2004, Petitioners' responded to the Dorbest Group's comments rebuttal on the Indian financial statements of May 26, 2004.

From May 10, 2004, to May 21, 2004, the Department issued supplemental Section A questionnaires to the 118 Section A respondents which submitted a section A questionnaire response. From May 21, 2004, to June 4, 2004, the Department received supplemental Section A responses from the Section A respondents.

On May 6, 2004, the Department requested that all interested parties provide comments on the unit-of-measure conversion tables and formulas located on the World Wide Web at *http://www.allmeasures.com* because, it indicated, it planned on using this Web site to convert certain surrogate values for the preliminary determination. On May 12, 2004, we received comments from Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Petitioners on this proposal. In general, the parties stated that they were not in favor of using the all-measures Web site for a variety of reasons (*e.g.*, conversions are not specific enough for practical application). Shing Mark and Starcorp provided an alternative unit-of-measure Web site: *http://www.worldagroforestrycentre.org/sea/Products/AFDbases/WD/Index.htm*.

On May 10, 2004, the Department requested that all mandatory respondents provide a chart indicating the Harmonized Tariff Schedule ("HTS") heading and article description for each of the mandatory respondent's factors of production. On May 26, 2004,

the Department received responses to its May 10, 2004, request from all the mandatory respondents. On June 7, 2004, Petitioners responded to Dongguan Lung Dong and Starcorp's May 26, 2004, submission and urged the Department to use adverse facts available to value Dongguan Lung Dong and Starcorp's factors of production because, they allege, its factor categories are overly broad and vague. Additionally, on June 8, 2004, Petitioners responded to Tech Lane's May 26, 2004, submission and stated that the Department should use adverse facts available to value Tech Lane's factors of production because its factor categories are overly broad and vague. Further, on June 9, 2004, Petitioners responded to the Dorbest Group's May 26, 2004, submission and stated that the Department should use adverse facts available to value its factors of production because its factor categories are overly broad and vague.

On May 19, 2004, Petitioners requested that the Department remove from the record untimely questionnaire responses from Section A respondents and apply facts available to these producers and exporters. On May 21, 2004, Starwood Furniture Manufacturing Co., Ltd. ("Starwood"), submitted a rebuttal to Petitioners' May 19, 2004, submission, stating that Starwood acted to the best of its ability in responding to the Department's requests for information.

On May 20, 2004, Lacquer Craft, Markor Tianjin, and Furniture Brands submitted for the record public financial statements for 2002 for Indonesian producers of wooden bedroom furniture for Goldfindo Intikayu Pratama ("Goldfindo"), PT. Sinarindo Megantara ("SIMA"), and PT Maitland-Smith and the 2001 financial statement for PT Maitland-Smith.

On June 4, 2004, Petitioners provided a submission that stated the Department should disregard certain categories of prices in its valuation of certain mandatory companies' factors of production: (1) Prices paid for wood products purchased from Russia; (2) import prices from Korea, Indonesia, and Thailand; (3) prices paid for goods purchased from market-economy trading companies but produced in a non-market-economy ("NME") country. On June 7, 2004, Petitioners provided their comments for the preliminary determination (*e.g.*, date of sale, factors of production, etc.). On June 9, 2004, Changshu HTC Import & Export Co., Ltd., Dongyin Huanghekou Furniture Industry Co., Ltd., Dream Rooms Furniture (Shanghai) Co., Ltd., Sheng Jing Wood Products Co., Ltd., and its affiliate, Telstar Enterprises Limited, responded to Petitioners' June 7, 2004, submission and stated that the Department should not apply facts available to companies that have cooperated and acted to the best of their abilities because they did not file a mini-Section A questionnaire.

Company-Specific Chronology

As described above, the Department staggered its issuance of sections of the antidumping questionnaire to the seven mandatory respondents. Upon receipt of the various responses, the Petitioners provided comments and the Department issued supplemental questionnaires. The chronology of this stage of the investigation varies by respondent. Therefore, the Department has separated the discussion of its information-gathering process after issuance of the questionnaire by company.

Dongguan Lung Dong

On March 1, 2004, Dongguan Lung Dong submitted its Section A questionnaire response. On March 10, 2004, Petitioners submitted comments on Dongguan Lung Dong's Section A questionnaire response. On March 19, 2004, the Department issued a Supplemental Section A questionnaire covering Dongguan Lung Dong's March 1, 2004, response. On March 29, 2004, Dongguan Lung Dong submitted its response to Sections C and D of the Department's February 11, 2004, questionnaire. On March 30, 2004, Dongguan Lung Dong submitted a replacement page to its March 29, 2004, response. On April 9, 2004, Dongguan Lung Dong submitted its response to the Supplemental Section A questionnaire. On April 16, 2004, Petitioners submitted their deficiency comments on Dongguan Lung Dong's response to Section C and D of the questionnaire. On April 27, 2004, Petitioners submitted deficiency comments on Dongguan Lung Dong's Supplemental Section A response. On April 30, 2004, the Department issued its Supplemental Sections C and D questionnaire covering Dongguan Lung Dong's March 29, 2004, questionnaire response. On May 24, 2004, the Department issued a second Supplemental Section A questionnaire covering Dongguan Lung Dong's April 9, 2004, questionnaire response. Also, on the same date, Dongguan Lung Dong submitted its Supplemental Sections C and D questionnaire responses to the Department. On May 25, 2004, Dongguan Lung Dong submitted replacement pages to its May 24, 2004, response. On May 28, 2004, Petitioners submitted deficiency comments on Dongguan Lung Dong's May 24, 2004, Supplemental Sections C and D questionnaire responses.

Dorbest Group

On March 1, 2004, the Dorbest Group submitted its Section A questionnaire response. On March 10, 2004, Petitioners submitted comments on the Dorbest Group's Section A questionnaire response. On March 23, 2004, the Department issued a Supplemental Section A questionnaire covering the Dorbest Group's March 1, 2004, response. On March 29, 2004, the Dorbest Group submitted its response to Sections C and D of the Department's February 11, 2004, questionnaire. On April 7, 2004, Petitioners submitted their deficiency comments on the Dorbest Group's response to Section D of the questionnaire. On April 14, 2004, the Dorbest Group submitted its response to Department's March 23, 2004, Supplemental Section A questionnaire. On April 20, 2004, Petitioners submitted deficiency comments on the Dorbest Group's Sections C and D questionnaire response. On April 27, 2004, Petitioners submitted deficiency comments on the Dorbest Group's Supplemental Section A response. On April 30, 2004, the Department issued a Supplemental Sections C and D questionnaire covering the Dorbest Group's March 29, 2004, questionnaire response. On May 11, 2004, the Department requested additional information for certain CONNUMs from Dorbest. On May 24, 2004, the Department issued a second Supplemental Section A questionnaire covering the Dorbest Group's April 14, 2004, questionnaire response. Also, on the same date, Dorbest submitted its Supplemental Sections C and D questionnaire responses to the Department. On May 28, 2004, Petitioners submitted deficiency comments on the Dorbest Group's May 24, 2004, Supplemental Sections C and D questionnaire responses. On June 3, 2004, the Dorbest Group submitted its response to the Second Supplemental Section A questionnaire. Also, on June 3, 2004, the Dorbest Group submitted response to Petitioners' May 28, 2004, comments on its Sections C and D questionnaire responses. On June 8, 2004, the Department issued a Second Supplemental Sections C and D questionnaire to the Dorbest Group.

Lacquer Craft

On March 1, 2004, Lacquer Craft submitted its Section A questionnaire response. On March 11, 2004, Petitioners submitted comments on Lacquer Craft's Section A questionnaire response. On March 23, 2004, the

Department issued Lacquer Craft a supplemental questionnaire concerning its Section A response. On March 29, 2004, Lacquer Craft submitted its Sections C and D questionnaire responses. On April 13, 2004, Petitioners submitted comments on Lacquer Craft's Sections C and D questionnaire responses. On April 13, 2004, Lacquer Craft submitted its response to the Department's Supplemental Section A Questionnaire. On April 30, 2004, the Department issued Lacquer Craft a supplemental questionnaire concerning its Sections C and D responses. On May 21, 2004, Lacquer Craft submitted its response to the Department's Sections C and D Supplemental Questionnaire. On May 21, 2004, the Department issued Lacquer Craft a second supplemental questionnaire concerning its Sections A and D responses. On May 27, 2004, Petitioners submitted comments on Lacquer Craft's Sections C and D Supplemental Questionnaire responses. On June 3, 2004, Lacquer Craft submitted its response to the Department's Sections A and D Second Supplemental Questionnaire.

Markor Tianjin

On March 1, 2004, Markor Tianjin submitted its Section A questionnaire response. On March 11, 2004, Petitioners submitted comments on Markor Tianjin's Section A questionnaire response. On March 19, 2004, the Department issued a Supplemental Section A questionnaire covering Markor Tianjin's March 1, 2004, response. On March 29, 2004, Markor Tianjin submitted its response to Sections C and D of the Department's February 11, 2004, questionnaire. On April 7, 2004, Petitioners submitted deficiency comments on Markor Tianjin's responses to Section D of the questionnaire. On April 9, 2004, Markor Tianjin submitted its response to the Supplemental Section A questionnaire. On April 9, 2004, Petitioners submitted their deficiency comments on Markor Tianjin's response to Section C and D of the questionnaire. On April 12, 2004, Markor Tianjin and Lacquer Craft submitted rebuttal comments regarding Petitioners' April 7, 2004, submission. On April 21, 2004, the Department met with Markor Tianjin to discuss double-bracketed information contained in its April 9, 2004, Supplemental Section A response. On April 23, 2004, Markor Tianjin submitted a letter containing additional arguments for not releasing under the administrative protective order certain information in Markor Tianjin's April 9, 2004, submission. On April 29, 2004, Petitioners submitted deficiency comments on Markor Tianjin's Supplemental Section A response. On May 3, 2004, the Department issued a Supplemental Sections C and D questionnaire covering Markor Tianjin's March 29, 2004, questionnaire response. On May 5, 2004, Petitioners submitted a letter regarding the double-bracketing of information in Markor Tianjin's April 9, 2004, submission. On May 7, 2004, the Department issued a memorandum rejecting Markor Tianjin's request that certain information in its April 9, 2004, submission not be released under the administrative protective order. *See Memorandum for Edward Yang from Ann M. Sebastian: Claim of Clear and Compelling Need to Withhold the Release of Business Proprietary Information Regarding Corporate Structure Issues Under Administrative Protective Order in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China*, May 7, 2004. Pursuant to the Department's rejection of its request for double-bracketing of certain information, on May 12, 2004, Markor Tianjin submitted a revised response to the Department's March 19, 2004, Supplemental Section A questionnaire. On May 24, 2004, the Department issued a second Supplemental Section A questionnaire concerning Markor Tianjin's May 12, 2004, questionnaire response. Also, on the same date, Markor Tianjin submitted its Supplemental Sections C and D questionnaire responses to the Department. On May 28, 2004, Petitioners submitted deficiency comments to Markor Tianjin's May 24, 2004, supplemental Sections C and D questionnaire responses.

Shing Mark

On March 1, 2004, Shing Mark submitted its Section A questionnaire response. On March 11, 2004, Petitioners submitted comments on Shing Mark's Section A questionnaire response. On March 19, 2004, the Department issued Shing Mark a supplemental questionnaire concerning its Section A responses. On March 29, 2004, Shing Mark submitted its Sections C and D questionnaire responses. On April 9, 2004, Shing Mark submitted its response to the Department's Section A Supplemental Questionnaire. On April 12, 2004, Petitioners submitted comments to Shing Mark's Sections C and D questionnaire responses. On April 28, 2004, the Department issued Shing Mark a supplemental questionnaire concerning its Sections C and D responses. On April 30, 2004, Petitioners submitted comments regarding Shing Mark's Section A Supplemental Questionnaire responses. On May 24 and May 26, 2004, Shing Mark submitted its response to the Department's Sections C and D Supplemental Questionnaire. On May 19, 2004, the Department issued Shing Mark a second supplemental questionnaire concerning its Sections A and D responses. On May 26, 2004, Shing Mark submitted its response to the Department's Sections A and D Second Supplemental Questionnaire. On May 26, 2004, Petitioners submitted comments on Shing Mark's Sections C and D Supplemental Questionnaire responses.

Starcorp

On March 1, 2004, Starcorp submitted its response to Section A of the questionnaire. On March 10, 2004, Petitioners submitted comments on Starcorp's Section A response. On March 19, 2004, the Department sent Starcorp a supplemental Section A questionnaire. On March 29, 2004, Starcorp submitted its response to Section C and D of the questionnaire. On April 9, 2004, Starcorp submitted its response to the Department's supplemental Section A questionnaire. On April 13, 2004, Petitioners submitted comments on Starcorp's Section C and D response. On April 28, 2004, the Department sent Starcorp a supplemental Sections C and D questionnaire. On April 30, 2004, Petitioners submitted comments on Starcorp's Supplemental Section A response. On May 21, 2004, Starcorp submitted its response to the Supplemental Sections C and D of the questionnaire. On May 24, 2004, the Department sent Starcorp a second supplemental Section A questionnaire. On May 28, 2004, Petitioners submitted comments on Starcorp's Supplemental Sections C and D response. On June 3, 2004, Starcorp submitted its response to the second supplemental Section A questionnaire. On June 9, 2004, Starcorp submitted its response to the second supplemental Sections C and D questionnaire. On June 10, 2004, Starcorp submitted additional clarifications regarding conversions of certain factors.

Tech Lane

The Department received Tech Lane's Section A questionnaire response on March 1, 2004. The Department issued a Section A supplemental questionnaire to Tech Lane on March 22, 2004. On March 29, 2004, the Department received Tech Lane's Sections C and D response.

The Department received Petitioners' comments to Tech Lane's Section A questionnaire response on March 29, 2004, and their comments to Tech Lane's Sections C and D questionnaire response on April 8, 2004. On April 15, 2004, we received Tech Lane's Section A supplemental questionnaire response. We received additional comments from Petitioners on Tech Lane's Section D questionnaire response on April 20, 2004, and Petitioners' comments on Tech Lane's Section A supplemental questionnaire response on April 27, 2004. The Department issued a Sections C and D supplemental questionnaire to Tech Lane on April 28, 2004.

On May 21, 2004, we received Tech Lane's Sections C and D supplemental questionnaire response and issued a second Sections A, C, and D supplemental questionnaire. On May 28, 2004, Tech Lane submitted additional exhibits it omitted in its May 21, 2004, Sections C and D supplemental questionnaire response. Also on May 28, 2004, we received Petitioners' comments on Tech Lane's Sections C and D supplemental questionnaire response. On June 4, 2004, we received Tech Lane's Sections A, C, and D second supplemental questionnaire response.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no 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, a request for such postponement is made by the petitioners. The Department's regulations at 19 CFR 351.210(e)(2) require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On May 20, 2004, June 3, 2004, and June 7, 2004, Lacquer Craft, Markor Tianjin, and the Dorbest Group requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Lacquer Craft, Markor Tianjin, and the Dorbest Group also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly.

Period of Investigation

The period of investigation ("POI") is April 1, 2003, through September 30, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (October 31, 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the Petition excludes: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; and (8) bedroom furniture in which bentwood parts predominate.[10]

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States ("HTSUS") as "wooden * * * beds"

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency, and then set by cooling or drying. *See* Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

and under statistical category 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as "glass mirrors * * * framed." This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 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 *Notice of Initiation* (*see* 68 FR at 70229).

The Department received numerous scope comments from a variety of interested parties. On January 12, 2004, LTD Commodities, LLC ("LTD"), and ABC Distributing, LLC ("ABC"), U.S. importers of wooden bedroom furniture from the PRC, provided scope comments concerning the exclusion of ready-to-assemble ("RTA") wooden bedroom furniture from the PRC. On January 13, 2004, the Furniture Retailers of America ("FRA") provided comments recommending that the scope of the investigation be limited to furniture sold in suites. On January 13, 2004, Shing Mark provided comments concerning whether daybeds are within the scope of the investigation and whether the description of wooden bedroom furniture as "made substantially of wood" is too broad. On January 13, 2004, Sunrise Medical Inc. ("Sunrise Medical") provided comments concerning whether patient room furniture used in the long-term care, nursing home, or similar markets (collectively, the "LTC market") are within the scope of the investigation. On January 13, 2004, Markor Tianjin, Lacquer Craft, and the Committee for Free Trade in Furniture ("CFTF") provided comments concerning whether parts and home office pieces are within the scope of the investigation.

On January 21, 2004, Petitioners provided two separate documents responding to the above-mentioned comments on patient room furniture, the exclusion of pieces not sold in suites, the inclusion of parts, the exclusion of day beds, the standard of "made substantially of wood," and RTA furniture.

On January 26, 2004, LTD and ABC submitted rebuttal comments concerning RTA furniture. On January 29, 2004, the FRA submitted rebuttal comments concerning products not sold in suites. On February 4, 2004, Sunrise Medical provided rebuttal comments concerning patient room furniture in the LTC market. On March 23, 2004, LTD and ABC provided further comments proposing specific language to exclude RTA wooden bedroom furniture from the scope of the investigation.

Due to the extraordinary detail and length of these comments, the Department will continue to analyze them for purposes of the final determination. As part of this process, the Department has fully summarized all of the comments received to date in a memorandum to the file. *See Memorandum to the File from Laurel LaCivita, Analyst, to Laurie Parkhill, Office Director, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Summary on Comments to the Scope*, dated June 17, 2004. Therefore, we will afford interested parties an opportunity to address only the comments summarized in our memorandum as this memorandum contains all of the comments received. Interested parties have until July 30, 2004, to submit additional comments on the scope of the investigation. We will address all of the scope comments in our final determination.

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. Section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, however, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision 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 to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we limited our examination to the seven exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The seven Chinese producers/exporters (Dongguan Lung Dong; Dorbest, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Tech Lane) accounted for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. *See Respondent Selection Memo* at 5.

Non-Market-Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy. *See Notice of Initiation*, 69 FR at 70230. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to Robert Bolling: Antidumping Duty Investigation on Wooden Bedroom Furniture from the People's Republic of China*, dated January 16, 2004. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries. In this case, we have found that India is a significant producer of comparable merchandise, wooden bedroom furniture, and is at a similar level of economic development pursuant to 733(c)(4) of the Act. *See Surrogate-Country Memorandum.*

On April 16, 2004, Lacquer Craft, Markor Tianjin, and Furniture Brands submitted surrogate-value information and financial data on Indonesia and requested that the Department revisit its decision on whether India is the appropriate surrogate country. On April 29, 2004, Petitioners submitted rebuttal comments to the interested parties' April 16, 2004, submission, stating that the Department should continue to determine that India is the appropriate surrogate country for this investigation. On May 13, 2004, representatives for the interested parties met with James Jochum, Assistant Secretary for Import Administration, and discussed the Department's selection of a surrogate country as well as the selection of surrogate values to be applied in this investigation. *See* Memorandum to the File from John Herrmann, Senior Advisor to the Assistant Secretary, dated May 13, 2004. On May 21, 2004, representatives for Petitioners met with Assistant Secretary Jochum and discussed the Department's selection of a surrogate country as well as the selection of surrogate values to be applied in this investigation. *See* Memorandum to the File from John Herrmann, Senior Advisor to the Assistant Secretary, dated May 21, 2004. The Department has evaluated all parties' concerns and comments and has determined India is the appropriate surrogate country to use in this investigation. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to the PRC; (2) Indian manufacturers produce comparable merchandise and are significant producers of wooden furniture; (3) India provides the best opportunity to use appropriate, publicly available data to value the factors of production. *See Surrogate-Country Memorandum.*

Therefore, we have used India as the surrogate country and, accordingly, we have calculated NV using Indian prices to value the respondents' factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. *See Memorandum to the File from Michael Holton, Case Analyst, through Robert Bolling, Program Manager, and Laurie Parkhill, Office Director, Factors Valuation Memorandum for Dongguan Lung Dong, the Dorbest Group, Lacquer Craft, Markor Tianjin, Shing Mark, Starcorp, and Tech Lane* ("*Factor-Valuation Memo*"), dated June 17, 2004.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.

Market-Oriented Industry

On January 15, 2004, Markor Tianjin and Lacquer Craft informed the Department that they intended to seek MOI status on behalf of the wooden bedroom furniture industry in the PRC. On February 2, 2004, Petitioners submitted a letter to the Department stating that the wooden bedroom furniture industry in the PRC does not warrant MOI status because there are NME forces at work in the PRC that distort the wooden bedroom furniture's cost of production. On April 20, 2004, the Furniture Sub-chamber of China Chamber of Commerce for Import & Export of Light Industrial Products and Arts-Crafts ("CCCLA") and the China National Furniture Association ("CNFA") requested as representatives of the wooden bedroom furniture industry that the Department initiate an inquiry to determine whether the wooden bedroom furniture industry in the PRC is an MOI. On May 5, 2004, Petitioners rebutted the submission by CCCLA and CNFA, stating that the request to initiate an MOI inquiry is untimely given the Department's statutory deadline for issuing its preliminary determination. On May 12, 2004, the Department placed on the record of this investigation a facsimile message from the U.S. Embassy in Beijing, China, which was a letter in Chinese and a translated version of the letter from the Chinese Ministry of Commerce requesting that the Department treat the furniture industry as an MOI industry. On May 14, 2004, the Department issued letters to the CCCLA, CNFA, and the Chinese government which informed the parties that it did not have sufficient substantive evidence to support the initiation of an MOI inquiry. On May 28, 2004, the CCCLA and CNFA submitted information they believe meets the Department's criteria for initiating an MOI inquiry. On June 8, 2004, Petitioners responded to CCCLA and CNFA's May 28, 2004, submission, stating that the Department should not initiate an MOI inquiry.

In order to consider an MOI claim, the Department requires information on each of the three prongs of the MOI test regarding the situation and experience of the PRC wooden bedroom furniture industry as a whole. Specifically, the MOI test requires that information supports the following conclusions: (1) There is virtually no government involvement in production or prices for the industry; (2) the industry is marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) producers pay market-determined prices for all major inputs and for all but an insignificant proportion of minor inputs. Even in those cases where the Department limits the number of firms it investigates, a MOI allegation must cover all (or virtually all) of the producers in the industry in question. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 205494 (April 16, 2004), and Accompanying Issues and Decision Memorandum at Comment 1. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China*, 64 FR 69723, 59725 (December 14, 1999). *See also Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 41347, 41353 (August 1, 1997).

On May 28, 2004, CCCLA and CNFA provided further information for the Department to evaluate. Because we received the MOI allegation and supporting information so recently and so close to the fully extended due date of the preliminary determination, we have not had adequate time to consider this information. We will continue to evaluate the request and address it as soon as possible.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are

subject to government control and thus should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The seven mandatory respondents and the Section A respondents have provided company-specific information and each has stated that it meet the standards for the assignment of a separate rate.

It is the Department's policy to treat Hong Kong companies as market-economy companies. *See Application of U.S. Antidumping and Countervailing Duty Law to Hong Kong*, 62 FR 42965 (August 11, 1997). Further consistent with our practice, we do not conduct a separate-rates test for respondents wholly owned by companies outside the PRC. Based on a review of the responses we have concluded that the Dorbest Group, Shing Mark, Tech Lane, and Lacquer Craft are companies not based in an NME. Therefore, we determine that no separate-rate analysis is required for these companies.

We have considered whether each company based in the PRC is eligible for a separate rate. The Department's separate-rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border-type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See* Sparklers, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See Memorandum to Laurie Parkhill, Office Director, Import Administration, from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, Wooden Bedroom Furniture from the People's Republic of China: Separate Rates for Producers/Exporters that Submitted Questionnaire Responses* ("*Separate-Rates Memo*"), dated June 17, 2004.

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the mandatory respondents located in the PRC and certain Section A respondents, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by the mandatory respondents and certain Section A respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and certain Section A respondents which shipped bedroom furniture to the United States during the POI. For a full discussion of this issue and list of Section A respondents, please see the *Separate-Rates Memo*.

PRC-Wide Rate

The Department has data that indicates there were more exporters of wooden bedroom furniture from the PRC during the POI than those which responded to the Q&V questionnaire. *See Respondent Selection Memo*. Although we issued the Q&V questionnaire to 211 known Chinese exporters of subject merchandise, we received only 137 Q&V questionnaire responses, including those from the seven mandatory respondents. Also, on February 2, 2004, we issued a Section A questionnaire to the Chinese Government (*i.e.*, Ministry of Commerce). Although all exporters were given an opportunity to provide information showing they qualify for

separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its Section A questionnaire. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from PRC producers/exporters that did not respond to the Department's questionnaire. We treated these PRC producers/exporters as part of the countrywide entity. Further, the Government of the PRC did not respond to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, 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.

Information on the record of this investigation indicates that there are numerous producers/exporters of the wooden bedroom furniture in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that certain PRC exporters of wooden bedroom furniture failed to respond to our questionnaires. As a result, use of adverse facts available ("AFA") pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire, thereby necessitating the use of AFA to determine the PRC-wide rate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also* "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). We find that, because the PRC-wide entity did not respond at all to our request for information, they have failed to cooperate to the best of their ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As AFA, we have assigned to the PRC-wide entity a margin based on information in the petition, because the margins derived from the petition are higher than the calculated margins for the selected respondents. In this case, we have applied a rate of 198.08 percent.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See id.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners' methodology for calculating the export price and NV in the petition is discussed in the initiation notice. *See Initiation Notice*, 68 FR at 70229. To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated June 17, 2004, we found that the margin of 198.08 percent has probative value. *See Memorandum to the File from Brian Ledgerwood, Analyst, through Robert Bolling, Program Manager, and Laurie Parkhill, Office Director, Preliminary Determination in the Investigation of Wooden Bedroom Furniture from the People's Republic of China, Corroboration Memorandum* ("*Corroboration Memo*"), dated June 17, 2004. Accordingly, we find that the rate of 198.08 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire. This rate will also apply to exporters which did not demonstrate entitlement to a separate rate. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the seven mandatory respondents and certain Section A respondents.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

Partial Adverse Facts Available

We have preliminarily determined that the use of a partial adverse inference is warranted for certain sales by Markor Tianjin.

According to section 771(33)(E) of the Act, as amended by the Uruguay Round Agreements Act ("URAA"), "any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization" shall he considered affiliated. For purposes of section 771(33), "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." According to section 771(33)(F) of the Act, as amended by the URAA, "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" shall be considered affiliated.

The Department has concluded that Markor Tianjin and Lacquer Craft are likely affiliated because strong evidence on the record indicates Markor Tianjin and Lacquer Craft were affiliated during the POI by virtue of common ownership and shared stock interest through a third party (*i.e.*, Company A). *See Memorandum for Laurie Parkhill, Office Director, from Jon Freed, Case Analyst, Affiliation between Markor Tianjin and Lacquer Craft*, dated June 17, 2004. Thus, an analysis of record evidence demonstrates that there is a strong likelihood that under section 771(33)(E) of the Act Markor Tianjin and Lacquer Craft are affiliated.

Lacquer Craft has acknowledged that it is affiliated, by virtue of common ownership, with a party in the United States (Company B). Markor Tianjin sold subject merchandise to Company B during the POI. Because we have determined that Markor Tianjin is likely affiliated with Lacquer Craft, this also raises issues of potential affiliation hetween Markor Tianjin and its customer, Company B. If Markor Tianjin were, in fact, affiliated with Company B, the appropriate sales to use in our dumping analysis would be sales of Markor Tianjin's affiliated customer in the United States to its unaffiliated U.S. customers. Those sales would be classified as constructed export price ("CEP") transactions because they would have been made in the United States after the date of importation. *See* section 772(b) of the Act. Further, for CEP sales, the Department deducts from the U.S. resale price to an unaffiliated purchaser all selling, distribution, and manufacturing expenses incurred in the United States and an amount for profit allocable to these expenses. *See* section 772(c) of the Act. Therefore, the Department cannot calculate an accurate dumping margin based on export price ("EP") sales when there is strong evidence for the Department to determine that the respondent should have reported the affiliates' CEP sales.

Although Markor Tianjin responded to the Department's questionnaire and supplemental questionnaires regarding affiliation, it failed to disclose the nature of its relationship during the POI to Company A. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department or when an interested party fails to provide the information requested in a timely manner and in the form required. Additionally, section 776(b) of the Act provides for the use of AFA when an interested party has failed to cooperate by not acting to the hest of its ability. We have concluded that Markor Tianjin did not cooperate to the best of its ability because it neither disclosed the nature of its affiliation with Company A and with its U.S. customer, Company B, nor provided the correct sales information for its U.S. customer, as we requested in the questionnaire. Markor Tianjin's failure to cooperate to the best of its ability has inhibited the Department's ability to conduct a meaningful analysis of its sales to Company B. As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries* v. *United States*, 671 F. Supp. 31, 39–40 (CIT 1987). Therefore, because it did not disclose the true nature of its affiliation with Company A and Company B, nor did it report the sales of the affiliated reseller (*i.e.*, Company B), we find that the application of AFA is warranted. Because Markor Tianjin did not provide this information, section 782(d) of the Act is not applicable. Further, absent this information, *i.e.*, the sales price to the unaffiliated customer and the expenses incurred in making those sales, the Department cannot calculate CEP and therefore cannot calculate an accurate dumping margin. Thus, the information on the record cannot serve as a reliahle basis for this determination under section 782(e) of the Act. Therefore, in accordance with sections 776(a)(2) and 776(b) of the Act, we have applied AFA for each of Markor Tianjin's sales that should have been reported as CEP sales. As AFA we have applied the highest individual weighted-average margin for Markor Tianjin after dismissing the aberrational margins. Because we have used primary information as AFA (*i.e.*, information Markor Tianjin submitted), the corroboration requirements of section 776(c) do not apply.

Further, we have preliminarily determined that the use of a partial adverse inference is warranted for certain surrogate values for Tech Lane. As described earlier, on May 10, 2004, the Department requested all mandatory respondents to provide a chart indicating the HTS heading and article description for each of their factors of production. On May 26, 2004, Tech Lane submitted its response and stated that it is not familiar with the Indian tariff schedule but it submitted only certain surrogate values. Additionally, Tech Lane stated it incorporated submissions by Lacquer Craft on HTS information by reference.

Through its incomplete response, Tech Lane has not met its burden of providing adequate information for the Department to value the factors of production. In other words, because Tech Lane provided no HTS headings for certain of its factors of production, the Department has no way of determining where in the spectrum of factors of production Tech Lane's factors fall. We have concluded that, because Tech Lane has not submitted an entire listing of its HTS heading and article descriptions for its submitted factors of production, it is appropriate to use the highest surrogate values on the record to calculate certain of Tech Lane's factors of production. *See* Tech Lane Preliminary Determination Analysis Memorandum dated June 17, 2004. Further, we have determined that an adverse inference is warranted pursuant to section 776(b) of the Act. Tech Lane did not cooperate to the best of its ability by providing its HTS heading and article descriptions for its factors of production and certain of its factors of production have multiple HTS headings for the same or similar products (*i.e.*, as submitted by mandatory respondents). Therefore, for the preliminary determination, we have used the highest surrogate values on the record to valne certain factors of production for Tech Lane.

For those companies that did not report a sandpaper usage rate, for the preliminary determination, the Department has used facts available to estimate the amount of sandpaper used in the production of subject merchandise. We made this determination based on the fact that sandpaper is essential to the production

process of the subject merchandise and because there is no indication that the cost of sandpaper is included in the overhead figures of the Indian surrogate companies. For the companies that did not report sandpaper usage rates, we calculated a simple average of the combined consumption of sandpaper and sand cloth from the respondents that did report sandpaper and/or sandcloth usage rates.

Margins for Section A Respondents

The exporters which submitted responses to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI but were not selected as mandatory respondents in this investigation ("Section A respondents") have applied for separate rates and provided information for the Department to consider for this purpose. Therefore, for the Section A respondents which provided sufficient evidence that they are separate from the state-controlled entity and answered other questions in Section A of the questionnaire, we have established a weighted-average margin based on the rates we have calculated for the seven mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. That rate is 10.92 percent. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

Because Power Dekor Group Co. Ltd. and Fuzhou Huan Mei Furniture Co., Ltd., reported that they did not have sales of the merchandise under investigation to the United States during the POI, these companies are not eligible to receive a separate rate.

Date of Sale

Section 351.401(i) of the Department's regulations state that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the mandatory respondents, we preliminarily determine that invoice date is the most appropriate date of sale for the Dorbest Group, Lacquer Craft, Markor Tianjin, and Starcorp. We made this determination because, at this time, there is insufficient evidence on the record to determine whether the contracts used by the respondents establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. *See Saccharin from China*, 67 FR at 79054.

Furthermore, after examining the sales documentation placed on the record by Dongguan Lung Dong, we also preliminarily determine that invoice date is the most appropriate date of sale for Dongguan Lung Dong. Dongguan Lung Dong claimed that its purchase-order date is the appropriate date of sale because its sales terms do not change. We have determined that, based on record evidence, its sales terms did change after the purchase-order date, and thus we have used invoice date as the date of sale for the preliminary determination for Dongguan Lung Dong.

Shing Mark reported shipment date as the date of sale. Shipment date typically falls on or about the invoice date. There is no record evidence to indicate otherwise, and thus we have used shipment date as the date of sale for the preliminary determination for Shing Mark. Additionally, Tech Lane provided record evidence that indicated its purchase-order date was the appropriate date of sale and there is no record evidence to indicate otherwise; thus, we have used purchase-order date as the date of sale for the preliminary determination for Tech Lane.

The Department intends to examine the date-of-sale issue at verification thoroughly and may reconsider its position for the final determination based on the results of verification.

Fair Value Comparisons

To determine whether sales of wooden bedroom furniture to the United States by the seven mandatory respondents were made at less than fair value, we compared EP or CEP to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for the seven mandatory respondents, as appropriate, because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States and because the use of CEP was not otherwise indicated. In accordance with section 772(b) of the Act, we used CEP for certain sales by Lacquer Craft and Shing Mark because the subject merchandise was sold in the United States after the date of importation by a U.S. seller affiliated with the producer.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, see the company-specific Analysis Memoranda dated June 17, 2004.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes credit, commissions, direct selling expenses, inventory carrying costs, and other indirect selling expenses. We compared NV to weighted-average EPs and CEPs, in accordance with section 777A(d)(1) of the Act. Where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. For a detailed description of all adjustments, see the company-specific Analysis Memoranda dated June 17, 2004.

For the Dorbest Group, the Department has denied its claim for billing adjustments for this preliminary determination because the Dorbest Group did not provide sufficient information for these adjustments in its responses. The Dorbest Group provided a billing-adjustments field in the database, but it did not provide a narrative explanation for these adjustments.

In the U.S. sales database it submitted with the original response, the Dorbest Group reported commissions that it paid to some of its customers. In the database that the Dorbest Group submitted with its supplemental response, however, it removed a portion of commissions from its database, claiming that those commissions were actually other types of expenses. We disagree with the Dorbest Group's classification of its commissions as other types of expenses. Therefore, for the preliminary determination, we have applied the commissions reported in the Dorbest Group's original U.S. sales database to the sales reported in the database submitted with its supplemental response.

For some sales observations, Lacquer Craft and Markor Tianjin combined multiple invoices for a single observation in their respective U.S. sales listings. Both explained that this was

the most reasonable method for reporting these items because the component pieces making up the furniture item sold were not always captured on the same invoice. In these instances, Lacquer Craft and Markor Tianjin explained, they combined the total gross unit price and total quantity of subject merchandise sold to a particular customer where the price for the subject merchandise was the same on each invoice. Generally, it is the Department's preference to evaluate each sale on a single invoice basis but the Department does not have any information on the record to indicate that Markor Tianjin and Lacquer Craft's method would cause a distortion in the comparison of U.S. price to NV. Therefore, for the preliminary determination, the Department has accepted this reporting methodology. The Department intends to examine this issue at verification thoroughly and may reconsider its position for the final determination based on the results of verification.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Due to the extensive number of surrogate values it was necessary to assign in this investigation, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, *see Factor-Valuation Memo.* For a detailed description of all actual values used for market-economy inputs, see the company-specific analysis memoranda dated June 17, 2004.

Except as discussed below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas® online ("Indian Import Statistics"). *See Factor-Valuation Memo.* The Indian Import Statistics we obtained from the World Trade Atlas were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with POI. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund.

On May 13, 2004, Shing Mark provided comments stating that, if the Department chooses India as the surrogate country, it should use InfodriveIndia to calculate surrogate values. On May 24, 2004, Petitioners responded to Shing Mark's May 13, 2004, submission and stated that the Department should not use InfodriveIndia to value the surrogate data.

For this preliminary determination, in accordance with past practice, we used data from the Indian Import Statistics in order to calculate surrogate values for the mandatory respondents' material inputs. In selecting the best available information for valuing factors of production in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. The record shows that data in the Indian Import Statistics represents import data, is contemporaneous with the POI, is product-specific, and is tax-exclusive. *See Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441, 12442 (March 13, 1998). Additionally, there is no record evidence which indicates that any of the factors being valued are of low value compared to other items in the basket categories; thus, our use of these statistics does not result in a distortion in favor of higher values. Further, the Indian Import Statistics contain values at both ends of the spectrum (*i.e.*, high value and low value), further indicating that the Indian Import values are not distorted when taken as an average, as we are doing in this case. Therefore the Department has determined that the Indian Import Statistics provide the best available information for valuing the factors of production.

Additionally, we have determined not to use InfodriveIndia data because we found InfodriveIndia data does not account for all imports into India (*i.e.*, it only accounts for 60% of the imports), and the information is not reported uniformly (*e.g.*, units of measure and descriptions of items). Due to the statistics not being reported uniformly, the Department would be required to select items in InfodriveIndia subjectively and then correlate these items with respondent's reported inputs. Additionally, due to the lack of uniformity, there would be numerous occasions where the Department would be unable to use the data because InfodriveIndia may report individual imports in different units of measurements (*e.g.*, pieces, kilograms, meters squared, etc.) for a given HTS number, whereas Indian Import Statistics are reported using a single uniform measurement (*e.g.*, meters squared, kilograms).

The Dorbest Group and Lacquer Craft purchased certain raw-material inputs from NME suppliers and paid for them in market-economy currencies. Consistent with *Final Determination of Sales at Less Than Fair Value in Polyethylene Retail Carrier Bags from the People's Republic of China ("PRCBs")* at Comment 4, issued on June 9, 2004, the Department has used its surrogate-value methodology to value inputs produced in an NME.

Furthermore, with regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries are subsidized. *See Notice of Amended Final Determination of Sales at Less than Fair Value: Automotive Replacement Glass Windshields from*

the People's Republic of China, 67 FR 11670 (March 15, 2002). We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

Where appropriate, we adjusted surrogate values to reflect inflation up to the POI using the WPI or the PPI published by the IMF, as appropriate.

For wood inputs (*e.g.*, logs and lumber of various species), wood veneer of various species, processed woods (*e.g.*, fiberboard, particleboard, plywood, etc.), adhesives and finishing materials (*e.g.*, glue, paints, stains, lacquer, etc.), hardware (*e.g.*, nails, staples, screws, bolts, knobs, pulls, drawer slides, hinges, clasps, etc.), other materials (*e.g.*, mirrors, glass, leather, marble, cloth, foam, etc.), and packing materials (*e.g.*, cardboard, cartons, styrofoam, bubblewrap, plastic bags, labels, tape, etc.), we used import values from the World Trade Atlas when respondents purchased these inputs from suppliers in the PRC. For a complete listing of all the inputs and the valuation for each mandatory respondent see the *Factor-Valuation Memo*.

On June 4, 2004, Petitioners asserted that the Department should disregard prices paid for wood products purchased from Russia because the Russian timber prices are distorted by illegal activities and NME conditions in the timber industry in Russia. Petitioners stated that illegal logging, false documentation of commercial grade timber as "salvage" or other forged documents, smuggling of timber, and control of many Russian timber firms by PRC nationals result in NME prices for timber imported into the PRC. Additionally, Petitioners commented that stumpage fees are far lower than in neighboring European countries.

For the preliminary determination, the Department has rejected Petitioners' argument and has used the market prices of Russian wood for the following reasons. First, we designated Russia as a market economy on August 6, 2002, with an effective date of April 1, 2002. Like many market economies, Russia's market economy has imperfections, which should not preclude use of its export prices. If establishing documenting imperfections in a market economy were sufficient cause to abandon using a country's export price, prices from many market economies would be unusable.

Second, the Department excludes prices that are subsidized by the foreign government, but it has no policy of excluding prices that are low because of evasion of that government's policy. Petitioners have made no allegations of a subsidy program in Russia.

Third, the sources cited by Petitioners are dated and the conditions that may have prevailed when the reports were issued may no longer hold today. None of the sources cited by Petitioners reflects the POI (*i.e.*, they refer to 1998 through January 2003 whereas the POI is April 2003 through September 2003) and, in fact, most of the reports cited pre-date the Department's graduation of Russia to market-economy status. Given the pace of change in Russia over the last several years, reliance on dated information may not be representative of the timber market in Russia during the POI. Additionally, allegations of illegal logging and smuggling in Russia without evidence that demonstrate respondents' wood products are, in fact, obtained from these sources provide an insufficient basis on which to reject these prices as NME prices.

For the purposes of the preliminary determination, the Department has decided to use *http://www.allmeasures.com* and other publicly available information where interested parties did not submit alternative conversion values for specific factors of production. Shing Mark and Starcorp submitted an alternative website for wood measurement conversions. Due to the complexity and number of the conversions, however, the Department has preliminarily determined to use the allmeasures website to convert certain values. For the final determination, the Department will continue to consider other appropriate conversion ratios.

As stated above, the Dorbest Group claimed that it had market-economy purchases for certain inputs produced in the PRC and shipped from the supplier's plant(s) in the PRC to the Dorbest Group's plants. Consistent with *PRCBs*, the Department has used its surrogate-value methodology to value inputs produce in an NME.

Additionally, as stated above, Lacquer Craft claimed that it had market-economy purchases of various paints and finishing materials produced in the PRC and shipped from the supplier's plant(s) in the PRC to Lacquer Craft's plant. Consistent with *PRCBs*, the Department has used its surrogate-value methodology to value inputs produce in an NME.

For the preliminary determination with respect to Shing Mark, the Department has relied generally upon its submitted factor inputs. Shing Mark reported that certain of its inputs were subcontracted. The Department's normal practice is to use a surrogate value for the production of subcontracted items, because the overhead, selling, general and administrative expenses ("SG&A"), and profit are reflected in the surrogate value and not the subcontracted factor inputs. For the preliminary determination, the Department has used Shing Mark's factor inputs to value these subcontracting costs. For the final determination, we will evaluate Shing Mark's subcontracted factor inputs further to determine whether these costs are distortive and examine this issue more closely at verification.

As the basis for NV, Starcorp provided factors-of-production data based on log processing and lumber purchases as Starcorp has its own log-processing facility. For each type of reported species of wood, Starcorp stated that it purchases both lumber and logs which are then processed internally into lumber. In response to a supplemental questionnaire, Starcorp provided factors-of-production information based only on lumber consumption. Although Starcorp reported the inputs (*i.e.*, logs) used to produce lumber, for the purposes of this preliminary determination, we have not valued those inputs when calculating NV. Rather, our NV calculation begins with a valuation of lumber consumption used to produce the merchandise under investigation for the following reasons.

Consistent with section 773(c)(1)(B) of the Act, our general policy is to value the factors of production that a respondent uses to produce the subject merchandise. To the extent that the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a grower of mushrooms, the Department valued the factors used to grow the mushrooms, the factors used

to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). If, on the other hand, the firm was simply a processor that bought fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. See final results valuation memorandum for *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001) (Final Results Valuation Memorandum). This policy has been applied to both agricultural and industrial products. *See, e.g., Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Recision*, 67 FR 50866 (August 6, 2002) (unchanged in final), and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in its overall calculations that would result from valuing each of those factors separately may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product may lead to an inaccurate result because the constructed value would not reflect a significant element of cost adequately. For example, in a recent case, we addressed whether we should value the respondent's factors used in extracting iron ore, an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not account sufficiently for the capital costs associated with the iron ore mining operation, given that the surrogate company the Department used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002), *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001), *Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997), and *Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

In this investigation, we have determined that the second exception discussed above applies here. We have reviewed and analyzed the information submitted by Starcorp and find that the data pertaining to the log processing cannot be used for purposes of the preliminary determination. Starcorp reported that, for some of the solid wood used in the manufacture of subject merchandise, it purchased logs and processed the logs internally into lumber. Additionally, Starcorp reported the electricity, water, and labor associated with the log-processing facility. The Department has determined that, if it were to value the logs, it would not account for the capital costs associated with processing the logs into lumber due to the fact that the overhead costs (*i.e.*, overhead ratio) of the surrogate companies do not indicate that these surrogate companies process logs into lumber. Therefore, for the preliminary determination, we have declined to value the inputs used in production of logs and have instead valued the lumber because this methodology yields a more accurate result.

For Tech Lane, the Department has denied its claim for a by-product offset to its board inputs for this preliminary determination, because Tech Lane did not provide sufficient information in order for the Department to adjust for this by-product offset. Tech Lane only submitted per-unit inputs used to produce recycled boards sold to unaffiliated third parties, but Tech Lane provided no record evidence of how it calculated its per-unit inputs for recycled boards. Additionally, Tech Lane did not explain the methodology it used to calculate the by-product offset it claimed. Furthermore, Tech Lane did not provide sufficient evidence that it sold board to unaffiliated third parties during the POI. Thus, for the preliminary determination, we have not applied a by-product offset adjustment to its board inputs. We intend to examine this issue more closely at verification.

Tech Lane purchased oak and cherry logs from the United States and had them processed into veneer in Vietnam by an unaffiliated Taiwanese company. The unaffiliated Taiwanese company received the logs, processed them, paid all costs incurred in Vietnam and all transportation expenses and insurance from Vietnam to Tech Lane's factory in the PRC. Tech Lane paid the Taiwanese company a flat fee for these services based on the square feet of veneer processed. Tech Lane reported this veneer as a market-economy input.

Because we valued "veneer" in the production of subject merchandise, not "logs," and because the majority of Tech Lane's oak veneer and a significant portion of Tech Lane's cherry veneer was purchased from market-economy suppliers, we have not used the price paid to the Taiwanese company for the processing in Vietnam and have valued Tech Lane's oak and cherry veneer using market-economy prices.

For Lacquer Craft, Shing Mark, and Tech Lane, the Department valued their stain paint, thinner paint, glaze paint, lacquer paint, and sealer paint (collectively "paints") by using a single HTS for the these paints. These companies either did not provide the Department with an HTS classification for their paint inputs or they provided the Department with multiple HTS classifications that represent the necessary ingredients for making the paints. Additionally, each company reported a usage rate for the final product and did not provide usage rates for the specific ingredients that make up the paints. Because there is no record evidence with respect to the usage rates for the HTS classifications component that make up the paints and because other information indicates that these components are mixed to create a single product, the Department has determined that best surrogate value to use for the paints in the preliminary determination is a single value for paint. For the final determination, the Department will evaluate whether usage rates for the component parts should be reported and whether to value each component.

Regarding certain minor factors of production (*e.g.*, cabinet lights, covers, paper covers, etc.) reported by the mandatory respondents, we did not value these factors because surrogate-value information was not available and conversion factors were not available. For a detailed list of the factors we did

not value for the preliminary determination, see the company-specific analysis memoranda dated June 17, 2004.

To value electricity, we used data from the International Energy Agency ("IEA") *Key World Energy Statistics* (2003 edition), submitted by the Petitioners in Exhibit 4 of their April 16, 2004, submission. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memo.*

To value water, we used the average water tariff rate as reported in the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (published in 1997), based on the average rupee per cubic meter rate for three cities in India during 1997. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memo.*

To value diesel fuel, we used data from IEA's *Key World Energy Statistics* (2003 edition) which was submitted by petitioners in their April 16, 2004, submission. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memo.*

For direct, indirect, crate-building and packing labor, consistent with 19 CFR § 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003, *http://ia.ita.doc.gov/wages/01wages/01wages.html.* The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.

The respondents also reported packing inputs. We used Indian Import Statistics data from the period April 2003 through September 2003 to value these inputs except where respondents obtained the inputs from market-economy suppliers and paid for them in a market-economy currency. *See Factor-Valuation Memo.*

We used Indian transport information in order to value the transportation of raw materials. To calculate domestic inland freight for trucking services, we selected freight values from *Chemical Weekly.* Some inputs were transported by market-economy transportation firms and paid for in a market-economy currency. Where this was the case, we added the actual market-economy transportation expense to the valuation of the factor of production.

We used Indian rail freight information in order to value the transportation of raw materials. To value the rail freight, we used two price quotes from November 1999 for steel shipments within India. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor-Valuation Memo.*

To value factory overhead, SG&A and profit, we used the audited financial statements for the fiscal year ending March 31, 2003, from the following producers of wooden furniture: Indian Furniture Products Ltd., Raghbir Interiors Pvt. Ltd., Nizamuddin Furnitures Pvt. Ltd., Fusion Design Private Ltd., Jayaraja Furniture Group, and Akriti Perfections India Pvt. Ltd. *See Factor-Valuation Memo* for a full discussion of the calculation of these ratios from these financial statements.

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 U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Dongguan Lung Dong	7.04
The Dorbest Group	19.24
Lacquer Craft	4.90
Markor Tianjin	8.38
Shing Mark	6.59
Starcorp	24.34
Tech Lane	9.36
Cheng Meng Furniture (PTE) Ltd., et al	10.92
Classic Furniture Global Co., Ltd	10.92
Dalian Guangming Furniture Co., Ltd	10.92
Dalian Huafeng Furniture Co., Ltd	10.92
Dongguan Cambridge Furniture Co., et al	10.92
Dongguan Creation Furniture Co., Ltd et al	10.92
Dongguan Great Reputation Furniture Co., Ltd	10.92
Dongguan Hung Sheng Artware Products Co., Ltd et al	10.92
Dongguan Kin Feng Furniture Co., Ltd	10.92
Dongguan Kingstone Furniture Co., Ltd et al	10.92
Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory)	10.92
Dongguan Singways Furniture Co., Ltd	10.92
Eurosa (Kunshan) Co., Ltd et al	10.92
Ever Spring Furniture Company Ltd, et al	10.92
Fine Furniture (Shanghai) Limited	10.92
Fujian Lianfu Forestry Co., Ltd, et al	10.92
Garri Furniture (Dong Guan) Co., Ltd et al	10.92
Guangming Group Wumahe Furniture Co., Ltd	10.92
Hainan Jong Bảo Lumber Co., Ltd	10.92
Hamilton & Spill Ltd	10.92
Dongguan Grand Style Furniture et al	10.92
Hang Hai Woodcraft's Art Factory	10.92
Hualing Funriture (China) Co., Ltd et al	10.92

Manufacturer/exporter	Weighted-average margin (percent)
Jardine Enterprise, Ltd	10.92
Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp	10.92
Jiangsu Yuexing Furniture Group Co., Ltd	10.92
Jiedong Lehouse Furntiure Co., Ltd	10.92
King Way Furniture Industries Co., Ltd et al	10.92
Kunshan Summit Furniture Co., Ltd	10.92
Langfang Tiancheng Furniture Co., Ltd	10.92
Leefu Wood (Dongguan) Co., Ltd	10.92
Link Silver Ltd et al	10.92
Locke Furniture Factory (dba Kai Chan Furniture) et al	10.92
Nantong Dongfang Orient Furniture Co., Ltd	10.92
Nantong Yushi Furniture Co., Ltd	10.92
Nathan International Ltd et al	10.92
Perfect Line Furniture Co., Ltd	10.92
Qingdao Liangmu Co., Ltd	10.92
Restonic (Dongguan) Furniture Ltd et al	10.92
RiZhao SanMu Woodworking Co., Ltd	10.92
Season Furniture Manufacturing Co. et al	10.92
Sen Yeong International Co., Ltd et al	10.92
Shanghai Maoji Imp and Exp Co., Ltd	10.92
Shanghai Aosen Furniture Co., Ltd	10.92
Shenyang Shining Dongxing Furniture Co., Ltd	10.92
Shenzhen Forest Furniture Co., Ltd	10.92
Shenzhen Jiafa High Grade Furniture Co., Ltd et al	10.92
Shenzhen New Fudu Furniture Co., Ltd	10.92
Shenzhen Wonderful Furniture Co., Ltd	10.92
Shenzhen Xingli Furniture Co., Ltd	10.92
Shun Feng Furniture Co., Ltd	10.92
Songgang Jasonwood Furniture Factory et al	10.92
Starwood Furniture Manufacturing Co. Ltd	10.92
Starwood Industries Ltd	10.92
Strongson Furniture (Shenzhen) Co., Ltd et al	10.92
Sunforce Furniture (Hui-Yang) Co., Ltd et al	10.92
Tarzan Furniture Industries Ltd et al	10.92
Teamway Furniture (Dong Guan) Ltd, et al	10.92
Techniwood Industries Limited	10.92
Sheng Jing Wood Products (Beijing) Co., Ltd et al	10.92
Tianjin Fortune Furniture Co., Ltd	10.92
Tianjin Phu Shing Woodwork Enterprise Co., Ltd	10.92
Tianjin Sande Fairwood Furniture Co., Ltd	10.92
Tube-Smith Enterprise (ZhangZhou) Co., Ltd et al	10.92
Union Friend International Trade Co., Ltd	10.92
U-Rich Furniture (Zhangzhou) Co., Ltd et al	10.92
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd et al	10.92
Woodworth Wooden Industries (Dong Guan) Co., Ltd	10.92
Xiamen Yongquan Sci-Tech Development Co., Ltd	10.92
XiangSheng Bedtime Furniture Co., Ltd	10.92
Xingli Arts & Crafts Factory of Yangchun	10.92
Yangchun Hengli Company Limited	10.92
Yeh Brothers World Trade, Inc.	10.92
Yichun Guangming Furniture Co., Ltd	10.92
Yihua Timber Industry Co., Ltd	10.92
Zhang Zhou Sanlong Wood Product Co., Ltd	10.92
Zhangjiagang Zheng Yan Decoration Co., Ltd	10.92
Zhangzhou Guohui Industrial & Trade Co. Ltd	10.92
Zhong Shan Fullwin Furniture Co., Ltd	10.92
Zhongshan Fookyik Furniture Co., Ltd	10.92
Zhongshan Golden King Furniture Industrial Co., Ltd	10.92
Zhoushan For-Strong Wood Co., Ltd	10.92
PRC-Wide Rate	198.08

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of subject merchandise, 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 normal value exceeds U.S. price, as indicated above. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, section 735(b)(2) of the Act requires the ITC to make its final determination as to whether domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of wooden bedroom furniture, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

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 intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

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 after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 17, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14361 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–122–848)

Hard Red Spring Wheat from Canada: Notice of Extension of Time Limit for Countervailing Duty Expedited Review

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the countervailing duty expedited review of hard red spring wheat from Canada. The period of review is August 1, 2001, through July 31, 2002.

EFFECTIVE DATE: June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1540.

SUPPLEMENTARY INFORMATION:

Background:

On December 23, 2003, the Department of Commerce ("the Department") initiated a countervailing duty expedited review of Richelain Farms. *See Notice of Initiation of Countervailing Duty Expedited Review*, 68 FR 75490 (December 31, 2003). The preliminary results are currently due no later than June 21, 2004.

Time Limits

Sections 351.214(k)(3) and 351.214(i)(1) of the Department's regulations require the Department to issue the preliminary results within 180 days after the date on which the expedited review is initiated. However, if the proceeding is extraordinarily complicated, section 351.214(i)(2) of the regulations allows the Department to extend this deadline to a maximum of 300 days.

Extension of Time Limit

The Department has determined that additional time is necessary to issue the preliminary results in this expedited review for the reasons stated in the memorandum from Susan Kuhbach to Jeffrey May, dated June 16, 2004. Therefore, in accordance with sections 351.214(k)(3) and 351.214(i) of the Department's regulations, we are extending the time limit of the preliminary results of this expedited review until no later than October 18, 2004.

This notice is published pursuant to section 777(i)(1) of the Act.

Dated: June 18, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group 1.

[FR Doc. 04–14364 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061804G]

Proposed Information Collection; Comment Request; Marine Recreational Fishery Statistics Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before August 23, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nicole D. Bartlett, U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Fisheries Statistics Division, F/ST1, Room 12427, 1315 East-West Highway,

Silver Spring, MD 20910, Phone: (301) 713–2328, ext. 216.

SUPPLEMENTARY INFORMATION:

I. Abstract

Marine recreational anglers are surveyed for catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

II. Method of Collection

A random-digit-dialing telephone survey of coastal zone households collects data on the proportion of marine fishing households and the number of shore and private/rental boat fishing trips by residents of those households. A directory telephone survey of boat operators collects data on the numbers of angler fishing trips on party and charter boats. On-site intercept interviews of marine recreational anglers collect data on the catch per trip by species. Supplemental surveys collect economic data about marine recreational fishing.

III. Data

OMB Number: 0648–0052.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations.
Estimated Number of Respondents: 770,504.
Estimated Time Per Response: 7 minutes for fishing households; 7 minutes for party/charter boat operators; 4.5 minutes for intercepted anglers; 3 minutes for supplemental economic data from fishing households; 5 minutes for supplemental economic data from party/charter boat operators; 8 minutes for supplemental economic data from intercepted anglers; 1.5 minutes for verification calls; 1 minute for non-fishing households; and .5 minutes for non-households.
Estimated Total Annual Burden Hours: 34,887.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: June 17, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14375 Filed 6–23–04; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061804F]

Proposed Information Collection; Comment Request; Saltonstall-Kennedy Grant Program (S–K Program) Applications and Reports

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before August 23, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alicia Jarboe, F/MB5, Room 13112, 1315 East-West Highway, Silver Spring, MD 20910–3282 (telephone 301–713–2358, ext. 199 or e-mail *alicia.jarboe@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The S–K Program provides financial assistance on a competitive basis for research and development projects that benefit the U.S. fishing industry (commercial and recreational). In addition to standard Federal government grant application requirements, S–K applications must provide a project summary form (NOAA Form 88–204), use NOAA Form 88–0205 instead of SF–424A for budget information, and provide one original and nine copies of applications. Successful grants applicants are required to submit semi-annual progress reports and a final report.

II. Method of Collection

Final reports must be submitted in electronic form unless an exemption is granted. The other documentation is in paper form.

III. Data

OMB Number: 0648–0135.
Form Number: NOAA Forms 88–204 and 88–205.
Type of Review: Regular Submission.
Affected Public: Not-for-profit institutions; business or other for-profit organizations; individuals or households; and state, local, or tribal government.
Estimated Number of Respondents: 210.
Estimated Time Per Response: 1 hour for a project summary form; 1 hour for a budget form; 2.5 hours for a semi-annual report; and 13 hours for a final report.
Estimated Total Annual Burden Hours: 985.
Estimated Total Annual Cost to Public: $606.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: June 17, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14376 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061804E]

Proposed Information Collection; Comment Request; Reporting Requirements for the Ocean Salmon Fishery Off the Coasts of Washington, Oregon, and California

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

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

DATES: Written comments must be submitted on or before August 23, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Wright, F/NWR2, 7600 Sand Point Way NE, Seattle, WA 98115–6349 (phone 206–526–6140).

SUPPLEMENTARY INFORMATION:

I. Abstract

Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner. The requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements if the appropriate notifications are made to provide the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

II. Method of Collection

Notifications are made by at-sea radio or cellular phone transmissions.

III. Data

OMB Number: 0648–0433.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 40.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: June 17, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14377 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061604B]

NOAA Recreational Fisheries Strategic Plan Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The National Marine Fisheries Service (NOAA Fisheries) is hosting a series of public meetings to present a draft of the NOAA Fisheries Strategic Plan for Recreational Fisheries 2005–2010. The primary goal of the meetings is to collect public input on the draft plan.

DATES: The meetings announced by this notice will be held July 6, 2004, in Orange Beach, AL and July 8, 2004, in Houston, TX. See **SUPPLEMENTARY INFORMATION** for specific times, addresses, and directions. Copies of the Draft Plan will be available at each meeting, or can be obtained in advance of the meeting on the website at *http://www.nmfs.noaa.gov/recfish/* or by contacting Michael Kelly, Division Chief, NOAA Fisheries Office of Constituent Services (301) 713–2379.

FOR FURTHER INFORMATION CONTACT: Michael Kelly, Division Chief, Office of Constituent Services at (301) 713–2379.

SUPPLEMENTARY INFORMATION: The meeting in Alabama is scheduled for July 6, 2004, from 6 9 p.m. at the Orange Beach Community Center, 27235 Canal Road, Orange Beach, AL. The meeting in Texas is scheduled from July 8, 2004, 6 9 p.m. at the Coastal Conservation Association National Headquarters Office 6919 Portwest, Suite 100, Houston, TX.

Directions from Mobile, Alabama airport: Begin going East on AIRPORT BLVD/CR–56 E toward JOSEPH DRAWNS DR. Merge onto I–65S. Merge onto I–10 E. Take the AL–59 S exit number 44 toward LOXLEY/GULF SHORES–BEACHS/GULF STATE PARK. Merge onto N HICKORY ST. N HICKORY ST becomes AL–59S. Turn LEFT onto FOLEY BEACH (Portions toll). Turn LEFT onto AL–180/CANAL RD. Turn SLIGHT LEFT to stay on AL–180/CANAL RD. Proceed to 27235 CANAL RD. ORANGE BEACH, AL.

Directions: From Bush Intercontinental airport: Start out going West on TERMINAL RD N toward TERMINAL A BAGGAGE CLAIM. Turn LEFT onto AIRPORT EXIT. Turn LEFT

onto TERMINAL RD S. Turn SLIGHT RIGHT onto JOHN F KENNEDY BLVD/ JFK BLVD. Take the HARDY TOLL RD ramp. Merge onto HARDY W (Portions toll). Take the I–45/HARDY TOLL RD exit on the left toward BELTWAY 8/ DOWNTOWN. Merge onto HARDY S (Portions toll). Merge onto I–610 W. Take exit number 11B toward KATY RD. Turn SLIGHT LEFT onto W LOOP FRWY N. Turn LEFT onto OLD KATY RD. Turn RIGHT onto PORTWEST DR. End at 6919 PORTWEST DR., HOUSTON, TX.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be Directed to Michael Kelly at (301) 713–2379 at least five days prior to the meeting date.

Dated: June 18, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–14378 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection Renewal; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed revision of its *Peer Reviewer Application* (OMB Number 3045–0090). Copies of the forms can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 23, 2004.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Shelly Ryan at *sryan@cns.gov*.

(2) By fax to 202–565–2786, Attention: Ms. Shelly Ryan.

(3) By mail sent to: Corporation for National and Community Service, 9th Floor, Attn: Shelly Ryan, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shelly Ryan, (202) 606–5000, ext. 549.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation connects Americans of all ages and backgrounds with opportunities to give back to their communities and country through three programs: AmeriCorps, Learn and Serve America, and Senior Corps. The Corporation provides grants to support people and organizations that use service as a strategy for addressing national and community needs. As part of its review process the Corporation uses peer reviewers to determine the quality of the applications we receive.

II. Current Action

The information collected will be used by the Corporation to select peer reviewers for each grant competition. All individuals interested in applying as peer reviewers or facilitators of the peer review panels will be required to complete an electronic application.

Modifications include combining the Zoomerang survey and the electronic application into one web-based process. This was a two-step process. Applicants would fill out a brief survey and once selected would complete the full eGrants application. The eGrants screens are changing from Oracle-based to web-based.

The Corporation seeks to continue using this particular form, albeit in a revised version. The current form is due to expire August 30, 2004.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as a peer reviewer.

Total Respondents: 2,000 responses annually.

Frequency: One time to complete and update as needed.

Average Time per Response: 40 minutes (includes both completing and updating)

Estimated Total Burden Hours: 1,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: June 17, 2004.

Marlene Zakai,

Director, Office of Grants Policy and Operation.

[FR Doc. 04–14278 Filed 6–23–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0359]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through August 31, 2004. DoD proposes that OMB extend its approval for use through August 31, 2007.

DATES: DoD will consider all comments received by August 23, 2004.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0359, using any of the following methods:

- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include OMB Control Number 0704–0359 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Ted Godlewski, OUSD (AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Godlewski, at (703) 602–2022. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm*. Paper copies are available from Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and related clause at DFARS 252.232–7007, Limitation of Government's Obligation; OMB Control Number 0704–0359.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (*e.g.*, allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 800.

Number of Respondents: 800.

Responses Per Respondent: 1.

Annual Responses: 800.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements related to contract financing and payment in DFARS Part 232, Contract Financing, and the related clause at DFARS 252.232–7007, Limitation of Government's Obligation. DFARS Subpart 232.7, Contract Funding, limits the use of incrementally funded fixed-price contracts to situations where the contract is funded with research and development appropriations; where Congress has otherwise incrementally appropriated program funds; or where the head of the contracting activity approves the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts. The clause at DFARS 252.232–7007 identifies procedures for incrementally funding the contract and requires the contractor to provide the Government with written notice when the work will reach the point at which the amount payable by the Government, including any termination costs, approximates 85 percent of the funds currently allotted to the contract.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–14342 Filed 6–23–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0336]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Drug-Free Work Force

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through October 31, 2004. DoD proposes that OMB extend its approval for use through October 31, 2007.

DATES: DoD will consider all comments received by August 23, 2004.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0336, using any of the following methods:

- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include OMB Control Number 0704–0336 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Section 223.570, Drug-free work force, and the associated clause at DFARS 252.223–7004; OMB Control Number 0704–0336.

Needs and Uses: This information collection requires DoD contractors to maintain records regarding drug-free work force programs provided to contractor employees. The information is used to ensure reasonable efforts to eliminate the unlawful use of controlled substances by contractor employees.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 980,096.

Number of Recordkeepers: 18,012.

Annual Responses: 0.

Average Annual Burden Per Recordkeeper: 48 hours.

Frequency: This is a requirement for recordkeeping only.

Summary of Information Collection

DFARS Section 223.570, Drug-free work force, and the associated clause at DFARS 252.223–7004, Drug-Free Work Force, require that DoD contractors institute and maintain programs for achieving the objective of a drug-free work force, but do not require contractors to submit information to the Government. This information collection requirement reflects the public burden of maintaining records related to a drug-free work force program.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–14343 Filed 6–23–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–123]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

June 17, 2004.

Take notice that on June 9, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval certain negotiated rate agreements between CEGT and Entergy Arkansas, Inc., Entergy Louisiana, Inc. and Entergy Gulf States, Inc.

CEGT states that it has entered into agreements to provide service to these shippers to be effective June 11, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 eFiling link.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1407 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–356–000]

Columbia Gas Transmission Corporation; Notice of Application

June 16, 2004.

On June 8, 2004, Columbia Gas Transmission Corporation (Columbia), at 1700 MacCorkle Avenue, SE. Charleston, West Virginia 25314, filed an application in the above referenced docket, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, to abandon its storage injection/withdrawal Well 3731 and associated well appurtenances, to abandon approximately 0.07 mile of 4-inch pipeline and appurtenances on Line SLW–3731, to construct new injection/withdrawal Well 12447 and appurtenances including 0.03 mile of 4-inch well line (SLW–12447), all located in Ashland County, Ohio in Columbia's Pavonia Storage Field. 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 "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, at (304) 357–2359, fax (304) 357–3206.

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, on or before the comment date stated below 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). 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 in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: July 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1396 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–330–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 17, 2004.

Take notice that on June 14, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective July 15, 2004:

1st Revised Third Revised Sheet No. 200;
Sixth Revised Sheet No. 289;
Original Sheet No. 368;
Original Sheet No. 369;
Original Sheet No. 370;
Sheet Nos. 371–399.

El Paso states that these tariff sheets are filed to establish provisions regarding the reservation of capacity for future expansion projects.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1406 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–292–001]

Gas Transmission Northwest Corporation; Notice of Compliance Filing

June 17, 2004.

Take notice that on June 14, 2004, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, with an effective date of June 3, 2004.

GTN states that the filing is being made to comply with the Commission's June 3, 2004 Order Accepting Tariff Sheets Subject to Conditions in Docket No. RP04–292–000. GTN states that it is adding tariff language to specify how right of first refusal (ROFR) bids will be evaluated by the pipeline and how shippers with a ROFR must match bids that have been accepted by the pipeline.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested State regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1404 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–033]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

June 17, 2004.

Take notice that on June 10, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8.01b,

reflecting an effective date of July 1, 2004.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1402 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–394–003]

KO Transmission Company; Notice of Compliance Filing

June 17, 2004.

Take notice that on June 10, 2004, KO Transmission Company (KOT) filed the following tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1, to be effective July 10, 2004:

Second Revised Sheet No. 30;
Second Revised Sheet No. 52;
Second Revised Sheet No. 55;
Second Revised Sheet No. 56;
First Revised Sheet No. 60;
Second Revised Sheet No. 99;
Second Revised Sheet No. 117;
Second Revised Sheet No. 123;
Second Revised Sheet No. 124;
Second Revised Sheet No. 125;
Second Revised Sheet No. 133;
Second Revised Sheet No. 134; and
Second Revised Sheet No. 135.

KOT states that the tariff sheets are submitted in compliance with the Commission's Order dated May 11, 2004, in Docket No. RP00–394–000.

KOT states that copies of its filing will be mailed to all jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1401 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–691–000 and Docket No. EL04–104–000]

Midwest Independent Transmission System Operator, Inc.; Public Utilities With Grandfathered Agreements in the Midwest ISO Region; Notice Granting Extension of Time

June 16, 2004.

On June 10, 2004, the National Rural Electric Cooperative Association, American Public Power Association, Dairyland Power Cooperative, GEN–SYS Energy, Midwest TDUs, Basin Electric Power Cooperative, Central Power Electric Cooperative, East River Electric Power Cooperative, Inc., Capital Electric Cooperative, Associated Electric Cooperative, Inc., Northeast Missouri Electric Power Cooperative, Minnkota Power Cooperative, Inc., Wisconsin Transmission Customer Group, and Hoosier Energy Rural Electric Cooperative, Inc. (together "Joint Movants") filed a motion for an extension of time for interested persons to file certain comments in Step 1 of the 3-step proceeding to address the grandfathered agreements (GFAs), as set forth in the Commission's Order (Order) issued May 26, 2004, in the above-docketed proceedings. The May 26 Order required interested parties to file initial comments by July 9, 2004, to a June 25, 2004, submission by the Midwest ISO concerning reliability and economic benefits of its proposed congestion management system with GFAs included in the market. The May 26 Order also made reply comments due July 9, 2004, to the comments of all affected parties on: (1) Whether keeping the GFAs separate from the market would negatively impact reliability; (2) the extent to which GFAs shift costs to third parties; and (3) whether keeping the GFAs separate from the market would result in undue discrimination. Joint Movants request that the Commission extend both comment deadlines to August 6, 2004.

In their motion, Joint Movants state that the period for preparation of these comments coincides with the upcoming Fourth of July holiday and that additional time is needed to prepare these comments. Joint Movants also state that the Midwest ISO does not oppose the request for additional time, provided that the extension of time does not adversely impact the Commission's attempt to issue an order on the merits, as described in the May 26 Order.

Upon consideration, notice is hereby given that an extension of time to file initial comments on the Midwest ISO's June 25 filing, and reply comments regarding the three issues enumerated above, is granted to and including July 16, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1394 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–281–001]

Northern Natural Gas Company; Notice of Compliance Filing

June 17, 2004.

Take notice that on June 14, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 400A; Substitute Second Revised Sheet No. 403A; and Substitute Second Revised Sheet No. 453, with an effective date of June 1, 2004.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1403 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–329–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

June 17, 2004.

Take notice that on June 14, 2004, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of July 15, 2004:

Third Revised Sheet Nos. 1 and 30.
First Revised Sheet Nos. 12, 21, 35, 39, 40, 41, 59, 60, 61, 63, 71,82, 83, 87, 92 and 93.
Second Revised Sheet Nos. 65 and 72.
Original Sheet No. 114.
Sheet Nos. 115–118 reserved for future use.

Southern Trails states it is proposing to clarify specific aspects of its tariff language.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1405 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–054]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

June 17, 2004.

Take notice that on June 14, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing its report of activities regarding collection of Kansas ad valorem taxes in Southern Star's Docket No. RP98–52, *et al.*

Southern Star states that this filing is being made in compliance with Commission's order issued September 10, 1997 in Docket Nos. RP97–369–000, *et al.* The September 10 Order requires first sellers to make refunds for the period October 3, 1983 through June 28, 1988. Southern Star further states that the Commission directed that pipelines file reports concerning their activities to collect and flow through refunds of the taxes at issue. Southern Star states that the filing details refunds made to Missouri customers, remaining producer obligations and producer refunds received awaiting distribution.

Southern Star states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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 eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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 eFiling link.

Protest Date: June 24, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1398 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–139]

Tennessee Gas Pipeline Company; Notice of Amendment to Negotiated Rate Agreement

June 17, 2004.

Take notice that on June 10, 2004, Tennessee Gas Pipeline Company (Tennessee), tendered for filing an amendment to a Gas Transportation Agreement, dated January 24, 2003, between Tennessee and El Paso Merchant Energy, LP pursuant to Tennessee's Rate Schedule FT–A (Negotiated Agreement), which agreement has been previously accepted by the Commission as a negotiated rate agreement. Tennessee requests that the Commission accept and approve the amendment to the Negotiated Rate Agreement to be effective on June 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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 eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1408 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–107–005]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

June 17, 2004.

Take notice that on June 14, 2004, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing.

Williston Basin states that Volume I of the filing contains revised tariff sheets reflecting Williston Basin's refund rates, which are proposed to be effective beginning June 1, 2000. Williston Basin further states that it is also filing a Volume II, with pro forma tariff sheets effective on a prospective basis. Williston Basin further states that these rates are proposed to become effective at the appropriate time, upon Commission approval.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. 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 eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. 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.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1400 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–045, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Filings

June 15, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket No. EL00–95–045; EL00–95–083; EL00–95–087; EL00–98–042; EL00–98–071; and EL00–98–074]

On June 14, 2004, The Dynegy Parties, Williams Power Company, Inc., and the California Parties filed an Expedited Joint Request for Waiver of Fuel Allowance Filing Requirements (Waiver Request), in the above-docketed proceedings. By this notice, the period for filing comments on the Waiver Request is hereby shortened to and including June 21, 2004.

2. Connecticut Department of Public Utility Control and Connecticut Office of Consumer Counsel

[Docket No. EL04–109–000]

Take notice that on June 10, 2004, the Connecticut Department of Public Utility Control and the Connecticut Office of Consumer Counsel (collectively, Connecticut Petitioners) pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, filed a petition for a declaratory order to terminate a controversy and remove alleged uncertainty about the interpretation of power purchase contracts between Connecticut Yankee Atomic Power Company (Connecticut Yankee) and its public utility power purchasers. The Connecticut Petitioners ask the Federal Energy Regulatory

Commission to resolve this controversy expeditiously and declare that the public utility power purchasers remain liable for all decommissioning costs but must refund to end-use ratepayers any costs that the Commission later determines were imprudently incurred. The Connecticut Petitioners request expedited treatment because the uncertainty about the obligations of Connecticut Yankee and the public utility power purchasers for imprudently incurred costs must be resolved in connection with Connecticut Yankee's new rate case that must be filed on or before July 1, 2004.

Comment Date: June 29, 2004.

3. Indigo Generation LLC; Larkspur Energy LLC; and Wildflower Energy LP

[Docket No. ER01–1822–002]

Take notice that on June 9, 2004, Indigo Generation LLC, Larkspur Energy LLC, and Wildflower Energy LP (collectively, the Wildflower Entities) submitted their Triennial Updated Market Analysis and an amendment to their individual market-based rate tariffs and rate schedules to add Appendix A, Market Behavior Rules. The Wildflower Entities state that this filing is made in compliance with the Commission's order issued June 12, 2001 in Docket No. ER01–1822 and the Commission's November 17, 2003, Order Amending Market-Based Rate Tariffs and Authorizations, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003).

Comment Date: June 30, 2004.

4. Conjunction, LLC

[Docket No. ER03–452–003]

On June 9, 2004, Conjunction, LLC (Conjunction) filed a "Motion to Determine the Scope of Negotiated Rate Authority and Request for Expedited Consideration." In the motion, Conjunction requests that the Commission find that the Commission's order issued May 21, 2003 in Docket No. ER03–542–000, 103 FERC ¶ 61,198, permits Conjunction to sell a substantial portion of the capacity of the Empire Connection merchant transmission project pursuant to the broad-based request for proposal recently issued by the New York Power Authority. Conjunction requests Commission action by July 30, 2004 and, in addition, requests a shortened comment period.

Comment Date: June 23, 2004.

5. MidAmerican Energy Company

[Docket No. ER04–703–001]

Take notice that on June 10, 2004 MidAmerican Energy Company (MidAmerican), in compliance with the Commission's letter order issued May 14, 2004 in Docket No. ER04–703–000, filed with the Commission an Electric Interconnection Agreement between MidAmerican Energy Company and Northwest Iowa Power Cooperative, incorporating the Third Amendment to the Agreement dated March 9, 2004, which includes the rate schedule designations as required by Order 614.

MidAmerican states that it has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: July 1, 2004.

6. Vermont Electric Cooperative, Inc.

[Docket No. ER04–794–001]

Take notice that on June 10, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing a supplement to its May 3, 2004 annual formula rate update to its FERC Electric Tariff, Original Volume No. 1 and its First Revised Rate Schedule FERC Nos. 4 through 7. VEC requests effective dates for its annual update of May 1, 2004, June 1, 2004, and July 1, 2004.

VEC states that a copy of this filing is being served on each of the customers under the Tariff and Rate Schedules the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: July 1, 2004.

7. Wabash Valley Power Association, Inc.

[Docket No. ER04–805–001]

Take notice that on June 7, 2004, as supplemented on June 9, 2004 Wabash Valley Power Association, Inc. (Wabash Valley) tendered for filing a Supplement to Application for Market-Based Rate Authority and Motion for Expedited Consideration and Shortened Notice Period. Wabash requests an effective date of July 1, 2004. Wabash also requests a shortened notice period.

Comment Date: June 21, 2004.

8. Niagara Mohawk Power Corporation

[Docket No. ER04–920–000]

Take notice that on June 9, 2004, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing Service Agreement No. 334 between Niagara Mohawk and Oneida Indian Nation (Oneida) under the New York Independent System Operator's FERC Electric Tariff, Original Volume No. 1. Niagara Mohawk states that under the Service Agreement, Niagara Mohawk will provide interconnection service to Oneida for the Turning Stone Substation.

Niagara Mohawk states that a copy of this filing has been served on Oneida, the New York Independent System Operator and the New York State Department of Public Service.

Comment Date: June 30, 2004.

9. Southern California Edison Company

[Docket No. ER04–922–000]

Take notice that on June 10, 2004, Southern California Edison Company (SCE) tendered for filing a Notice of Cancellation of Rate Schedule No. 349.4, a 115kV Added Facilities Agreement between SCE and Southern California Water Company (SCWC). SCE also filed an Amended and Restated Transmission Service Agreement between SCWC and SCE designated as Rate Schedule FERC No. 465; a Service Agreement for Wholesale Distribution Service between SCE and SCWC designated as Second Revised Service Agreement No. 4; and an Amended and Restated 33kV Added Facilities Agreement between SCE and SCWC designated as Rate Schedule FERC No. 466.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and SCWC.

Comment Date: June 28, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. 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 "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1397 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–118–000, et al.]

Black Hills Corporation, et al.; Electric Rate and Corporate Filings

June 16, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Black Hills Corporation Xcel Energy Inc. Cheyenne Light, Fuel & Power Company

[Docket No. EC04–118–000]

Take notice that on June 14, 2004, Black Hills Corporation (Black Hills), Xcel Energy Inc., (Xcel Energy), and Cheyenne Light, Fuel and Power Company (CLF&P) filed an application under section 203 of the Federal Power Act requesting approval for the sale by Xcel Energy of all of the capital stock of CLF&P to Black Hills.

Comment Date: July 6, 2004.

2. Calpine Energy Services, L.P. Delta Energy Center, LLC CES Marketing III, LLC

[Docket No. EC04–119–000]

Take notice that on June 14, 2004, Calpine Energy Services, L.P. (CESLP), Delta Energy Center, LLC, and CES Marketing III, LLC tendered for filing an application under section 203 of the Federal Power Act for approval of the assignment by CESLP of a wholesale power sales agreement between CESLP and the California Department of Water Resources.

Comment Date: July 6, 2004.

3. Orion Power Holdings, Inc.; Great Lakes Power Inc.; Brascan Power Hudson River LLC; Brascan Power St. Lawrence River LLC; Brascan Power Lake Ontario LLC

[Docket No. EC04–120–000]

Take notice that on June 14, 2004, Orion Power Holdings, Inc. *et al.*, (Orion) and Great Lakes Power Inc. (GLPI) Brascan Power Hudson River LLC, Brascan Power St. Lawrence River LLC, and Brascan Power Lake Ontario LLC filed with the Federal Energy Regulatory Commission an application, pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, seeking authorization for a two-step transfer of ownership interests and assets.

Comment Date: July 6, 2004.

4. South Jersey Energy Company

[Docket No. ER97–1397–011]

Take notice that on June 14, 2004, South Jersey Energy Company filed an amendment to its market-based rate tariff in compliance with the Commission's Order issued November 17, 2003 in Docket No. EL01–118–000, *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003).

Comment Date: July 6, 2004.

5. ISO New England Inc.

[Docket No. ER02–2330–027]

Take notice that on June 14, 2004, ISO New England Inc. submitted a compliance filing providing a status report on the implementation of Standard Market Design in New England pursuant to the Commission's order issued September 20, 2002 in Docket Nos. ER02–2330–000 and EL00–62–039.

Comment Date: July 6, 2004.

6. American Electric Power Service Corporation

[Docket No. ER04–79–001]

Take notice that on June 14, 2004, the American Electric Power Service Corporation as agent for Indiana Michigan Power Company (AEP) tendered for filing proposed amendments to a Facilities Agreement between AEP and Covert Generating Company, L.L.C (CGC) originally filed with the Commission on October 24, 2003 in Docket No. ER04–79–000. AEP requests an effective date of December 23, 2003.

AEP states that a copy of the filing was served upon CGC, the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment Date: July 6, 2004.

7. PPL Distributed Generation, LLC

[Docket No. ER04–671–001]

On June 9, 2004, PPL Distributed Generation, LLC (PPL Distributed Generation) submitted for filing a "Request for Extension of Time and Establishment of Effective Date." PPL Distributed Generation requests that the Commission grant an extension of time until November 9, 2004 for PPL Distributed Generation to submit a revised market power study as required by the Commission's order issued May 13, 2004, *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168. PPL Distributed Generation also requests that its Market-Based Rate Tariff be made effective as of May 24, 2004, sixty days from the date of the filing of its application for market-based rate authority, subject to refund if the Commission later finds that PPL Distributed Generation possesses generation market power.

Comment Date: June 30, 2004.

8. Idaho Power Company

[Docket No. ER04–739–001]

Take notice that on June 14, 2004 Idaho Power Company (Idaho Power) submitted a compliance filing pursuant to the Commission's letter order issued May 28, 2004.

Comment Date: July 6, 2004.

9. American Electric Power Service Corporation

[Docket No. ER04–924–000]

Take notice that on June 14, 2004, the American Electric Power Service Corporation (AEPSC), tendered for filing a service agreement for Long-Term Firm Point-to-Point Transmission Service between AEPSC and Duke Energy Trading and Marketing, L.L.C. AEPSC requests an effective date of June 1, 2004.

AEPSC states that a copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 6, 2004.

10. Merrill Lynch Commodities, Inc.

[Docket No. ER04–925–000]

Take notice that on June 14, 2004, Merrill Lynch Commodities, Inc. (MLCI) submitted for filing an "Application for Order Accepting Initial Rate Schedule, Blanket Authorizations and Certain Waivers and Request for Expedited Consideration." MLCI states that MLCI's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: July 6, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. 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 "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1410 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8657–064]

Virginia Hydrogeneration and Historical Society, L.C.; Notice of Availability of Final Environmental Assessment

June 16, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations contained in the 18 CFR Part 380 (FERC Order No. 486, 52 FR 47897), the Office of Energy Projects staff (staff) reviewed the Order Proposing Revocation of License for the Harvell Dam Project, located on the Appomattox River in Petersburg, Virginia, and prepared an environmental assessment (EA) for the proposed action at the project. In this EA, staff analyzed the potential environmental effects of the revocation of license and conclude that the revocation, or any other alternative considered, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426 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, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1392 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–223–000 and CP04–293–000]

KeySpan LNG, L.P.; Notice of Extension of the Scoping Period for the Proposed Keyspan Lng Facility Upgrade Project

June 17, 2004.

On May 11, 2004, the Commission issued a "Notice Of Intent To Prepare An Environmental Impact Statement For The Proposed KeySpan LNG Facility Upgrade Project, Request For Comments On Environmental Issues, And Notice Of Public Scoping Meeting" (NOI) in the above referenced dockets. The NOI initiated the time period for receiving filed comments and identified the comment period closing date as June 11, 2004.

United States Senators Jack Reed and Lincoln Chafee, and U.S. Representatives Patrick Kennedy and James Langevin, on behalf of constituents, have requested that additional time be made available in which to file environmental comments. Upon consideration, the scoping period has been extended until July 12, 2004.

Additionally, Algonquin Gas Transmission Company has filed an application, in Docket No. CP04–358–000, to construct and operate the planned interconnect pipeline described in the NOI. The Commission will accept environmental comments on the proposed pipeline within the above-referenced scoping period. Instructions for submitting comments are provided in the NOI.

FERC staff will also hold additional scoping meetings before the close of the scoping period. Meeting dates, locations, and times will be provided at a later date.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1409 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–001]

SAF Hydroelectric, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions; and Revised Schedule for Processing Application

June 16, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Major License.

b. *Project No.:* 12451–001.

c. *Date filed:* January 20, 2004.

d. *Applicant:* SAF Hydroelectric, LLC.

e. *Name of Project:* Lower St. Anthony Falls Hydroelectric Project.

f. *Location:* On the Mississippi River, in the Town of Minneapolis, Hennepin County, Minnesota. The project affects federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Douglas A. Spaulding P.E., Spaulding Consultants, 1433 Utica Avenue South Suite 162, Minneapolis, MN 55416, (952) 544–8133 or Robert Larson, 33 South 6th Street, Minneapolis, MN 55402, (612) 343–2913.

i. *FERC Contact:* Kim Carter at (202) 502–6486, or *kim.carter@ferc.gov*.

j. The deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 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 and Procedure 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.

Comments, recommendations, terms and conditions, and prescriptions 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 "eFiling" link.

k. Status of environmental analysis: This application is ready for environmental analysis.

l. Description of Project: The proposed Lower St. Anthony Falls Hydroelectric Project would be located at the U.S. Army Corps of Engineers (Corps) Lower St. Anthony Falls Lock and Dam and would utilize 5.9 acres of Corps lands. The generation turbines would be located in an auxiliary lock chamber adjacent to the Corp's main lock chamber. An auxiliary building, storage yard, and buried transmission line would occupy additional Corps lands. The project would operate according to the Corp's current operating criteria which maintain a constant water surface elevation of approximately 750.0 mean sea level in the 33.5-acre reservoir.

The proposed project would consist of the following features: (1) 16 turbine/generator units grouped in eight 6.2-foot-wide by 12.76-foot-high steel modules having a total installed capacity of 8,980 kilowatts, each module contains 2 turbine/generator sets (two horizontal rows of 1 unit each) installed in eight stoplog slots on the auxiliary lock structure; (2) trashracks located at the turbine intake; (3) a 1,050-foot-long, 13,800-volt buried transmission line; (4) a 21-foot by 81-foot control building to house switchgear and controls; (5) a 20-foot by 30-foot project office and storage building; and (6) appurtenant facilities.

The applicant estimates that the average annual generation would be about 57,434,000 kilowatt-hours.

m. 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 (866) 208–3676, or for TTY, (202) 502–8659. Copies are also available for inspection and reproduction at the addresses in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. Procedures schedule: The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item j above, briefly explaining the basis for their objection.

The remaining schedule for processing this application is shown below. Revisions to this schedule may be made as appropriate.

Action	Target date
Issue Notice Ready for Environmental Analysis/Soliciting Final Comments, Recommendations, Terms and Conditions	June 2004.
Deadline for Agency Comments, Recommendations, Terms and Conditions	August 2004.
Issue Notice of the availability of the EA	Sept./Oct. 2004.
Public Comments on EA due	Oct./Nov. 2004.
Ready for Commission decision on the application	December 2004.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA: January 2005.

Ready for Commission's decision on the application: March 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1395 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL03–3–005; AD03–7–005; ER03–1271–000; CP01–418–000; CP03–7–001; CP03–301–000; RP03–245–000; RP99–176–089; RP99–176–094; RP02–363–002; RP03–398–000; RP03–533–000; RP03–70–002; P03–70–003; CP01–421–000; CP01–421–001; RP03–540–000; and ER04–439–001 (Not consolidated)]

Price Discovery in Natural Gas and Electric Markets; Natural Gas Price Formation; Aquila, Inc.; B–R Pipeline Company; Colorado Interstate Gas Company; Colorado Interstate Gas Company, et al.; Kinder Morgan Interstate Gas Transmission LLC; Natural Gas Pipeline Company of America; North Baja Pipeline LLC; Northern Natural Gas Company; PG&E Gas Transmission, Northwest Corporation; Portland General Electric Company; Transcontinental Gas Pipe Line Corporation; and PacifiCorp; Notice of Agenda for the June 25, 2004 Conference on Market Liquidity, Energy Price Discovery, and Natural Gas and Electricity Price Indices

June 17, 2004.

As announced in the Notice of Conference issued May 14, 2004, the Federal Energy Regulatory Commission (Commission) will hold a Staff technical conference on Friday, June 25, 2004, from 9 a.m. to 5 p.m. e.s.t. (please note time change from the May 14 Notice), at the Commission's headquarters, 888 First Street, NE., Washington, DC, in the Commission's meeting room (Room 2C). The conference will be conducted by the Commission's Staff, and members of the Commission may be present for all or part of the conference. The Commodity Futures Trading Commission (CFTC) will participate. All interested parties are invited to attend. The Commission's summer dress code is business casual. There is no requirement to register and no cost for attending the conference.

The purpose of the conference is to discuss the adequacy of natural gas and electricity price formation, the level of reporting of energy transactions to price index developers, actions taken by price index developers to improve the information available to the market, the overall level of liquidity in wholesale natural gas and electricity markets, and the use of price indices in jurisdictional tariffs. More detail on the issues to be considered is contained in the May 14 Notice. Staff is interested in discussion of these issues, including specific recommendations made by Staff in the Report on Natural Gas and Electricity Price Indices, issued May 5, 2004, in Docket Nos. PL03–3–004 and AD03–7–004. We plan to hear from a variety of speakers representing all segments of the natural gas and electricity industries.

The conference agenda is appended to this Notice. The agenda includes four panels, each with a different emphasis on the issues to be considered. Panelists are encouraged to file prepared written statements addressing the issues on or before June 25. Such statements should be filed with the Secretary of the Commission. Speakers will be encouraged to use their allotted time to summarize their positions and views on the issues noted for their panel. Time will be reserved for questions by Staff and, at the end of the conference, for members of the audience.

As mentioned in the May 14 Notice, the conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record seven days after the Commission receives them. Also, Capitol Connection will broadcast this conference. Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements, should contact David Reininger or Julia Morelli at Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

For additional information, please contact Ted Gerarden of the Office of Market Oversight & Investigations at 202–502–6187 or by e-mail at *Ted.Gerarden@ferc.gov.*

Linda Mitry,

Acting Secretary.

Attachment: Conference Agenda.

Conference Agenda

June 25, 2004

Welcome And Opening Remarks—9–9:30 a.m.

William Hederman, Director Office of Market Oversight & Investigations

Stephen Harvey, Deputy Director, Market Oversight and Assessment

Michael Gorham, Director, Division of Market Oversight, Commodity Futures Trading Commission

Panel 1—Reaction to staff report and recommendations for indices used in pipeline or utility tariffs—9:30–10:30 a.m.

Panelists:

- Timothy Oaks, Manager Federal Regulatory Affairs & Contract Administration, UGI Utilities Inc. (American Gas Association)
- Eugene V. Rozgony, Vice President and Chief Risk Officer, AGL Resources
- Donald Santa, President, Interstate Natural Gas Association of America
- Dena Wiggins, Sutherland Asbill & Brennan (Process Gas Consumers)
- James Allison, Regional Risk Manager, ConocoPhilips

Issues:

—Should the Commission adopt Staff's recommendation that any index used in a tariff provide volume and number of transactions for each reported price? Should other data be required?

—Are Staff's recommended volumes (25,000 MMBtu/day or 4000 MWh/day) or transactions (five for daily, eight for weekly, ten for monthly indices) sufficient to indicate adequate liquidity?

—Should the Commission require all pipelines and utilities to amend their tariffs by a date certain if indices currently used in tariffs do not meet adopted criteria?

—What conclusions can be drawn from the responses to the Commission's surveys on price reporting?

Break—10:30–10:40 a.m.

Panel 2—Price reporting, confidence in indices, and options for future Commission action—10:40 a.m.–12:15 p.m.

Panelists:

- Scott Nauman, Manager, Americas Gas Marketing, ExxonMobil Gas & Power Marketing Company (Natural Gas Supply Association)
- Representative from the Electric Power Supply Association (invited)
- Timothy Oaks, Manager Federal Regulatory Affairs & Contract Administration, UGI Utilities Inc. (American Gas Association)
- Gerald Ballinger, Chief Executive Officer of the Public Energy Authority of Kentucky (American Public Gas Association)
- Jeff Walker, Senior Vice President and Chief Risk Officer, ACES Power Marketing (National Rural Electric Cooperative Association)

• Al Musur, Director, Energy and Utility Programs, Abbott Laboratories and Chairman of the Industrial Energy Consumers of America

• Alexander Strawn, Proctor & Gamble Company and Chairman of the Process Gas Consumers

Issues:

—What incentives will encourage companies to begin or increase price reporting?

—Are process improvements by reporting companies (public code of conduct, independent source, audit of processes) adequate or are there further improvements that can increase the accuracy of price indices?

—Has industry confidence in prices reported in indices increased to a satisfactory level?

—What steps can be taken to improve transparency of price indices?

—What further information should price indices provide to market participants?

—Has sufficient progress been made under the Policy Statement?

—Should the Commission adopt further requirements for price reporters and/or index developers? If so, what requirements are appropriate?

—Should some form of mandatory reporting be required? If so, what is the desirable scope of such reporting (Who should be required to report? Should reporting be to existing index developers, to an intermediary or depository, or to the Commission? What data should be required to be reported)?

—Would mandatory reporting materially improve the quality of price data available to market participants?

Lunch break—12:15–1:15 p.m.

Panel 3—Index developers' response to industry views and Staff report—1:15–2:45 p.m.

Panelists:

• C. Miles Weigel, Senior Vice President, Argus Media, Inc.

• Brad Johnson, Global Energy Business Manager, Bloomberg

• Tom Waterman, Publisher, Btu/DTN

• Ernest Onukogo, Manager Newswire Indexes, DowJones

• Richard Sansom, Markets Editor, Io Energy LLC

• Bobette Riner, President, Powerdex

• Tom Haywood, Editor, Energy Intelligence Group

• Dexter Steis, Executive Publisher, Intelligence Press

• Chuck Vice, Chief Operating Officer, Intercontinental Exchange

• Larry Foster, Editorial Director, U.S. Natural Gas, Platts

Issues:

—What improvements in data collection and price reporting have index developers seen since issuance of the Policy Statement?

—How have index developers responded to the call for greater transparency of indices?

—What plans do price index developers have to provide more information and more transparency to energy market participants?

—Do price index developers meet the standards of the Policy Statement? Did the Staff report accurately depict the extent to which index developers have adopted Policy Statement standards?

—Do price index developers support the criteria proposed by Staff for use of indices in jurisdictional tariffs?

—How can price index developers facilitate tariff compliance by pipelines and utilities?

—Will price index developers provide FERC with access to data in the event of an investigation of suspected false reporting or price manipulation?

Break—2:45–2:55 p.m.

Panel 4—Market liquidity 2:55–4:15 p.m.

Panelists:

• Martin Marz, Compliance Manager, North American Gas and Power, BP America, Inc.

• Christopher Edmonds, Senior Vice President, ICAP Energy LLC (Energy Brokers Association)

• Representative of financial institution active in energy markets (invited)

• Mark Niehaus, Partner Energy Assurance, PriceWaterhouseCoopers

• Tom Jepperson, Division Counsel, Questar Market Resources, Inc.

• Vince Kaminski , Managing Director, Sempra Energy Trading

Issues:

—Is there adequate trading activity at enough locations to develop reliable price signals for market participants?

—What are the characteristics that make for a good trading hub?

—What steps can the Commission take to encourage the development of active trading hubs?

—What role can electronic trading, confirmation/settlement, and clearing play in improving market liquidity?

—Can improvements in price indices restore confidence in price formation given the present levels of trading?

Audience questions and comments—4:15–4:45 p.m.

Concluding remarks—4:45–5 p.m.

[FR Doc. E4–1399 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–688–000; ER04–689–000; ER04–690–000; and ER04–693–000]

Pacific Gas and Electric Company; Notice of Technical Conference

June 14, 2004.

Parties are invited to attend a technical conference in the above-referenced Pacific Gas and Electric Company (PG&E) proceedings on June 15–16, 2004, at Commission Headquarters, 888 First Street, NE., Washington, DC 20426. The technical conference will be held in Conference Room 3M–4. The June 15th technical conference will be held from 10 a.m. until 4 p.m. (e.s.t.). The June 16th technical conference will be held from 9 a.m. until noon (e.s.t.). Arrangements have been made for parties to listen to the technical conference by telephone.

The purpose of the conference is to identify the issues raised in these proceedings, develop information for use by Commission staff in preparing an order on the merits, and to facilitate any possible settlements in these proceedings. Specifically, the parties will discuss, among other things, the following unexecuted replacement agreements filed by PG&E in the above-referenced dockets: (1) The interconnection agreement between PG&E and Western Area Power Administration (WAPA), (2) the parallel operations agreement between PG&E and WAPA (PG&E Original Rate Schedule FERC No. 228), and (3) PG&E's wholesale distribution tariff service agreement for wholesale distribution service to WAPA.

Questions about the conference and the telephone conference call arrangements should be directed to: Julia A. Lake, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *Julia.lake@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–1393 Filed 6–23–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7778–2]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the

Administrator and the program office managers. The purpose of the meeting is to discuss and approve the recommendations of the NACEPT Compliance Assistance Advisory Committee, a subcommittee under the auspices of NACEPT. The Council will also address a range of issues, including environmental technology, EPA's Draft Report on the Environment, environmental foresight, collaborative problem-solving, and corporate branding for EPA.

DATES: NACEPT will hold a two day public meeting on Thursday, July 8, 2004, from 9 a.m. to 5:30 p.m. and Friday, July 9, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at The Fairmont Hotel 2401 M Street NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, 202–233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer using the contact information below by July 1, 2004.

The public is welcome to attend all portions of the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Sonia Altieri at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 17, 2004.

Daiva Balkus,

Director, Office of Cooperative Environmental Management.

[FR Doc. 04–14384 Filed 6–23–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the July 8, 2004, regular meeting of the Farm Credit Administration Board (Board) has been rescheduled. The regular meeting of the Board will be held July 15, 2004, starting at 9 a.m. An agenda for this meeting will be published at a later date.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

Dated: June 22, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–14515 Filed 6–22–04; 3:09 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 15, 2004.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0894.

OMB Approval Date: 6/07/2004.

Expiration Date: 6/30/2007.

Title: Certification Letter Accounting for Receipt of Federal Support—CC Docket Nos. 96–45 and 96–262.

Form No.: N/A.

Estimated Annual Burden: 52 responses; 162 total annual burden hours; 3–5 hours average per respondent.

Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant with section 254 (e). In the Remand Order, the Commission, modifies the high-cost universal service support mechanism for non-rural carriers and adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.

OMB Control No.: 3060–0807.

OMB Approval date: 6/07/2004.

Expiration Date: 6/30/2007.

Title: Section 51.803 and Supplemental Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.

Form No.: N/A.

Estimated Annual Burden: 52 responses; 2,040 total annual burden hours; 20–40 hours per respondent.

Needs and Uses: Any interested party seeking preemption of a state commission's jurisdiction based on the state commission's failure to act shall notify the Commission. *See* 47 U.S.C. 252(e)(5) and 47 CFR 51.803. In a Public Notice, the Commission set out procedures for filing petitions for preemption pursuant to section 252(e)(5). All of the information will be used to ensure that petitioners have complied with their obligations under the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–14328 Filed 6–23–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11 a.m. on Monday, June 28, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2) of title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: June 21, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1411 Filed 6–23–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Monday, June 28, 2004, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: CRA Technical Amendments—Joint Interim Rule with Request for Comment.

Discussion Agenda:

Memorandum and resolution re: Notice and Request for Public Comment Pursuant to Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Memorandum and resolution re: Notice of Proposed Rulemaking—12 CFR Part 334: Fair Credit Reporting Affiliate Marketing Regulations.

Memorandum and resolution re: Guidelines for Appeals of Material Supervisory Determinations and Guidelines for Appeals of Deposit Insurance Assessment Determinations.

Memorandum and resolution re: Final Rule on Capital Requirements for Asset-Backed Commercial Paper Programs.

Memorandum and resolution re: Notice of Proposed Rulemaking: Part 347—International Banking, and Part 303—Filing Procedures (Subpart J—International Banking).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: June 21, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–1412 Filed 6–23–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–06]

Exclusive Tug Franchises—Marine Terminal Operators Serving the Lower Mississippi River; Notice of Extension of Time

Notice is given that, upon request of the Administrative Law Judge, the Commission has determined to extend the deadline for issuance of an initial decision in this proceeding to July 1, 2005. Correspondingly, the time for issuance of the Commission's final decision is extended to October 31, 2005.

By the Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–14296 Filed 6–23–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency information collection activities: Announcement of Board approval under delegated authority and submission to OMB

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: Acting Federal Reserve Clearance Officer – Michelle Long—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.

Final approval under OMB delegated authority of the implementation of the following report:

Report title: Survey of Financial Management Behaviors of Military Personnel

Agency form number: FR 1375

OMB control number: OMB No. 7100–0307

Frequency: Semi–annually

Reporters: Two groups of military personnel: (1) those completing a financial education course as part of their advanced training and (2) those not completing a financial education course.

Annual reporting hours: 2,640

Estimated average hours per response: 20 minutes

Number of respondents: 4,000

General description of report: This information collection is voluntary. The statutory basis for collecting this information is section 2A of the Federal Reserve Act [12 U.S.C. § 225a]; the Bank Merger Act [12 U.S.C. § 1828(c)]; and sections 3 and 4 of the Bank Holding Company Act [12 U.S.C. §§ 1842 and 1843 and 12 U.S.C. §§ 353 and 461]. No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents will not be reported to the Board.

Abstract: This survey will gather data from two groups of military personnel: (1) those completing a financial education course as part of their advanced training and (2) those not completing a financial education course. These two groups will be surveyed on their financial management behaviors and changes in their financial situations over time. Data from the survey will help to determine the effectiveness of financial education for young adults in the military and the durability of the effects as measured by financial status of those receiving financial education early in their military careers.

Board of Governors of the Federal Reserve System, June 18, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–14293 Filed 6–23–04; 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 July 8, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Billie Sims McRae, Ralph Dillion McRae, Sr., and William Vernon McRae, all of Leesburg, Louisiana, to collectively acquire additional outstanding shares of Vernon Bancshares, and thereby indirectly acquire voting shares Vernon Bank, both of Leesville, Louisiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. New Mexico First Financial, Inc. Voting Trust, and trustees Lucinda Loveless, Hondo, New Mexico; T. Michael Henderson, Hondo, New Mexico; and William L. Giron, Belen, New Mexico, to acquire 44.36 percent of the outstanding voting stock of New Mexico First Financial, Inc., Dover, Delaware, and therefore indirectly, Mesilla Valley Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, June 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–14292 Filed 6–23–04; 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 July 19, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Beach Community Bancshares, Inc., Fort Walton Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Beach Community Bank, Fort Walton Beach, Florida.

Board of Governors of the Federal Reserve System, June 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–14291 Filed 6–23–04; 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 July 8, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire First Federal Capital Corporation, Lacrosse, Wisconsin, and thereby engage in operating a savings and loan association, and in credit insurance activities, pursuant to sections 225.28 (b)(4)(ii) and (b)(11)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–14290 Filed 6–23–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: Federal Trade Commission.

TIME AND DATE: 10 a.m., Tuesday, September 21, 2004.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to public:

(1) Oral Argument in the matter of Rambus Incorporated, Docket 9302.

Portion Closed to the Public:

(2) Executive Session to follow Oral Argument in Rambus Incorporated, Docket 9302

FOR FURTHER INFORMATION CONTACT: Mitch Katz. Office of Public Affairs: (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary. (202) 326–2514.

[FR Doc. 04–14418 Filed 6–22–04; 8:56 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the fourth meeting of the Secretary's Advisory Committee on Human Research Protections (SACHRP). The meeting will be open to the public.

DATES: The meeting will be held on Monday, July 26, 2004, from 8:30 a.m. to 5 p.m. EDT, and Tuesday, July 27, 2004 from 8:30 a.m. to 5 p.m.

ADDRESSES: The Sheraton Four Points Hotel, 1201 K St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., Ph.D., Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852, (301) 496–7005, fax: (301) 496–0527, e-mail address: *sachrp@osophs.dhhs.gov* or Catherine Slatinshek, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200; Rockville, Maryland 20852, (301) 496–7005, fax: (301) 496–0527, e-mail address: *sachrp@osophs.dhhs.gov*.

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

On July 26, 2004, SACHRP will receive and discuss preliminary reports from its two subcommittees that were established to address issues related to HHS regulations and policies for research involving prisoners and HHS regulations and policies for research involving children. On July 27, 2004, SACHRP will hold follow-up discussions on issues involving the HIPAA Privacy Rule and hear a presentation on issues involving Subpart B of 45 CFR part 46. In addition, SACHRP will address the formation of a new subcommittee to address an area of human subject protections. The Committee also will host a panel of experts in the fields of behavioral and social sciences to discuss issues affecting the clinical research enterprise. The Committee will discuss future tasks for the remainder of the year.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID to gain entry into the building where the meeting is scheduled to be held. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting on July 26 and 27, 2004. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to SACHRP members for this meeting should submit materials to the Executive Director, SACHRP (contact information listed above) prior to close of business July 16, 2004.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm*.

Dated: June 17, 2004.

Bernard A. Schwetz,

Director, Office for Human Research Protections, and Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 04–14330 Filed 6–23–04; 8:45 am]

BILLING CODE 4150–36–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–04–04]

Fiscal Year 2004 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications for the Performance Outcomes Measures Project (POMP).

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for 8–10 Standard POMP (Priority Area 1) projects at a Federal share of approximately $35,000–$50,000 per year for a project period of one year. It is estimated that $350,000 will be available for this competition. Further, the Administration on Aging announces that under this program announcement it will hold a competition for cooperative agreement awards for 8–12 Advanced POMP projects at a Federal share of approximately $15,000 per year for a project period of three years; budget period of one year. It is estimated that $150,000 will be available for this competition.

Legislative authority: The Older Americans Act, Pub. L. 106–501. (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II, Discretionary Projects).

Purpose of grant awards: The purpose of these projects is to continue the development of performance outcome measures. The Administration on Aging (AoA) will fund two different types of Performance Outcome Measures Projects (POMP); one type will be funded with grant awards and the other with cooperative agreement awards.

Priority Area 1: Standard POMP—Grants will be awarded to State Agencies on Aging for the purpose of developing and/or refining consumer assessment performance measurement tools and developing service provider surveys to inform performance outcome measurement. Grant projects will receive technical support for conference calls, survey design, sampling, and data entry/data summary if requested.

Priority Area 2: Advanced POMP—Cooperative agreements will be awarded to State Agencies on Aging for the purpose of designing a protocol for the development of more robust performance outcome measures quantifying program impact in a manner that can be associated with program cost. The latter awards will be cooperative agreements because the Administration on Aging will be substantially involved in the development and execution of the activities of the projects. The cooperative agreement will provide for technical assistance and support to funded States. The applicants and the Administration on Aging will work cooperatively to clarify the issues to be addressed by the project.

Awardee activities for this priority area are as follows:

a. Working collaboratively with AoA, form a conference call workgroup to identify potential methodologies to measure program impacts in relationship to cost.

b. Selecting two grantees to co-lead the workgroup with AoA.

c. Forming subgroups to investigate existing research, identify promising methodology, investigate potential data sources, etc. Grantees should participate in at least two subgroups.

d. Drafting a plan that recommends two to three possible performance measurement approaches for future year testing.

AoA activities for this priority area are as follows:

a. Providing logistics for all conference calls (through technical assistance contract).

b. Co-leading the main workgroup with grantees.

c. Reviewing and commenting on products developed by subgroups.

d. Providing input for plan.

e. Providing contractor technical assistance identifying existing research and critiquing potential methodology.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to State Units on Aging (SUAs).

Grantees are required to provide at least 25 percent of the total program costs from non-Federal cash or in-kind resources in order to be considered for the award.

Executive Order 12372 is not applicable to these grant applications.

Screening criteria: In order for an application to be reviewed it must meet the following screening requirements:

1. *Postmark Requirements:* Applications must be postmarked by midnight of the deadline date for submission indicated below, or hand delivered by 5:30 p.m. Eastern Time on that date, or submitted electronically by midnight on that date.

2. *Organizational Eligibility:* For the competitions under this announcement, eligibility is limited to State Units on Aging. State Agencies must collaborate with one or more Area Agency on Aging. For SUAs that function as a single planning and service area, applications must reflect substantial collaboration with one or more service provider agencies.

3. *Responsiveness to Priority Area Description:* Applications will be screened on whether the application is responsive to the priority area description.

4. *Project Narrative:* The project narrative must be double-spaced on single-sided 8.5″ x 11″ plain white paper with a 1″ margin on each side and a font size of not less than 11. You can use smaller font sizes to fill in the standard forms and sample formats. The suggested length of the narrative is ten to twenty pages; twenty pages is the maximum length allowed. AoA will not accept applications with a project narrative that exceed twenty pages excluding the project work plan grid, letters of cooperation and vitae of key personnel.

Review of applications: Applications will be evaluated against the following criteria:

Standard POMP (Priority Area 1): Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (35 points); Project Outcomes, Evaluation and Dissemination (25 points); Level of Effort (20 points).

Advanced POMP (Priority Area 2): Purpose and Need for Assistance (30 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (20 points); Level of Effort (20 points).

DATES: The deadline date for the submission of applications is July 26, 2004.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, by calling (202) 357–0145, or online at *http://www.grants.gov.*

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–04–04).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–04–04). If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, telephone: (202) 357–3440.

SUPPLEMENTARY INFORMATION: All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

Dated: June 21, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–14295 Filed 6–23–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–67]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an email to *omb@cdc.gov.* Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation Questions for State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDHP), Centers for Disease Control and Prevention (CDC).

Background

The "State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases" project was established by CDC to prevent and control obesity and other chronic diseases by supporting States in the development and implementation of nutrition and physical activity interventions, particularly through population-based strategies such as policy-level changes, environmental supports and the social marketing process. The goal of the programs in this project is to attain population-based behavior change such as increased physical activity and better dietary habits; this leads to a reduction in the prevalence of obesity, and ultimately to a reduction in the prevalence of obesity-related chronic diseases..

The evaluation questions for "State Nutrition and Physical Activity Programs to Prevent Obesity and Other Chronic Diseases" have been designed to focus on three primary areas: (1) CDC training and technical assistance; (2) State Plan development; and (3) State interventions. Within each of these primary evaluation areas, the plan identifies specific evaluation questions that have been chosen for study. The evaluation questions will be asked of the funded states via a web-based data collection system supported by an electronic database. This evaluation will take place every 6 months during the funding cycle. The proposed project will be conducted over a 3-year period. There is no cost to the respondents.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
State Project Coordinators of Funded State Programs	20	2	8	320
Assistants to State Project Coordinators of Funded State Programs	20	2	4	160
Total	40			480

Dated: June 18 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14312 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04183]

Rapid Expansion of the Capacity of the Cote d'Ivoire Ministry of Solidarity, Security, Social Affairs and Disabled Persons To Coordinate and Improve the Coverage and Quality of Care and Support Activities for Orphans, Vulnerable Children and Other HIV-Affected Persons and Families Under the President's Emergency Plan for AIDS Relief; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to help the Ministry of Solidarity, Security, Social Affairs, and Disable Persons (MSSSH) of Cote d'Ivoire to rapidly expand their capacity to coordinate expanded quality HIV/AIDS prevention, care and support activities for particularly vulnerable segments of the population, such as orphans and other vulnerable children, and HIV-affected persons and families. MSSSH will be better able to facilitate the vulnerable populations' access to information and quality support services. This program also directly addresses goals of the President's Emergency Plan for AIDS Relief to turn the tide of HIV/AIDS in Africa and the Caribbean. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to The Ministry of Solidarity, Security, Social Affairs, and Disabled Persons (MSSSH) of Cote d'Ivoire. This Ministry is mandated by the government of Cote d'Ivoire to coordinate activities for the target groups named in this announcement (*i.e.*, orphans, vulnerable children, HIV-affected families, and social workers) and is, therefore, the most direct route to reaching these populations with information, services and training for HIV/AIDS prevention, care and support.

C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before August 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone: 770–488–2700.

For program technical assistance, contact: Karen Ryder, Project Officer, CDC/Project RETRO–CI, 2010 Abidjan Place, Dulles, Virginia 20189–2010, telephone: (225) 21–25–41–89, e-mail: *kkr1@cdc.gov*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, telephone: 770–488–1515, e-mail: *zbx6@cdc.gov*.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14308 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04225]

Evaluation of Antiretroviral (ARV) Delivery Systems at The AIDS Support Organization In the Republic of Uganda; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for

a cooperative agreement program for Evaluation of Antiretroviral (ARV) Delivery Systems at The AIDS Support Organization in the Republic of Uganda. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will only be provided to the Medical Research Council (MRC) of the United Kingdom. No other applications are solicited.

The need for research on ARV treatment delivery is extremely urgent and the value of PEPFAR's already substantial investment in ARVs in Uganda will be greatly enhanced by rapid results.

The MRC is the only current CDC partner working with TASO on HIV/AIDS care and treatment projects. They have demonstrated their capacity for rigorous operational research and evaluation with TASO in respect to previous studies of Izoniazid prophylaxis, cotrimoxazole prophylaxis and ART at TASO Entebbe. TASO has been funded under PEPFAR Track 1.5 to implement the provision of ARVs and a basic care package at five centers. One of the centers is in the Jinja District. Because implementation of this program will begin in September 2004, it is necessary to work with an organization already conducting research with TASO at one of its centers. The MRC has a well-staffed and equipped station of experienced researchers who have conducted more than five major research projects at multiple TASO centers since 1994. The MRC has virological and other laboratories in Entebbe. The Entebbe facilities are essential to conducting the research since biomedical evaluation of adherence must be conducted by measuring HIV viral load.

No other partner could develop the capacity which MRC and TASO have in combination within a few months.

C. Funding

Approximately $550,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–41320776, E-mail: *jhm@cdc.gov*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–1515, E-mail: *zbx6@cdc.gov*.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14306 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Early Screening and Diagnosis of Duchenne Muscular Dystrophy

Announcement Type: New.

Funding Opportunity Number: PA 04216.

Catalog of Federal Domestic Assistance Number: 93.283.

Dates: Letter of Intent Deadline: July 14, 2004.

Application Deadline: August 9, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 317 (k)(2){42 U.S.C. section 247b(k)(2)) and sections 311 and 317(C) of the Public Health Service Act [42 U.S.C. 241, 243, and 247b–4 as amended].

Purpose and Research Objectives: The purpose of the program is to develop, implement and evaluate creatine kinase-based screening programs for the early detection of Duchenne Muscular Dystrophy (DMD) during the newborn period (part A) and during infancy (part B). This program addresses the "Healthy People 2010" focus area of Disability and Secondary Conditions. Measurable outcomes of the program will be in alignment with the following performance goal for the National Center on Birth Defects and Developmental Disabilities: To improve the health and quality of life of Americans with disabilities.

DMD is the most common form of muscular dystrophy in children. It causes progressive muscle deterioration, leading to the inability to walk around the age of 12 years, and death in the teens or early 20s, most commonly due to severe respiratory or heart problems, or both. The gene for DMD is on the X chromosome so DMD affects males almost exclusively. In the absence of newborn screening, DMD is usually diagnosed when a child is three to six years of age. DMD does not meet the traditional criteria for inclusion in routine newborn screening panels in the United States, because there is insufficient evidence that early detection and intervention leads to an improved medical outcome for children with DMD. However, an earlier age of diagnosis has potential non-medical benefits to the family, including knowledge of recurrence risk, avoidance of a long diagnostic process, and more time for financial and other planning related to raising a child with a disabling condition. In addition, earlier age at diagnosis will offer more opportunity to study the potential medical benefits of earlier treatments. In several countries, families are offered newborn screening for DMD based on creatine kinase activity in dried bloodspots.

Two approaches to screening have been employed; screening after birth and screening at 6–12 months of age. Sensitivity, specificity, and other characteristics of the screen are dependent on the age of screening, the particular assay utilized, and cut-off levels used. DMD screening offered to parents of male neonates, with informed consent and in conjunction with existing routine newborn screening systems, is one potential approach to decreasing the age of diagnosis in the United States. However, complications of this approach include the difficulty in obtaining uniform and informed consent (contingent on promoting complete understanding by parents of genetic and outcome factors) during the prenatal or immediate neonatal period, and the potential impact of test results on parent-infant bonding.

A second potential approach is to offer screening to families of male infants (6 to 12 months) through pediatric health care services. This approach offers more time for informed consent, but a major complication is disparities in access to pediatric health care.

Both approaches require well-planned protocols for follow-up of positive screening results. The purpose of this cooperative agreement is to develop, implement and evaluate early screening

programs in both neonates (part A) and infants (part B) in order to: (a) Assess the feasibility of early screening for DMD; (b) identify challenges related to each approach; and (c) evaluate the risks and benefits of each approach.

Activities: Applicants may apply for funding under part A and/or part B. Please note that if applicants choose to apply for both part A and part B, separate applications are required. There is no provision which allows the submission of consolidated applications addressing the requirements of both part A and part B under one application.

Awardee activities for part A of this program are as follows:

- Develop, implement and evaluate laboratory protocols for DMD newborn screening based on creatine kinase activity levels in dried blood spots of male newborns. The evaluation component should include determination of sensitivity, specificity, negative predictive value and positive predictive value of the screening methodology in the newborn period.
- Develop, implement, and evaluate protocols for informed consent, follow-up of positive screening results, diagnostic testing, and referral to clinical care. The evaluation component should include assessments of (1) parental understanding of informed consent, (2) factors that influence the entire process for screening, (3) factors that influence loss to follow-up, (4) acceptability of screening to parents and health care providers, (5) impact of transient positive screening results on families, (6) attitudes of diagnosed families toward the screening and diagnostic process, (7) attitudes of transient positive and true negative families (both screen-negative and DMD not present) toward the screening process, (8) assessments of other potential risks and benefits of newborn screening for DMD, and (9) the overall economic costs of screening.

Awardee activities for part B of this program are as follows:

- Develop, implement and evaluate laboratory protocols for DMD infant screening based on creatine kinase activity levels in dried blood spots or other suitable biologic specimens from male infants. The evaluation component should include determination of sensitivity, specificity, and positive predictive value of screening methodology in infancy (6–12 months).
- Develop, implement, and evaluate protocols for informed consent, follow-up of positive screening results, diagnostic testing, and referral to clinical care. The evaluation component should include assessments of (1) factors that influence access to and uptake of infant screening, (2) parental understanding of informed consent, (3) factors that influence loss to follow-up, (4) acceptability of screening to parents and health care professionals, (5) impact of transient positive screening results on families, (6) attitudes of diagnosed families toward the screening and diagnostic process, (7) attitudes of transient positive and true negative families toward the screening process, (8) assessments of other potential risks and benefits of infant screening for DMD, and (9) the overall economic costs of screening.

CDC Responsibilities: In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. In this cooperative agreement, a CDC Scientist (Scientific Liaison) within the National Center on Birth Defects and Developmental Disabilities (NCBDDD) is an equal partner with scientific and programmatic involvement during the conduct of the project through technical assistance, advice, and coordination. The Scientific Liaison will:

1. Participate in the development of the protocol.
2. Participate in the analysis, interpretation, and reporting of findings in the scientific literature and other media to the community at large and the public policy community within the Federal government.
3. Participate in data management, analysis of data, and interpretation and dissemination of findings.
4. Provide scientific consultation and technical assistance in the design and conduct of the project, including protocol adherence, outcome measures, and analytical approaches in participation with the recipient organization.

CDC Scientific Program Administrator (SPA)

The CDC NCBDDD will appoint an SPA, apart from the NCBDDD Scientific Liaison who will:

1. Serve as the Program Official for the funded research institutions.
2. Carry out continuous review of all scientific and administrative activities to ensure objectives are being met.
3. Attend Coordination Committee meetings for purposes of assessing overall progress and for program evaluation purposes.
4. Provide scientific consultation and technical assistance in the conduct of the project as requested.
5. Conduct site visits to recipient institutions to determine the adequacy of the research and to monitor performance against approved project objectives.

Collaborative Responsibilities

The planning and implementation of the cooperative aspects of the study will be effected by a Coordination Committee consisting of the Principal Investigator from the participating institution(s) and the CDC Scientific Liaison. This Coordinating Committee will formulate a plan for cooperative research.

At periodic coordination committee meetings, the group will: (1) Make recommendations on the study protocol and data collection approaches; (2) discuss the target populations that have been or will be recruited; (3) identify and recommend solutions to unexpected study problems; and (4) discuss ways to efficiently coordinate study activities and best practices.

II. Award Information

Part A. DMD During the Newborn Period

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $250,000.

Approximate Number of Awards: One.

Approximate Average Award: $250,000 (this amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award: None.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

Part B. DMD During the Infancy Period

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $250,000.

Approximate Number of Awards: One.

Approximate Average Award: $250,000 (this amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award: None.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years. Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies, such as:

- Public non-profit organizations
- Private non-profit organizations
- Universities
- Colleges
- Non-profit Research Institutions and Hospitals
- State and local governments or their *bona fide* agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A *bona fide* agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a *bona fide* agent of a state or local government, you must provide a letter from the state as documentation of your status. Place this documentation behind the first page of the application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicants must document their present infrastructure, capacity, expertise, and experience (within organization or within organizations of collaborators) in conducting population-based newborn or infant screening and follow-up for genetic diseases.

Applicants must provide specific evidence to substantiate this capacity, experience, and expertise. Through documentation of two pages in length, applicants must provide specific evidence that they can fully meet these eligibility criteria in order to be considered for formal review. This information must be included as part of the application and inserted immediately after the Face Page of the application.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from under-represented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): The LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One-inch margins
- Printed only on one side of page
- Single-spaced
- Written in plain language; avoiding jargon

The LOI must contain the following information: Name, address, and telephone number of the proposed Principal Investigator, number and title of this program announcement, intent to apply under part A or part B or both, names of other key personnel, designations of collaborating institutions and entities, and an outline of the proposed work, recruitment approach, and expected outcomes.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at (770) 488–2700, or contact GrantsInfo, Telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov.*

You must submit a signed original and five copies of your application form. The PHS 398 grant application form requires the applicant to enter the project title on page 1 (Form AA, "Face Page") and the project description (abstract on page 2).

The main body of the application should not exceed 25 single-spaced pages. This narrative research plan should address activities to be conducted over the entire project period.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information may include curriculum vitae and resumes for key project staff, organizational charts, graphic workplan/time charts, letters of commitment, etc.; and should be limited to those items relevant to the requirements of this announcement.

Applicants must include a graphic work plan (which may be placed in the appendices) that outlines major project goals and objectives with timelines established for each calendar quarter covering the entire project period.

All material must be typewritten, with 10 characters per inch type (12 point) on 8½ by 11 inch white paper with one-inch margins, no headers or footers (except for applicant-produced forms such as organizational charts, c. vitae, graphs and tables, etc.). Applications must be held together only by rubber bands or metal clips, and not bound together in any way (including attachments/appendices).

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely

identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Time

Letter of Intent (LOI) Deadline Date: July 14, 2004.

CDC requests that you send an LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and will allow CDC to plan the application review. LOI should include intent to apply under part A or part B or both.

Application Deadline Date: August 9, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are that project funds cannot be used to supplant other available applicant or collaborating agency funds for construction or for lease or purchase of facilities or space.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must be less than 12 months from the application due date.

IV.6. Other Submission Requirements

LOI Submission Address: Lisa T. Garbarino, Public Health Analyst, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87, Atlanta, Georgia 30333. E-mail address: *lgt1@cdc.gov.*

Application Submission Address: Submit the original and five copies of your application by mail or express delivery service to: Technical Information Management—PA 04216, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341. Applications may not be submitted by fax or e-mail at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of outcome and effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological, environmental, and human behavior systems; public health delivery/intervention systems; improvement of the control and prevention of disease and injury; and to enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address the applications' overall score, weighting them as appropriate for each application. The application does not have to be strong in all categories to be judged to have major scientific impact and thus deserve a high priority score.

Under the evaluation criteria noted below, applicants must describe how they will address the program components as they relate to the Purpose and Research Objectives, and the Recipient/Awardee Activities as cited in this Announcement.

Your application will be evaluated against the following criteria:

1. *Resources and Organizational Capacity:*

• This includes applicant infrastructure, experience, and capacity within its organization and/or with partners in early screening and diagnosis programs for genetic conditions, including genetic counseling and other appropriate follow-up activities; and to access target populations for screening.

• This indicates that based on the organizational capacity and resources the proposed project goals and objectives will be relevant, specific, achievable, and measurable; and can be addressed through the proposed methods and within the established timelines.

2. *Methods and Activities:*

• This includes that the proposed methods and activities convincingly and comprehensively meet the intent and purpose of the announcement.

• This considers that the overall process for planning, implementation, and evaluation is comprehensive and appropriate to accomplish the stated goals and objectives.

• This includes that: (a) The methods and activities are feasible within programmatic and fiscal restrictions; (b) the methods will produce accurate, valid and reliable data; (c) the potential capacity of the research design is adequate to generate meaningful results during the study period, the design can be replicated for future use; and (d) adequate and appropriate plans are in place for dissemination of findings and recommendations.

3. *Project Management and Staffing:*

• This criteria includes whether the proposed personnel, staff qualifications and experience and project organization are sufficient to address the planning, operations, and management/analysis activities of the program.

• This includes the process by which the applicant will assemble an effective

team and how the applicant presents specified tasks and responsibilities to be assigned for key personnel and positions.

• This includes how well the proposed approaches to meeting proposed goals and specific objectives are convincing and likely to achieve all objectives within the prescribed time frames.

4. *Evaluation Plan:* This assesses that: (a) Evaluation components described in the announcement have been addressed in the proposal; (b) measurable time-phased goals and objectives are included in the proposal; and (c) the evaluation plan includes a process for evaluation of sub-components and the entire project, including the assignment of responsibility for ongoing review of specified components.

5. *Budget Description and Justification:* This includes the comprehensiveness and adequacy of the proposed budget in relation to program operations, collaborations, and services; and the extent to which the budget is reasonable, clearly justified, accurate, and consistent with the purposes of this research.

6. *Protections:* Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? This criteria will not be scored; however an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

7. *Inclusion:* Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NCBDDD. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements and will not receive further consideration.

Applications, which are complete and responsive, will be subjected to a preliminary evaluation (triage) by a scientific review group (Special Emphasis Panel—SEP) composed of external (non-CDC) peer reviewers to determine if each application is of sufficient technical and scientific merit to warrant further review by the SEP. Applications that are determined to be non-competitive will not be considered. Subsequent to the review meeting CDC will notify the investigator/program director and the official signing for the applicant organization of that determination.

Applications determined to be competitive will then be reviewed and scored under the formal SEP peer review process. The review of these fully competitive applications will result in the determination of the score and ranking for those applications.

Subsequent to the formal peer review of all competitive applications by the SEP a second level of review will be conducted by senior CDC program staff. This review will not revisit the scientific merit of the applications, but will evaluate the overall budget implications of the applications against funding ceilings and may not make recommendations as to the final ordering of the top ranked applications for part A and part B, they may not actually change the ranking order (or scores). It is possible that the second level of review may recommend funding the highest ranked proposal under part A (or part B) and also funding that same organization under its application for the other part of the announcement. That could occur in the event that an organization with the highest ranking in one part ranks among the highest three applicants in the other part. This would be done to take into account economies of scale and establish the capacity to conduct non-redundant programs to best meet the purposes of this announcement. In such a case, the total approved budget may be less than the sum of the two applications due to staff time commitment duplications and other considerations.

V.3. Anticipated Award Date

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 and 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration a the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

• AR–1 Human Subjects Requirements
• AR–2 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research
• AR–10 Smoke-Free Workplace Requirements
• AR–11 Healthy People 2010
• AR–12 Lobbying Restrictions
• AR–14 Accounting Systems Requirements
• AR–15 Proof of Non-Profit Status
• AR–22 Research Integrity
• AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

Interim progress report, (PHS 2590, OMB Number 0925–0001, rev. 5/2001), on a date to be determined for your project for each subsequent budget year. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the

end of the project period. These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section (PGO–TIM), CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Lisa T. Garbarino, Public Health Analyst, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, Mailstop E–87, Atlanta, Georgia 30333. E-mail address: *lgt1@cdc.gov*. Telephone: (404) 498–3979.

For budget assistance, contact: Sylvia Dawson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341. Telephone: (770) 488–2771. E-mail: *snd8@cdc.gov*.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14311 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

HIV Treatment for Research Subjects or by Researchers In Kenya

Announcement Type: New.

Funding Opportunity Number: PA 04264.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Letter of Intent Deadline: Not required.

Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 307 and 317(k)(2)of the Public Health Service Act, [42 U.S.C. 242l and 247b(k)(2)] as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2004 funds for a cooperative agreement program to provide support for organizations conducting bio-medical research related to HIV in Kenya in order to provide treatment to HIV-infected research subjects.

The Global AIDS Program (GAP) has established field operations to support national HIV/AIDS control programs in 25 countries. The CDC's GAP exists to help prevent HIV infection, improve care and support, and build capacity to address the global AIDS pandemic. GAP provides financial and technical assistance through partnerships with governments, community- and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. CDC/GAP works with the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), the U.S. Agency for International Development (USAID), the Peace Corps, the Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including UNAIDS, the Global Fund to Combat HIV, TB and Malaria, World Bank funding, and other private sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the Presidential Emergency Plan for AIDS Relief (PEPFAR). Through this new initiative, CDC's GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. government agencies are already active. Kenya is one of these targeted countries. A specific mandate of this initiative is to provide treatment to HIV-infected participants identified through U.S. government funded research agencies. In addition, the ambitious targets for treatment under this initiative make it imperative to capitalize on any existing technical expertise related to the administration of medical treatment for HIV.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. CDC's program of assistance to Kenya focuses on several areas of national priority including scaling up activities and funding for HIV prevention, care, and treatment, improvement of the national blood safety program, and support for the National AIDS and STD Control Program.

A number of research scientists, working independently or in collaboration with Kenyan institutions such as the University of Nairobi or the Kenya Medical Research Institute have, or will, identify research participants with HIV as part of their research work. Many of these scientists have technical capacity related to the treatment of HIV. Under PEPFAR, CDC Kenya plans to support treatment of HIV-infected individuals by providing funds and additional technical assistance as needed to allow the research groups to implement or expand HIV treatment programs.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They also will contribute to the goals of the PEPFAR which are: within five years treat more than 2 million HIV-infected persons with effective combination anti-retroviral therapy (ART); care for 10 million HIV-infected and affected persons including those orphaned by HIV/AIDS; and prevent 7 million infections in 14 countries throughout the world.

The key specific measurable outcomes from this program will be: (1) The numbers of individuals receiving basic care packages; (2) The number of pregnant women receiving a comprehensive package of PMCT and PMCT+ services; (3) the number of new patients served with ART; and (4) those current ART patients receiving continuous service for more than 12 months.

Activities

Awardee activities for this program are as follows:

- Develop programs to provide care and treatment for people with HIV infection, including, but not limited to, participants in research programs. The individuals to whom services are provided may include both participants in research programs and individuals who are not participating in research (family members, other individuals seen at the same site, individuals seen at other sites). The care should include testing and ongoing counseling, prevention services (for example efforts to reduce risk that an HIV infected individual will transmit HIV to an uninfected partner), diagnosis and management of opportunistic infections, and treatment with antiretroviral (ARV) drugs in accordance with U.S.

Government and Kenya national guidelines.

• Through these programs, provide basic treatment and/or ART to a minimum of 50 people per year for each program.

• Evaluate approaches to the provision of HIV treatment that are in accordance with both Kenya national guidelines, and the requirements of the emergency plan so as to guide implementation of other treatment programs.

• Collect and analyze standardized data on all of these services.

Awardee should ensure that all of the above activities integrate into the national HIV/AIDS strategy and are in line with national guidelines and the guidelines for the implementation of the emergency plan.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Provide technical assistance in clinical, counseling and laboratory issues, training, data management, and program monitoring and evaluation.

• Provide additional commodities that are not provided through this program. For example, antiretroviral drugs may be provided outside of the scope of this cooperative agreement.

• Monitor project and budget performance to ensure satisfactory progress toward the goals of the project.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $7,500,000 (This amount is for the entire project period.)

Approximate Number of Awards: Eight to twelve individual organizations, or one or more consortia.

Approximate Average Award: $150,000. (This amount is for the first 12-month budget period, and includes both direct and indirect costs. This is the anticipated average award for individual organization applicants; the award for consortia would be expected to be higher depending upon the numbers of projects/patients represented.)

Floor of Award Range: $20,000.

Ceiling of Award Range: $1,500,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by U.S.-based or Kenya-based universities or other research organizations that meet the following criteria:

1. Have or will identify HIV-infected individuals through ongoing research work in Kenya.

2. Have technical expertise related to provision of treatment for individuals with HIV as evidenced by relevant training and/or experience.

3. Are able to provide treatment to HIV-infected individuals either through provision of services at the research site or an appropriate nearby site.

1. Propose activities that are consistent with the Kenya Country Operational Plan approved by the PEPFAR coordinator, and contribute to the achievement of PEPFAR targets for Kenya.

Applications may be submitted by individual organization research projects or consortia consisting of one or more research projects.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. The narrative must be submitted in the following format:

• Maximum number of pages: 15. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

• Font size: 12 point unreduced.

• Double spaced.

• Paper size: 8.5 by 11 inches.

• Page margin size: One inch.

• Printed only on one side of page.

• Held together only by rubber bands or metal clips; not bound in any other way.

• All pages should be numbered, and a complete index to the application and any appendices must be included.

• Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, an evaluation framework, a budget highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure. The budget justification will not be counted in the page limit state above. Guidance for completing your budget can be found on the United States government website at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: Organizational charts, curriculum vitas, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4:00 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used for: Training and infrastructure improvements required to establish HIV treatment services; procurement of required equipment and supplies and other commodities; procurement of drugs in line with U.S. Government and Kenyan national guidelines and regulations; payment of salaries, benefits, and travel costs for personnel providing health care or supportive technical or administrative services such as program or data management; and payment of costs for program evaluation that are in line with PEPFAR goals and needs.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior written approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization regardless of their location.
- The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities relating to the implementation of HIV treatment programs.
- An annual audit of these funds is required by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.
- A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for

the purpose of a commercial sex act, 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund, to HHS, the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA 04264, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Ability To Carry Out the Project. (25 Points)

Is the applicant specifically familiar with national guidelines for treatment of HIV in Kenya? Does the applicant document appropriate technical capacity to implement the program?

2. Ability To Identify Appropriate Recipients for These Program Services (20 Points)

Is the applicant identifying HIV-infected subjects through an existing research project? Is the applicant conducting a program that identifies or will identify HIV-infected individuals? Preference will be given to programs currently conducting research projects using U.S. government funds; however, organizations are eligible for funding regardless of the source of the research funding.

Identification of HIV-infected persons through research is a requirement for this funding; however, preference will be given to programs that can provide treatment to large numbers of individuals. The individuals to whom services are provided may include both participants in research programs and individuals who are not participating in research (family members, other individuals seen at the same site, individuals seen at other sites).

3. Plans for Administration and Management of the Project (20 Points)

Are there adequate plans for administering the project? Does the applicant have the capacity to provide treatment to at least 50 people by March 31, 2005? Does the applicant have the capacity to collect and report data related to the measurable outcomes that will contribute to PEPFAR targets? Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

4. Personnel (20 Points)

Are the professional personnel involved in this project qualified, including evidence of technical expertise in providing treatment for HIV, evaluating and reporting on program experience, and reporting data in a timely manner? Do the personnel have appropriate technical qualifications?

4. Administrative and Accounting Plan (15 Points)

Is there a plan to account for, prepare reports, monitor and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

5. Budget (Not Scored, but Evaluated)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities? Does the budget reflect a commitment to ensure that per patient costs are reasonable in the context of providing treatment for large numbers of people in Kenya? For example, is the number of proposed health care providers appropriate for the number of individuals receiving treatment? Is the percentage of funds designated for administrative overhead reasonable?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD and TB Prevention (NCHSTP). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "Criteria" section above.

No award will be made without the concurrence of the U.S. Embassy and the CDC representative in Kenya.

V.3. Anticipated Announcement and Award Date

August 15, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–14 Accounting System Requirements.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. In year one, quarterly progress reports, due 30 days after the end of each quarter. In subsequent years, a semi annual progress report, due 30 days after the end of the budget period.
2. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
3. Financial status report, no more than 90 days after the end of the budget period.
4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Barbara Marston, M.D., Project Officer, Global Aids Program [GAP], Kenya Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 606 Village Market, Nairobi, Kenya, Telephone: 254–20–271–3008, e-mail: *bmarston@kisian.mimcom.net.*

For budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, e-mail: *dmf6@cdc.gov.*

VIII. Other Information

None.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14305 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of Prevention of Mother To Child Transmission Services in Kenya

Announcement Type: New.

Funding Opportunity Number: PA 04263.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Letter of Intent Deadline: Not required.

Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 242l and 247b(k)(2)] as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2004 funds for a cooperative agreement program to support the implementation of a Prevention of Mother-to-Child HIV transmission (PMTCT) program in facilities offering Maternal and Child Health services (MCH) in Kenya.

This program should include HIV counseling and testing in antenatal clinics (ANC) and maternity wards, provision of prophylactic antiretroviral (ARV) drugs, basic medical care including prevention and treatment of opportunistic infections, and antiretroviral therapy (ART) for HIV infected women and their families (PMTCT+).

The Global AIDS Program (GAP) has established field operations to support national HIV/AIDS control programs in 25 countries. The CDC's GAP exists to help prevent HIV infection, provide care and support, and build capacity to address the global AIDS pandemic. GAP provides financial and technical assistance through partnerships with governments, community- and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. CDC/GAP works with the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), the U.S. Agency for International Development (USAID), the Peace Corps, the Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including UNAIDS, the Global Fund to Combat HIV, TB and Malaria, World Bank funding, and other private sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the Presidential Emergency Plan for AIDS Relief (PEPFAR). Through this new initiative, CDC's GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and

(3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. government agencies are already active. Kenya is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic.

The goal of the Kenya government PMTCT program is to increase access of PMTCT services so as to reach at least 50 percent of all health facilities by the end of 2005 and at least 80 percent by 2007.

CDC Kenya has supported the national effort by supporting implementation in facilities in 22 of the 74 districts in Kenya through collaborative or contractual agreements with local and international non-governmental organizations (NGO). These organizations have supported PMTCT implementation through infrastructure improvement, capacity building and coordination, and supervision of PMTCT implementation. This has contributed significantly to the up-scaling of the national PMTCT program. CDC, therefore, wishes to engage the services of NGOs to continue supporting PMTCT implementation activities in Kenya.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They will also contribute to the goals of the PEPFAR which are: (1) Within five years treat more than two million HIV-infected persons with effective combination ART; (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent ten million new infections. Some of the specific measurable outcomes from this program will be: (1) The number of antenatal and maternity clients receiving counseling and testing; (2) number of HIV positive women and their children who receive prophylactic antiretroviral drugs; (3) the number of patients receiving basic care packages; (4) the number of new patients served with ART and patients on ART receiving continuous care for more than 12 months; and (5) the number of health care workers trained in PMTCT and PMTCT + services.

Activities: Awardee activities for this program are as follows:

- To provide technical assistance in program implementation to managers of maternal child health services at Ministry of Health (MOH) facilities and other health facilities in Kenya.
- To train service providers in HIV counseling and testing in the ANC and maternity wards, on prophylactic anti-retroviral regimens, in prevention and treatment of opportunistic infections and on lifelong ART for HIV infected women and their families.
- To provide supportive supervision, and ensure that PMTCT services are being implemented according to the national and international standards.
- Where necessary, hire extra personnel to alleviate problems of implementation due to staff shortages
- To enhance the capacity of health facilities to integrate PMTCT data into the national reporting system.
- To assist the facilities in report writing on the program.
- To collaborate with the District health management teams and local stakeholders including associations of people living with HIV in sensitizing the communities on PMTCT through community education, male involvement and establishment of community support structures.
- To develop strategies to improve the capacity of the health facilities to maintain the PMTCT services independently.

Awardee will ensure that all of the above activities integrate into the national HIV/AIDS strategy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance in clinical, counseling and laboratory issues, training, data management and program monitoring and evaluation
- Collaborate with the recipient, as needed, in the development of an information technology system for medical record keeping and information access and in the analysis of data derived from the records.
- Assist, as needed, in monitoring and evaluation of program and in development of further appropriate intervention strategies.
- Monitor project and budget performance to ensure satisfactory progress towards the goals of the project

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $5,000,000 (This amount is for the entire project period.).

Approximate Number of Awards: Three.

Approximate Average Award: $300,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.).

Floor of Award Range: $250,000.

Ceiling of Award Range: $500,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by international non-profit organizations, Kenyan non-profit organizations, universities or colleges, and international and Kenyan faith-based organizations that meet the following criteria:

1. Have at least three years of documented experience in implementing PMTCT programs in Kenya; and
2. Have an existing program in Kenya because it is critical that this activity commences quickly.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 15. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Double spaced.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered, and a complete index to the application and any appendices must be included.
- Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, an evaluation framework, a budget highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure. The budget justification will not be counted in the page limit stated above. Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: organizational charts, curriculum vitas, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used for: Hiring of staff needed to provide services; training service providers; coordination of the program; purchase of supplies, equipment, and commodities (including antiretroviral drugs) needed to provide the services; renovation of clinical facilities at site of program implementation; and sensitization of the community on PMTCT services.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior written approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.
- An annual audit of these funds is required by a U.S. based audit firm with

international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

• A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Prostitution and Related Activities. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits. condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA 04263, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals. stated in the "Purpose" section of this announcement.

Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Understanding the Issues Relating to the HIV Prevalence in Women in Kenya, and Developing a Creative and Innovative Approach To Preventing Mother to Child HIV Transmission (30 Points)

Does the applicant demonstrate an understanding of the social, behavioral, and contextual issues relating to the mother to child transmission of HIV? Does the applicant demonstrate creative and innovative ideas for addressing this problem?

2. Ability To Carry Out the Proposal (25 Points)

Does the applicant demonstrate the capability to achieve the purpose of this proposal? Does the applicant have demonstrated ability to provide technical support to set up and operate an intervention program in partnership with government and non-government health facilities?

3. Personnel (20 Points)

Are the key technical personnel involved in this project qualified, including evidence of at least three years experience in providing PMTCT

interventions in Kenya? Do the technical personnel have demonstrated capacity for creative approaches to complex problems?

4. Plans for Administration and Management of the Project(15 Points)

Does the applicant describe activities, which are realistic, achievable, time-framed and appropriate to complete this program?

5. Administrative and Accounting Plan (10 Points)

Is there a plan to account for, prepare reports, monitor and audit expenditures under this agreement, manage the resources of the program, and produce, collect and analyze performance data?

6. Budget (Not Scored, but Evaluated)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD and TB Prevention (NCHSTP). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "Criteria" section above. In addition, the following factors may affect the funding decision:

- Geographic distribution—to ensure that funding is not concentrated in any one catchment area.
- Number of persons to be treated.
- No award will be made without the concurrence of the U.S. embassy and the CDC representative in Kenya.

V.3. Anticipated Announcement and Award Date

August 15, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–14 Accounting System Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. In year one, quarterly progress reports, due 30 days after the end of each quarter. In subsequent years, a semi-annual progress report, due 30 days after the end of the budget period.

2. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Dorothy Mbori-Ngacha, MBChB, MMed, MPH, Senior Technical Advisor, PMTCT, Global Aids Program [GAP], Centers for Disease Control and Prevention [CDC], PO Box 606 Village Market, Nairobi, Kenya, Telephone: 256–20–271–3008, E-mail: *Dngacha@cdcnairobi.mimcom.net.*

For budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov.*

VIII. Other Information

None.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14307 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of Programs for Prevention of Mother to Child HIV Transmission Through Indigenous Non-Governmental Organizations (NGOs) in Kenya

Announcement Type: New.

Funding Opportunity Number: PA 04262.

Catalog of Federal Domestic Assistance Number: 93.941.

Key Dates:

Letter of Intent Deadline: Not required.

Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 307 and 317(k)(2)of the Public Health Service Act, [42 U.S.C. Sections 242l and 247b(k)(2)] as amended and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability for Fiscal Year (FY) 2004 funds for a cooperative agreement program to provide technical assistance and funding to local organizations in Kenya to enable them to support the implementation of a

Prevention of Mother-to-Child HIV Transmission (PMTCT) program in Ministry of Health (MOH) facilities and other facilities offering Maternal and Child Health services (MCH).

This program should include HIV counseling and testing in the antenatal clinics (ANC) and maternity wards, provision of prophylactic antiretroviral (ARV) drugs, basic medical care including prevention and treatment of opportunistic infections and anti-retroviral therapy (ART) for HIV infected women and their families (PMTCT+).

The Global AIDS Program (GAP) has established field operations to support national HIV/AIDS control programs in 25 countries. The CDC's GAP exists to help prevent HIV infection, provide care and support, and build capacity to address the global AIDS pandemic. GAP provides financial and technical assistance through partnerships with governments, community- and faith-based organizations, the private sector, and national and international entities working in the 25 resource-constrained countries. CDC/GAP works with the Health Resources and Services Administration (HRSA), the National Institutes of Health (NIH), the U.S. Agency for International Development (USAID), the Peace Corps, the Departments of State, Labor and Defense, and other agencies and organizations. These efforts complement multilateral efforts, including UNAIDS, the Global Fund to Combat HIV, TB and Malaria, World Bank funding, and other private sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the Presidential Emergency Plan for AIDS Relief (PEPFAR). Through this new initiative, CDC's GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training. Targeted countries represent those with the most severe epidemics where the potential for impact is greatest and where U.S. government agencies are already active. Kenya is one of these targeted countries.

To carry out its activities in these countries, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic.

The goal of the Kenya government PMTCT program is to increase access of PMTCT services so as to reach at least 50 percent of all health facilities by the end of 2005 and at least 80 percent by 2007. This will require involvement of all sectors in implementation. To date indigenous NGOs have contributed significantly in supporting implementation in both government and non-government facilities. These indigenous organizations bring special expertise to the process by virtue of their knowledge of the Kenyan health systems and the local culture. There is added advantage in working with these groups due to their long and on-going presence on the ground and their intimate direct experience of the effects of the epidemic.

CDC proposes to enhance the capacity of these organizations to support the implementation of PMTCT programs in Kenya. CDC Kenya is committed to strengthening and supporting indigenous NGOs to continue to facilitate implementation of PMTCT services in various facilities in Kenya.

The measurable outcomes of the program will be in alignment with goals of the GAP to reduce HIV transmission and improve care of persons living with HIV. They will also contribute to the goals of the PEPFAR which are: (1) Within five years treat more than two million HIV-infected persons with effective combination of anti-retroviral therapy (ART); (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent ten million new infections. Some of the specific measurable outcomes from this program will be: (1) The number of antenatal and maternity clients receiving counselling and testing; (2) number of HIV positive women and their children who receive prophylactic antiretroviral drugs; (3) the number of patients receiving basic care packages; (4) the number of new patients served with anti-retroviral treatment and the number of patients on ART receiving continuous care for more than 12 months; and (5) the number of health care workers trained in PMTCT and PMTCT+ services.

Activities: Awardee activities for this program are as follows:

- To provide technical assistance in program implementation to managers of maternal and child health services at MOH facilities and other facilities in Kenya.
- To train service providers in HIV counseling and testing in the ANC and maternity wards, on prophylactic anti-retroviral regimens, in prevention and treatment of opportunistic infections and on lifelong antiretroviral therapy for HIV infected women and their families.
- To provide supportive supervision and ensure that PMTCT services are being implemented according to the national and international standards.
- Where necessary, to hire extra personnel to alleviate problems of implementation due to staff shortages.
- To enhance the capacity of health facilities to integrate PMTCT data into the national reporting system.
- To assist the facilities in report writing on the program.
- To collaborate with the District health management teams and local stakeholders including associations of people living with HIV in sensitizing the communities on PMTCT through community education, male involvement and establishment of community support structures.
- To develop strategies to improve the capacity of the facilities to maintain the PMTCT services independently.

Awardee will ensure that all of the above activities integrate into the national HIV/AIDS strategy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance in clinical, counseling and laboratory issues, training, data management, and program monitoring and evaluation.
- Collaborate with the recipient, as needed, in the development of an information technology system for medical record keeping and information access and in the analysis of data derived from those records.
- Assist, as needed, in monitoring and evaluation of program and in development of further appropriate initiatives.
- Provide fiscal oversight and technical assistance in the areas of financial management, administration, personnel management, data management and other aspects of institution strengthening.
- Monitor project and budget performance to ensure satisfactory progress towards the goals of the project.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $5,000,000 (This amount is for the entire project period.).

Approximate Number of Awards: Two to Three.

Approximate Average Award: $300,000 (This amount is for the first 12-month budget period, and includes only direct costs).

Floor of Award Range: $250,000.

Ceiling of Award Range: $500,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may only be submitted by indigenous Kenyan organizations, indigenous universities or colleges, and indigenous Kenyan faith-based organizations that meet the following criteria:

1. Have at least three years of documented experience in implementing PMTCT programs in Kenya.

2. Have an existing program in Kenya because it is critical that this activity commences quickly.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 15. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced.
- Paper size: 8.5 by 11 inches.
- Double spaced.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered, and a complete index to the application and any appendices must be included.
- Submitted in English

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, an evaluation framework, a budget highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure. The budget justification will not be counted in the page limit state above. Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: organizational charts, curriculum vitas, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may be used for: Hiring of staff needed to provide services; Training service providers; Coordination of the program; purchase of supplies, equipment, and commodities (including antiretroviral drugs) needed to provide the services; renovation of clinical facilities at site of program implementation; and

sensitization of the community on PMTCT services.

• Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.

• Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

• Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior written approval by CDC officials must be requested in writing.

• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program, however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are requested.

• An annual audit of these funds is required by a U.S. based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

• A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. *Restoration of the Mexico City Policy,* 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.,* "[Recipient's name] certifies compliance with the section, "Prostitution and Related Activities.") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to:

Technical Information Management-PA 04262, CDC Procurement and Grants

Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. *Understanding the issues relating to the HIV prevalence in women in Kenya, and developing a creative and innovative approach to preventing mother to child HIV transmission* (30 points).

Does the applicant demonstrate an understanding of the social, behavioral, and contextual issues relating to the mother to child transmission of HIV? Does the applicant demonstrate creative and innovative ideas for addressing this problem?

2. *Ability to carry out the proposal* (25 points).

Does the applicant demonstrate the capability to achieve the purpose of this proposal? Does the applicant have demonstrated ability to set up and operate an intervention program in Ministry of Health facilities in Kenya? Does the applicant have demonstrated ability to set up and operate an intervention program in non-governmental facilities?

3. *Personnel* (20 points).

Are the key technical personnel involved in this project qualified, including evidence of at least three years experience in providing PMTCT HIV interventions in health facilities in Kenya? Do the technical personnel have demonstrated capacity for creative approaches to complex problems?

4. *Plans for Administration and Management of the Project* (15 points).

Does the applicant describe activities, which are realistic, achievable, time-framed and appropriate to complete this program?

5. *Administrative and Accounting Plan* (10 points).

Is there a plan to account for, prepare reports, monitor and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

6. *Budget (not scored, but evaluated).*

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD and TB Prevention (NCHSTP). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "Criteria" section above.

No award will be made without the concurrence of the U.S. Embassy and the CDC representative in Kenya.

V.3. Anticipated Announcement and Award Date

August 15, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–14 Accounting System Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. In year one, quarterly progress reports, due 30 days after the end of each quarter. In subsequent years, a semi-annual progress report, due 30 days after the end of the budget period.

2. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

3.Financial status report, no more than 90 days after the end of the budget period.

4.Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Dorothy Mbori-Ngacha, MBChB, MMed, MPH, Senior Technical Advisor PMTCT, Global Aids Program [GAP], Centers for Disease Control and Prevention [CDC], PO Box 606 Village Market, Nairobi, Kenya, Telephone: 256–20–271–3008, E-mail: *Dngacha@cdcnairobi.mimcom.net.*

For budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov.*

VIII. Other Information

None.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14309 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Morbidity and Risk Behavior Surveillance

Announcement Type: New.

Funding Opportunity Number: 04155.

Catalog of Federal Domestic Assistance Number: 93.944.

Key Dates:

Application Deadline: July 26, 2004.

Executive Summary: HIV/AIDS surveillance programs function in all U.S. states to collect a core set of information on the characteristics of persons diagnosed with, living with, and dying from HIV infection and AIDS. Supplemental surveillance projects have historically provided complementary information about clinical outcomes of HIV infection, and behaviors of persons with HIV infection with respect to care seeking and utilization of care (which affect prevention of HIV-related morbidity) and ongoing risk behaviors (which affect further transmission of HIV).

Supplemental surveillance projects initiated in the 1990s were funded at a time when the HIV epidemic was substantially more concentrated in large cities, especially in the East and the West. Currently, a much larger number of cities and states are heavily impacted by the HIV epidemic. Supplemental surveillance data are thus needed on a national basis (e.g., beyond the currently funded supplemental surveillance sites) to understand the provision and impact of treatments for HIV, health care utilization, ongoing HIV risk behaviors, care seeking behaviors, quality of life for persons with HIV infection, and acceptance of and adherence to prescribed antiretroviral therapy. These data will be especially important as a means of evaluation for new prevention initiatives (e.g., Advancing HIV Prevention) which call for a focus on provision of prevention services to persons living with HIV infection.

There is also a need for high-quality, population-based data on quality of care and severity of need for care, prevention, and support services on the local level to assist local planning groups (i.e. Community Planning Groups and local planning councils) in determining local allocation of CDC and Ryan White CARE Act funds.

In order to implement a supplemental surveillance system which will address these data needs, CDC has developed a study design which will rely on a national probability sample of persons with HIV infection to generate nationally representative estimates of clinical outcomes and HIV-related behaviors. The methodology has been demonstrated as appropriate for this purpose by the Health Care Services and Utilization Survey, conducted in the mid-1990s by the RAND Corporation. CDC has contracted with the RAND Corporation to draw a nationally representative sample of states using probability proportional to size methods. Based on availability of resources, 20 states were selected by RAND. Cities separately funded for HIV surveillance were deemed eligible for funding if their state was selected for funding. This resulted in 26 sites (20 states and 6 cities) being eligible for funding.

In the 20 selected states, HIV care providers will be randomly selected to participate in the study. For patients randomly selected from these providers, data on HIV care will be abstracted from medical records, and the patients will be offered participation in an interview. CDC has piloted these methods for population-based patient selection since 1998 in 12 sites in the Survey of HIV Disease and Care (SHDC) project.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act Sections 301 (42 U.S.C. 241); 318B (42 U.S.C. 247c–2), as amended.

Purpose: The purpose of the program is to develop a supplemental HIV/AIDS surveillance system which will produce population-based estimates of characteristics of persons with HIV infection and the care they receive. By using probability sampling, estimates developed will be rigorously representative of the underlying populations diagnosed with and in care for HIV infection in the United States and in the participating project sites.

Measurable outcomes of the program will be in alignment with the following goal for the National Center for HIV, STD and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

Activities: Awardee activities for this program are as follows:

Year 1 Activities (September 2004–May 2005—9 Months)

For sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS) and either Adult Spectrum of Disease (ASD) or Survey of HIV Disease in Care (SHDC) in the past; or that are currently conducting Survey of HIV Disease in Care-Plus (SHDC+) (successful completion is defined as having transmitted abstraction or interview data to CDC as of May 17, 2004) (see eligibility criteria):

- Soon after receipt of funds, attend a principal investigators meeting at CDC to review and finalize the project protocol and data collection instruments.
- Assist in the development and review of the required protocols and data collection instruments.
- Work with providers of HIV/AIDS care to educate them about the surveillance project, determine potential barriers to provider participation, and work to improve the likelihood of provider and patient participation in this activity.
- Work with CDC to develop a database and database management capability for this project.
- Develop a de-duplicated list of HIV/AIDS care providers in the jurisdiction using data from the HIV/AIDS Reporting System (HARS).
- Provide the list of providers (by unique identifier or non-identifying code determined by CDC), to CDC and to a CDC contractor for development of a sample of providers.
- Approach selected providers to solicit the providers' participation in the project. Work with selected providers to secure human subjects review (if required).
- Participate in required training activities: send appropriate staff members to interviewer, abstractor, and data manager training meetings before beginning data collection.
- Abstract the medical records of sampled patients for variables related to clinical care and outcomes as determined in collaboration with CDC.
- Work with sampled HIV/AIDS care providers to contact sampled HIV-infected persons to conduct personal interviews. During the interview, patients will be asked about care seeking and ongoing risk behaviors as well as multiple sources of care during the surveillance period. Consent for release of medical records will be obtained if possible, and every effort will be made to contact all providers of care named for each sampled participant during the surveillance

period and review and abstract medical records at those sites.

• Maintain an electronic database of information linked to interview and chart review data; periodically transmit this data to CDC with patient unique identifier. No individual patient names will be transmitted to CDC or to the CDC contractor.

• Data security: Protect data in accordance with "Appendix C" of CDC's "Guidelines for HIV/AIDS Surveillance." Applicant must ensure that the program requirements detailed in the Security Standards are attained.

• Participate in periodic conference calls and grantee meetings with other funded sites and the CDC.

• Disseminate findings jointly with CDC and other participating sites.

Sampled sites that have successfully conducted either Adult Spectrum of Disease (ASD) or Survey of HIV Disease in Care (SHDC), but that have not conducted Supplement to HIV/AIDS Surveillance (SHAS) (see eligibility criteria) will conduct all startup activities listed above except the patient interview.

Sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS), but that have not conducted Survey of HIV Disease in Care (SHDC) or Adult Spectrum of Disease (ASD) in the past (see eligibility criteria) will conduct all startup activities listed above in year 1 except the abstraction of medical records.

Sampled sites that have not conducted Adult/Adolescent Spectrum of HIV Disease (ASD), or Supplement to HIV/AIDS Surveillance (SHAS), or successfully conducted Survey of HIV Disease in Care (SHDC), will conduct all startup activities listed above in year 1 except data collection, participation in interviewer training, and participation in abstractor training.

Year 2 Activities (June 2005–May 2006)

All funded sites will conduct medical record abstractions and interviews during calendar year 2006 for care occurring during calendar year 2005.

• Participate in required training activities: send appropriate staff members to interviewer, abstractor, and data manager training meetings.

• Continue to abstract medical records and interview patients selected in year 1.

• In preparation for data collection in year 3, sites will develop a new de-duplicated list of HIV/AIDS care providers in the jurisdiction, using data from the HIV/AIDS Reporting System (HARS).

• Provide the list of providers (by unique identifier or non-identifying code determined by CDC) to CDC and to a CDC contractor for development of a sample of providers.

• Approach selected providers to solicit participation in the project. Work with selected providers to secure human subjects review (if required).

• Abstract the medical records of sampled patients for variables related to clinical care and outcomes as determined in collaboration with CDC.

• Work with sampled HIV/AIDS care providers to contact sampled HIV-infected persons to conduct personal interviews. During the interview, patients will be asked about care seeking and ongoing risk behaviors as well as multiple sources of care during the surveillance period. Consent for release of medical records will be obtained if possible, and every effort will be made to contact all providers of care named for each sampled participant during the surveillance period and review and abstract medical records at those sites.

• Maintain a database of linked interview and chart review data; periodically transmit this data to CDC with patient unique identifier. No individual patient names will be transmitted to CDC or to the CDC contractor.

• Data security: Protect data in accordance with "Appendix C" of CDC's "Guidelines for HIV/AIDS Surveillance." Applicant must ensure that the program requirements detailed in the Security Standards are attained.

• Participate in periodic conference calls and grantee meetings with other funded sites and the CDC.

• Disseminate findings jointly with CDC and other participating sites.

Year 3 Activities (June 2006–May 2007)

• Repeat cycle of chart abstractions and interviews for persons in care for HIV infection.

Year 4 (June 2007–May 2008)

• Repeat cycle of chart abstractions and interviews for persons in care for HIV infection.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Assist in the development and review of the core components of protocols.

• Participate in joint conference calls, grantee meetings, and site visits.

• Jointly disseminate findings.

• Collaborate with the CDC-funded contractor to develop a sample of HIV/AIDS care providers from the list of providers developed by the grantee.

• Collaborate with the CDC-funded contractor to develop a sample of HIV-infected persons from the list of patients developed by the sampled providers.

• Provide training and technical support for data abstractors and interviewers, including technical support for electronic data collection and data transfer to CDC.

• Provide training and technical support for data management and data analysis.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004, 2005, 2006, 2007.

Approximate Total Funding: $41,000,000.

Approximate Number of Awards: 26 awards.

Approximate Average Award:

Year 1 (September 2004–May 2005, 9 Months)

Sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS) and either Adult Spectrum of Disease (ASD), Survey of HIV Disease in Care (SHDC) in the past; or that are currently conducting Survey of HIV Disease in Care-Plus (SHDC+) will receive approximately $375,000 each in year 1.

Sampled sites that have successfully conducted either Adult Spectrum of Disease (ASD), Survey of HIV Disease in Care (SHDC) but that have not conducted Supplement to HIV/AIDS Surveillance (SHAS) will receive approximately $200,000 each in year 1.

Sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS), but that have not conducted Survey of HIV Disease in Care (SHDC) or Adult Spectrum of Disease (ASD) in the past will receive approximately $270,000 each in year 1.

Sampled sites that have not conducted Adult/Adolescent Spectrum of HIV Disease (ASD), or Supplement to HIV/AIDS Surveillance (SHAS), or successfully conducted Survey of HIV Disease in Care (SHDC) will receive approximately $140,000 each in year 1.

Years 2, 3 and 4

For all grantees, budgets for collecting chart abstraction data and interviews for persons in care for HIV infection will be approximately equal for years 2, 3 and 4. Average budgets will be as follows, based on the number of matched medical record abstractions/interviews allocated by random sampling:

- 1000 abstractions/interviews: $900,000–$1,100,000
- 800 abstractions/interviews: $700,000–$900,000
- 500 abstractions/interviews: $500,000–$700,000
- 400 abstractions/interviews: $450,000–$550,000
- Less than or equal to 200 abstractions/interviews: $150,000–$300,000

All eligible applicants that are technically acceptable will be funded. Funding levels will be determined based on number of abstractions and interviews to be performed, and site-specific variations in cost. For the number of records to be collected, see Appendix I, as posted on the CDC Web site.

Floor of Award Range: $100,000.

Ceiling of Award Range: $1,100,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: Year 1: 9 months; Year 2–4: 12 months.

Project Period Length: 3 years, 9 months.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government. If full funding is not available, number of matched medical record abstractions/interviews allocated by random sampling may be reduced.

III. Eligibility Information

Eligible Applicants

Eligible applicants are limited to those jurisdictions randomly sampled by the RAND Corporation in a national probability sample. Following are the jurisdictions sampled: California; Chicago, IL; Delaware; Florida; Georgia; Houston, TX; Illinois; Indiana; Los Angeles, CA; Maryland; Massachusetts; Michigan; Mississippi; New Jersey; New York; New York City, NY; North Carolina; Oregon; Pennsylvania; Philadelphia, PA; Puerto Rico; San Francisco, CA; South Carolina; Texas; Virginia; and Washington.

Sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS) and either Adult Spectrum of Disease (ASD) or Survey of HIV Disease in Care (SHDC), or are currently conducting Survey of HIV Disease in Care-Plus (SHDC+) are: Georgia; Houston, TX; Los Angeles, CA; Michigan; New Jersey; and Washington.

Sampled sites that have successfully conducted either Adult Spectrum of Disease (ASD) or Survey of HIV Disease in Care (SHDC) but that have not conducted Supplement to HIV/AIDS Surveillance (SHAS) are: New York City, NY and Puerto Rico.

Sampled sites that have successfully conducted Supplement to HIV/AIDS Surveillance (SHAS), but that have not conducted Survey of HIV Disease in Care (SHDC) or Adult Spectrum of Disease (ASD) are: Delaware; Florida; Illinois; Maryland; Philadelphia, PA; South Carolina; and Texas.

Sampled sites that have not conducted Adult/Adolescent Spectrum of HIV Disease (ASD), or Supplement to HIV/AIDS Surveillance (SHAS), or successfully conducted Survey of HIV Disease in Care (SHDC) are: California; Chicago, IL; Indiana; Massachusetts; Mississippi; North Carolina; New York State; Oregon; Pennsylvania; San Francisco, CA; and Virginia.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Paper margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative plan should address activities to be conducted over the entire project period, and must include the following items in the order listed: Plan, Methods, Objectives, Timeline, Staff, Understanding, Need, Performance Measures, Budget and Justification. The budget justification will not be counted in the stated page limit.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- None

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA#04155, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Note: All technically acceptable applications will be awarded appropriate funds. Your application will be evaluated against the following criteria:

1. Methods (40 points): The extent to which the proposed methods are feasible, will accomplish program goals, addresses the required follow-up activities and methods in a timely manner. Specific methods for accomplishing the following technical activities should be described.

2. Capacity (30 points): The extent to which the applicant has the appropriate facilities and staff to conduct this research; the extent to which the primary investigator is well qualified, by education and experience, to lead the project team, hire and train appropriate staff, and provide scientific oversight; the extent to which job descriptions and curricula vitae for both the proposed and current staff indicate the ability to carry out the purposes of the program.

3. Objectives (20 points): The extent to which the objectives are reasonable, time-phased and measurable. The extent to which the applicant provides reasonable methods to evaluate their progress toward the timely accomplishment of objectives.

4. Proposed data uses (10 points): The extent to which data have, or will, assist in HIV prevention and care activities, so that these data are used in formulating strategies and targeting resources for improving quality of care for HIV infection and, if applicable, getting HIV infected persons into care in a timely manner.

5. Budget (not scored): The extent to which the budget is reasonable, clearly itemized and justified, and consistent with the intended use of funds.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the NCHSTP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement and Award Dates

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 90 days before the end of the first 12 month budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives

b. Current Budget Period Financial Progress

c. New Budget Period Program Proposed Activity Objectives

d. Budget

e. Additional Requested Information

f. Measures of Effectiveness

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Patrick Sullivan, DVM, PhD, Extramural Project Officer, 1600 Clifton Road, MS E–46, Atlanta, Georgia 30333, Telephone: 404–639–2090, E-mail: *msw6@CDC.GOV*.

For financial, grants management, or budget assistance, contact: Ann Cole, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2731, E-mail: *zlr5@cdc.gov*.

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14310 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening HIV Counselor Training in the Republic of Uganda; Notice of Availability of Funds

Announcement Type: New.
Funding Opportunity Number: Program Announcement 04224.
Catalog of Federal Domestic Assistance Number: 93.941.
Key Dates:
Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 307 of the Public Health Service Act, [42 U.S.C. Section 241 and 242*l*, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 215lb], as amended.

Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Strengthening HIV Counselor Training in the Republic of Uganda. This program addresses the "Healthy People 2010" focus area(s) HIV.

The overall aim of this program is to: (1) Improve the capacity of HIV counselor training providers in Uganda to meet expanding need for counselors; (2) to develop new messages adapted to complex HIV issues and strategies; and (3) to ensure the quality of training.

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia and the Americas. The President's Emergency Plan for AIDS Relief (PEPFAR) encompasses HIV/AIDS activities in more than 75 countries and focuses on 14 countries, including Uganda, to develop comprehensive and integrated prevention, care and treatment programs. CDC has initiated its Global AIDS Program (GAP) to strengthen capacity and expand activities in the areas of: (1) HIV primary prevention; (2) HIV care, support and treatment; and (3) capacity and infrastructure development including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential impact is greatest and where the United States government agencies are already active. Uganda is one of those countries.

CDC's mission in Uganda is to work with Ugandan and international partners to develop, evaluate, and support effective implementation of interventions to prevent HIV and related illnesses and improve care and support of persons with HIV/AIDS.

HIV counselor training in Uganda started about 15 years ago. Counselor training has grown, but it has grown haphazardly with many providers but little coordination of curriculum or quality control. Counseling skills are not yet a routine element of pre-service training for medical professionals. New curriculum development is needed to cover rapidly evolving issues such as antiretroviral therapy (ART), prevention of Mother to Child Transmission (PMTCT), home based counseling and testing, basic preventative care, routine counseling and testing (RCT) in clinical settings, and prevention with positives (PWP) counseling. In addition, the curriculum will include approaches that counselors can use to implement the ABC approach (that promotes abstinence until marriage, being faithful after HIV testing, and proper use of condoms.) Curriculum content, skills levels, and training duration need to be graded in accordance with the level and intensity of counseling to be provided by the trainee in the context of their work. Certification of qualifications within a common framework and accreditation of training providers are all key steps required to improve quality. Major NGO training providers need institutional development support in increasing their training output capacity to meet the demands of growing programs under the HIV/AIDS National Strategy. Without rapid impact in the area of counselor training, the lack of quality counseling as well as the limited number of counselors could become a major constraint in delivering increases in voluntary counseling and testing (VCT), RCT, PMTCT, basic care and ART.

The purpose of this program is to ensure that Uganda is able to meet its expanding need for quality HIV/AIDS counseling at different levels. The program will work with the Ministry of Health (MOH) and other stakeholders to review training needs, curricula, supply and demand, and delivery strategies. Training strategies and revised and new curricula will be developed to address gaps. Competencies will be determined for different levels of counseling and modular curricula will be developed for different target groups. Capacity building in the form of skills and organizational development will be provided to key training organizations to implement the new curricula and strategies and increase their trainee output. Support will be provided to the

formation and development of an appropriate coordinating mechanism such as a professional body for counselors to work closely with the MOH and other stakeholders on issues such as quality assurance of training, curriculum coordination, certification, and standards and professional ethics.

The measurable outcomes of the program will be in alignment with goals of the Global AIDS Program to reduce HIV transmission and improve care of persons living with HIV (PLWH). They also will contribute to the PEPFAR goals for Uganda, which are: (1) Within five years treat more than two million HIV-infected persons with effective combination anti-retroviral therapy; (2) care for seven million HIV-infected and affected persons including those orphaned by HIV/AIDS; and (3) prevent 10 million new infections. A specific measurable outcome of this program is expected to be an increase in annual certified HIV counselor output in Uganda.

Activities

Awardee activities for this program are as follows:

a. Identify project staffing needs; hire and train staff.

b. Identify vehicles, furnishings, fittings, equipment, computers and other fixed assets procurement needs of the program and acquire from normal sources.

c. Establish suitable administrative and financial management structures and a project office if required.

d. Conduct a comprehensive national assessment of HIV counselor training, looking at: curricula; demand; supply; and the size and nature of priority target groups for training and other related issues. Develop, with stakeholders, a strategy to address gaps.

e. Determine competencies for different levels of counseling.

f. Develop and field test modular curricula, including visual aides and job aides, for different target groups, ensure inclusion of new issues such as ARV, PMTCT, Home-based VCT, PWP, etc. and pre-test curricula.

g. Support HIV counselor training organizations to implement the new curricula and build the capacity of their training units to supply the demand for quality counselors.

h. Coordinate with stakeholders to implement an increase in HIV counselor training capacity in a manner which is responsive to demand and addresses critical gaps.

i. Work with stakeholders to incorporate counseling skills in pre-service training for relevant professions.

j. Support the establishment and development of an umbrella professional body for counselors.

k. Work with stakeholders and the professional counseling body to establish systems for counselor training, quality assurance, accreditation and certification.

l. Work with stakeholders and the professional counseling body to develop standards, quality assurance, and a system of professional ethics for counseling.

m. Provide technical assistance to strengthen the network of HIV/AIDS training organizations through the professional counseling body.

n. Provide high level technical training advisor who will work closely with MOH and key PEPFAR partners, including The AIDS Support Organization (TASO), the AIDS Information Centre (AIC) Mildmay, the Joint Clinical Research Centre (JCRC), AIDS/HIV Integrated Model District Program (AIM), and others.

o. Establish appropriate counselor training scholarship mechanisms and provide scholarships to meet critical gaps for counselors generally, and especially for PEPFAR partners.

p. Support the collection and analysis of data as relevant for development of a management information system (MIS) for HIV counselor training and to ensure collection of PEPFAR indicator data.

q. Ensure that the above activities are undertaken in a manner consistent with the national HIV/AIDS strategy. All activities should be coordinated with the MOH.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for this program are as follows:

a. Provide technical assistance, as needed, in the development of standards for HIV counseling and counselor training and for quality assurance systems.

b. Collaborate with the recipient, as needed, in the development of an information technology system for tracking key counselor training activities and in the analysis of data derived from those records.

c. Assist, as needed, in evaluation of the program and in development of further appropriate initiatives.

d. Provide input, as needed, into the criteria for selection of staff and non-staff implementing the program and into the target criteria and structure of counselor training scholarship programs.

e. Provide input into the overall program strategy.

f. Review and approve of all final draft curricula before dissemination.

g. Collaborate, as needed, with the recipient in the selection of key personnel to be involved in the activities to be performed under this agreement including approval of the overall manager of the program.

Technical assistance and training may be provided directly by CDC staff or through organizations that have successfully competed for funding under a separate CDC contract.

II. Award Information

Type of Award: New Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $3,275,000 (This amount is for the entire five year project period).

Approximate Number of Awards: 1.

Approximate Average Award: $655,000 (This amount is for the first 12-month budget period, only direct costs).

Floor of Award Range: None.

Ceiling of Award Range: $655,000.

Anticipated Award Date: July 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by: public nonprofit organizations, private nonprofit organizations, universities, colleges, research institutions, hospitals, and faith-based organizations that meet the following criteria:

1. Have at least three years of documented HIV/AIDS counselor training experience.

2. Have at least three years of documented experience in training needs assessment and training strategy development related to health training programs in Africa.

3. Have at least three years experience in the development or management of a professional association for counselors.

4. Have experience producing high quality HIV/AIDS training curricula that are technically accurate and that follow solid adult training principles.

5. The organization must be based in Uganda.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages should be numbered, and a complete index to the application and any appendices must be included.
- Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and should consist of, as a minimum, a plan, objectives, activities, methods, an evaluation framework, a budget and budget justification highlighting any supplies mentioned in the Program Requirements and any proposed capital expenditure.

The budget justification will not be counted in the page limit stated above. Guidance for completing your budget can be found on the United States government Web site at the following address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information is optional and may be included in the application appendices. The appendices will not be counted toward the narrative page limit. Additional information could include but is not limited to: Organizational charts, curriculum vitae, letters of support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700.

Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funds may be used for:

1. Studies, needs assessment, curriculum development, training materials development, institutional development including equipment purchase, and establishment of a professional body for counseling.

2. Evaluation and management of the activities.

Restrictions, which must be taken into account while writing your budget, are as follows:

- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed, however, prior written approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program,

however, the applicant must perform a substantial portion of the activities, including program management and operations, and delivery of prevention and care services for which funds are required.

• An annual audit of these funds is required by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

• A fiscal Recipient Capability Assessment may be required with the potential awardee, pre or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any foreign recipient must have a policy explicitly opposing, in its activities outside the United States, prostitution and sex trafficking, except that this requirement shall not apply to the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative or to any United Nations agency, if such entity is a recipient of U.S. government funds in connection with this document.

The following definitions apply for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

• A foreign recipient includes an entity that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico. Restoration of the Mexico City Policy, 66 FR 17303, 17303 (March 28, 2001).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, acknowledge that each certification to compliance with this section, "Prostitution and Related Activities," are a prerequisite to receipt of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. In addition, all recipients must ensure, through contract, certification, audit, and/or any other necessary means, all the applicable requirements in this section, "Prostitution and Related Activities," are met by any other entities receiving U.S. government funds from the recipient in connection with this document, including without limitation, the recipients' sub-grantees, sub-contractors, parents, subsidiaries, and affiliates. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All primary grantees receiving U.S. Government funds in connection with this document must certify compliance prior to actual receipt of such funds in a written statement referencing this document (*e.g.*, "[Recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event it is determined by HHS that the recipient has not complied with this section, "Prostitution and Related Activities."

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to:

Technical Information Management Section–PA #04224, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Understanding of the Issues, Principles and Systems Requirements Involved in Improving HIV Counselor Training and in Developing a Professional Counseling Body in the Context of Uganda (25 Points)

Does the applicant demonstrates an understanding of the technical, managerial and other practical issues involved in the national assessment of HIV counselor training needs, in improving the quality of HIV counselor training and increasing the training providers' capacity to deliver quality training to priority target groups as well as the development of a professional counseling body and accreditation, certification and quality assurance systems for training and for counseling throughout Uganda?

2. Work Plan (20 Points)

Does the applicant describe activities which are realistic, achievable, time-framed and appropriate to complete this program?

3. Ability to carry out the proposal (20 Points)

Does the applicant demonstrate the capability to achieve the purpose of this proposal?

4. Personnel (20 Points)

Are the personnel (including their qualifications, training, availability, and experience) adequate to carry out the proposed activities?

5. Administrative and Accounting Plan (15 Points)

Is there a plan to account for, prepare reports, monitor and audit expenditures under this agreement, manage the resources of the program, and produce, collect and analyze performance data?

6. Budget (Not Scored)

Is the budget for conducting the activity itemized and well-justified, and consistent with stated activities and planned program activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for HIV, STD and TB Prevention (NCHSTP). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "Criteria" section above.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports not more than 30 days after the end of the budget period.
2. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
   f. Measures of effectiveness.
3. Financial status report, no more than 90 days after the end of the budget period.
4. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management or Contract Specialist identified in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–41320776 E-mail: *jhm@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–1515, E-mail address: *zbx6@cdc.gov.*

Dated: June 18, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14313 Filed 6–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACYF/FYSB 2004–EV–0022A]

Notice of Correction for the FY04 Discretionary Grants Family Violence Prevention and Services—Domestic Violence/Runaway and Homeless Youth Collaboration on the Prevention of Adolescent Dating Violence Program Announcement; HHS–2004–ACF–ACYF–EV–0022; CFDA# 93.592

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice of correction.

SUMMARY: This notice is to inform interested parties of corrections made to the Domestic Violence/Runaway Homeless Youth Program Announcement published on Tuesday, June 1, 2004. The following corrections should be noted:

Under Eligible Applicants the paragraph should read as follows: Eligible applicants are: Local public agencies and non-profit community-based organizations, faith-based and charitable organizations who are recipients, or have been recipients, of grant awards for Basic Center, Transitional Living and Street Outreach Family and Youth Services Bureau-funded projects; and non-profit domestic violence advocacy organizations, and domestic violence State Coalitions who are or have been recipients of Family Violence Prevention and Services grant awards.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at (866) 796–1591 or *fysb@dixongroup.com.*

Dated: June 16, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–14355 Filed 6–23–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KC, the Administration on Developmental Disabilities (ADD) (65 FR 18337–38), as last amended April 7. 2000. This notice incorporates the provisions governing election assistance for individuals with disabilities in the Help America Vote Act (HAVA) of 2002, Pub. L. 107–252, 116 Stat 1666 (2002). The authority to administer HAVA was delegated to the Assistant Secretary, ACF by the Secretary on February 9, 2004, and subsequently redelegated to the Commissioner, Administration on Developmental Disabilities by the Assistant Secretary, ACF on April 2, 2004. In addition, the notice establishes the Office of Programs and the Office of Operations, eliminates the Deputy Commissioner position, and moves the Administration and Planning Staff and their functions to the newly established Office of Operations.

This Chapter is amended as follows:

1. Chapter KC, Administration on Developmental Disabilities

A. Delete KC.00 Mission in its entirety and replace with the following:

KC.00 Mission. The Administration on Developmental Disabilities advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to individuals with developmental disabilities and their families. ADD serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. ADD assists states, through the design and implementation of a comprehensive and continuing state plan, in increasing the independence, productivity and community inclusion of individuals with developmental disabilities. These state plans make optimal use of existing federal and state resources for the provision of services and supports to these individuals and their families to achieve these outcomes. ADD works with the states to ensure that the rights of all individuals with developmental disabilities are protected.

ADD administers two formula grant programs, the State Developmental Disabilities Councils and the Protection and Advocacy Systems, and two discretionary grant programs, University Affiliated Programs and Projects of National Significance, including Family Support. These programs support the provision of services to individuals with developmental disabilities and their families. In concert with other components of ACF as well as other public, private, and voluntary sector partners, ADD develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of individuals with developmental disabilities. In addition, ADD serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with developmental disabilities through the identification of promising practices and dissemination of information. ADD supports and encourages programs or services, which prevent developmental disabilities and manages initiatives involving the private and voluntary sectors that benefit individuals with developmental and other disabilities and their families.

ADD is responsible for administering three grant programs under the voter accessibility provisions of HAVA. Two are formula grants, one to states and local governments and one to protection and advocacy systems, and the other is a discretionary grant for training and technical assistance.

B. Delete KC.10 Organization in its entirety and replace with the following:

KC.10 Organization. The Administration on Developmental Disabilities is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families. The Administration on Developmental Disabilities consists of:

- Office of the Commissioner (KCA).
- Office of Programs (KCB).
- Office of Operations (KCC).

C. Delete KC.20 Functions, paragraph A in its entirety and replace with the following:

KC.20 Functions. A. The Office of the Commissioner (OC) serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for individuals with developmental disabilities. The Office provides executive direction and management strategy to ADD's components and establishes goals and objectives for ADD programs.

In coordination with the ACF Office of Public Affairs, the Office of the Commissioner develops a strategy for increasing public awareness of the needs of individuals with developmental disabilities and programs designed to address them.

D. Delete KC 20 Functions, paragraph B in its entirety and replace with the following:

B. Office of Programs is responsible for the coordination, management, and evaluation of the State Developmental Disabilities Councils Program and the Protection and Advocacy Grants Program, including the development of procedures and performance standards that ensure compliance with the Developmental Disabilities Assistance and Bill of Rights (DD) Act and improve the outcomes of Developmental Disabilities Councils and Protection and Advocacy Systems in increasing the independence, productivity and community inclusion of persons with developmental disabilities.

The Office administers two formula grants under HAVA that improves accessibility to individuals with disabilities, including the blind and visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. The Office also administers a training and technical assistance grant under HAVA that supports training, demonstration, and evaluation of the use of new voting systems and technologies by individuals with disabilities.

The Office conducts routine and special analyses of state plans under the Basic State Grants Program, including an examination of priority area activities, to assure consistent application of ADD program goals and objectives. The Office conducts reviews of programs to ensure compliance with the DD Act to improve program outcomes; and identify and disseminate information regarding excellence in advancing the independence, productivity and community inclusion of people with developmental disabilities.

The Office initiates, executes, and supports the development of interagency, intergovernmental, and public-private sector agreements, committees, task forces, commissions, or joint funding efforts as appropriate.

The Office provides program and administrative guidance to regional offices on matters related to the implementation of the DD Act; and

ensures timely and effective communication with the regional offices regarding program compliance, policy clarification, and the approval of required state plans and reports.

E. Delete KC 20 Functions, paragraph C in its entirety and replace with the following:

C. Office of Operations plans, coordinates and controls ADD policy, planning, and management activities which include the development of legislative proposals, regulations and policy issuances for ADD. The Office manages the formulation and execution of the program and operating budgets; provides administrative, personnel and information systems support services; serves as the ADD Executive Secretariat controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures. The Office also coordinates interagency collaboration, program outreach, and convener functions.

The Office manages the discretionary grants and contracts mandated by the DD Act, and provide program development services. The Office originates cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS, and other government agencies; and manages discretionary grants and contracts and assists in monitoring and evaluating discretionary grants at the national level.

The Office plans for and implements experimental program services based on advice from state and local organizations on program needs. The Office formulates and prepares annual demonstration and evaluation plans, coordinates and administers the University Affiliated Programs (UAP's) activities, and develops quality assurance criteria for the UAP Program.

The Office develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS, and other government agencies to fulfill the mission and goals of the DD Act. The Office ensures the dissemination of project results and information produced by ADD grantees.

The Office coordinates national program trends with other ACF programs and HHS agencies; and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

Dated: June 16, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 04–14357 Filed 6–23–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0456]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; 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 proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 26, 2004.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Prevention of Medical Gas Mixups at Health Care Facilities

Background

FDA has received four reports of medical gas mixups occurring during the past 5 years. These reports were received from hospitals and nursing homes and involved 7 deaths and 15 injuries to patients who were thought to be receiving medical grade oxygen, but who were actually receiving a different gas (e.g., nitrogen, argon) that had been mistakenly connected to the facility's oxygen supply system. In 2001, FDA published guidance making recommendations to help hospitals, nursing homes, and other health care facilities avoid the tragedies that result from medical gas mixups and alerting these facilities to the hazards. This survey is intended to assess the degree of facilities' compliance with safety measures to prevent mixups, to determine if further steps are warranted to ensure the safety of patients.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
210 and 211	285	1	285	.25	71.25
Total	285	1	285	.25	71.25

[1] There are no capital costs or operating and maintenance costs associated with this collection.

In the **Federal Register** of October 10, 2003 (68 FR 58691), FDA published a 60-day notice requesting public comment on the information collection provisions. The agency received two comments. One comment had specific questions regarding the requirements to register firms exporting foods from Korea.

The responder of the second comment feels the agency is gathering facts with the intent of developing and implementing future guidance that would be enforced on manufacturers,

fillers, and transfillers of medical gases. This comment also requests the agency meet with the medical gases industry prior to issuing any guidance.

The intent of this survey is stated previously and is not applicable to the medical gases industry.

The agency does however, agree with the statement addressed in the second comment regarding the initial contact FDA makes with the 285 facilities would be more effective and save valuable resources if made via telephone. This call could determine whether the health care facility is one of those covered by this assignment and our April 6, 2001, FDA Public Health Advisory—Guidance for Hospitals, Nursing Homes, and other Health Care Facilities.

Dated: June 16, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–14266 Filed 6–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 27, 2004, from 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Johanna M. Clifford, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–21), 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–677, ALIMTA (pemetrexed) Eli Lilly, Inc., proposed indication for single-agent treatment of patients with locally advanced or metastatic nonsmall cell lung cancer after prior chemotherapy.

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 July 20, 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 July 20, 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 Trevelin Prysock at 301–827–7001, 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: June 18, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–14304 Filed 6–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for fiscal year (FY) 2005. As part of its annual planning, budgeting, and resource allocation process, CFSAN is reviewing its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Submit written or electronic comments by August 9, 2004.

ADDRESSES: Submit written comments concerning this document 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: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, e-mail: *Dcarring@cfsan.fda.gov*, 301–436–1697.

SUPPLEMENTARY INFORMATION:

I. Background

On April 29, 2004, CFSAN released a document entitled "FY 2004 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's Web site (*www.cfsan.fda.gov*) or from the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section), constitutes the Center's priority workplan for FY 2004 (i.e., October 1, 2003, through September 30, 2004). The FY 2004 workplan is based on input we received from our stakeholders (see 68 FR 33727, June 5, 2003), as well as input generated internally. The primary focus is: "Where do we do the most good for consumers?"

In addition to our continued emphasis on enhancing the security of the nation's food supply, the FY 2004 workplan continues to place a high priority on food safety, food additives, dietary supplements, and food biotechnology. It also reflects a commitment to revitalize and bolster our nutrition program and improve the health of the public by empowering people to make healthy choices in their daily diets. We also are working to ensure the information consumers receive is scientifically valid and easily understood.

The FY 2004 workplan emphasizes eight additional program areas and cross-cutting areas: (1) Nutrition, health claims and labeling; (2) cosmetics; (3) enhancing the science base; (4) international activities; (5) enhancing

internal processes; (6) focused economic-based regulations; (7) equal employment opportunity/diversity initiatives; and (8) management initiatives.

The format of the FY 2004 workplan was changed from previous years. It was formatted into the following four sections:

(1) Assuring Food Safety and Security,

(2) Improving Nutrition and Dietary Supplement Safety,

(3) Assuring Food and Cosmetic Safety, and

(4) Assuring Food Safety: Cross cutting Areas.

Similar to previous years, the FY 2004 workplan contained two lists of activities—the "A-list" and the "B-list". Our goal is to fully complete at least 90 percent of the "A-list" activities by the end of the fiscal year, September 30, 2004. Activities on the "B-list" are those we plan to make progress on, but may not complete before the end of the fiscal year.

CFSAN intends to issue a progress report on what program priority activities already have been completed to date in FY 2004, as well as any adjustments in the workplan (i.e., additions or deletions) for the balance of the fiscal year.

The 2004 workplan primarily represents new or different initiatives identified for 2004, as well as priority initiatives that are being continued from the 2003 workplan. The workplan does not identify many important ongoing activities, such as CFSAN's base programs in data collection, research, and enforcement or the myriad of unanticipated issues that often require a substantial investment of CFSAN resources (e.g., response to outbreaks of foodborne illness).

II. 2005 CFSAN Program Priorities

FDA is requesting comments on new program areas or activities that CFSAN should add as high priorities for FY 2005. The input will be used to develop CFSAN's workplan for FY 2005 (i.e., October 1, 2004, through September 30, 2005).

The format of the 2005 workplan will be similar to last year's workplan. FDA expects there will be considerable continuity between the 2004 and 2005 workplans. For example, initiatives aimed at increasing the security of our country's food supply will continue to be a high priority in FY 2005. FDA requests comments on other broad program areas that should continue to be a priority in FY 2005.

FDA intends to make the FY 2005 workplan available in the fall of 2004.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Two paper copies of any comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–14303 Filed 6–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193)—Extension

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and other grantees under Section 330. The authorizing statute is section 330 of the Public Health Service Act, as amended.

The Bureau collects data in the UDS which is used to ensure compliance with legislative mandates and to report to Congress and policymakers on program accomplishments. To meet these objectives, BPHC requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Universal Report	920	1	27	24,840
Grant Report	125	1	18	2,250
Total	920			27,090

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–14269 Filed 6–23–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to the Office of Management and Budget (OMB) for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Nursing Education Loan Repayment Program Application (OMB No. 0915–0140)—Revision

This is a request for revision of the Nursing Education Loan Repayment Program (NELRP) application. The NELRP was originally authorized by 42 U.S.C. 297b(h) (section 836 (h) of the Public Health Service Act) as amended by Public Law 100–607, November 4, 1988. The NELRP is currently authorized by 42 U.S.C. 297(n) (section 846 of the Public Health Service Act) as amended by Public Law 104–205, August 1, 2002.

Under the NELRP, registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying educational loan balance as follows: 30 percent each year for the first 2 years and 25 percent for the third year. In exchange, the nurses agree to serve full-time as a registered nurse for 2 or 3 years at a health care facility with a critical shortage of nurses.

NELRP requires the following information:

1. Applicants must provide information on their nursing education, employment, and proposed service site;

2. Applicants must provide information on their outstanding nursing educational loans; and

3. Applicants must provide banking information from their financial institution.

Estimates of Annualized Hour Burden: The application has been changed due to legislative and program changes and an increased budget. Burden estimates are as follows:

Form/regulatory requirement	Number of respondents	Responses per respondents	Hours per response	Total burden hours
NELRP Application	8,000	1	1	8,000
Loan Verification Form	8,000	3	1	24,000
Employ. Verification Form	8,000	1	.5	4,000
Payment Info. Form	8,000	1	1	8,000
Checklist	8,000	1	.5	4,000
Total	8,000			48,000

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–14270 Filed 6–23–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; 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: Council on Graduate Medical Education (COGME).

Dates and Times: July 28, 2004, 8:30 a.m.–5 p.m.; July 29, 2004, 8:30 a.m.–12:15 p.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status: The meeting will be open to the public.

Agenda: The agenda for July 28 in the morning will include: Welcome and opening comments from the Chair of COGME and management staff of the Health Resources and Services Administration. There will be a review and discussion of comments on the Physician Workforce Report, with the expectation of finalizing the report. In the afternoon there will be a facilitated discussion on new and emerging issues regarding (1) the supply, distribution, and adequacy of the physician workforce in training and practice; (2) financing of medical education; and (3) Federal policies and non-Federal efforts to ensure an appropriately trained physician workforce.

The agenda for July 29 will include a presentation of a contractor's report on updating of COGME's Twelfth Report covering Minorities in Medicine, with discussions leading to approval of the report.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Anyone requiring information regarding the meeting should contact Jerald M. Katzoff, Acting Deputy Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Dated: June 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–14267 Filed 6–23–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: July 22, 2004, 5 p.m.–7 p.m.; July 23, 2004, 8:30 a.m.–5 p.m.; July 24, 2004, 9 a.m.–5:30 p.m.; July 25, 2004, 8 a.m.–10:30 a.m.

Place: Capitol Hilton, 1001 16th Street, NW., Washington, DC 20036, (202) 393–1000.

Status: The meeting will be open to the public.

Agenda: The Council will be meeting in Washington, DC, in conjunction with the National Health Service Corps Loan Repayment Conference. Members will meet with newly awarded loan re-payers, as the program pilots a new conference to share program expectations.

For Further Information Contact: Tira Robinson-Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 594–4140.

Dated: June 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–14268 Filed 6–23–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

Office of Refugee Resettlement

[CFDA No.: 93.566, Refugee Assistance—State Administered Programs]

Final Notice of Allocations to States of FY 2004 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Final notice of allocations to States of FY 2004 funds for refugee social services.

SUMMARY: This notice establishes the final allocations to States of FY 2004 funds for refugee [1] social services under the Refugee Resettlement Program (RRP). The final notice reflects amounts adjusted based upon final adjustments to FY 2001, FY 2002 and FY 2003 data submitted to ORR by twenty-two States.

FOR FURTHER INFORMATION CONTACT: Kathy Do, Division of Budget, Policy, and Data Analysis (BPDA), telephone: (202) 401–4579, e-mail: *kdo@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $152,217,586 in FY 2004 refugee social service funds. *See* Consolidated Appropriations Act, 2004, Pub. L. 108–199. This amount reflects a rescission of 0.59 percent applied across the board to all line items.

The FY 2004 Conference Report (H.R. Rept. No. 108–401) reads as follows with respect to social service funds:

> The conference agreement appropriates $450,276,000 rather than the $461,853,000 as proposed by H.R. 2660 and $428,056,000 as proposed by the Senate. Within this amount, $153,121,000 is provided for social services as proposed in H.R. 2660. The Senate bill included $140,000,000 for this purpose.
>
> The agreement also includes $19,000,000 for increased support to communities with large concentrations of Cuban and Haitian refugees of varying ages whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance for healthcare and education.
>
> The conferees recognize the importance of continued educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees, and urge the Office of Refugee Resettlement to support these efforts should funding become available in the social services or other programs.

ORR intends to use the $152,217,586 appropriated for FY 2004 social services as follows:

- $79,728,429 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- Approximately $5,200,000 is expected to be awarded as new social service discretionary grants under new and prior year standing competitive grant announcements issued separately from this proposed notice.
- Approximately $19,000,000 is expected to be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded under a prior year separate announcement.
- Approximately $35,400,000 is expected to be awarded through discretionary grants for continuation of awards made in prior years.
- Approximately $10,887,416 in FY 2004 social services funding will be utilized to continue the awards for educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees.
- Approximately $2,000,000 is expected to be awarded through contracts for an evaluation of the effectiveness of ORR employment programs.

Refugee Social Service Funds

The FY 2004 population figures that have been used for this final formula social services allocation include refugees, Amerasians from Viet Nam, Cuban/Haitian entrants, Havana parolees, and victims of severe forms of trafficking. These population figures are adjusted in the final allocation to reflect more accurate information on arrivals in 2003, secondary migration (including that of victims of severe forms of trafficking), asylee, and entrant data submitted by States. (*See* Section IV. Basis of Population Estimates.)

The Director allocates $79,728,429 to States on the basis of each State's proportion of the national population of refugees who have been in the U.S. three years or less as of October 1, 2003 (including a floor amount for States that have small refugee populations). Of the amount proposed to be awarded, approximately $6 million is expected to be awarded to Wilson/Fish Alternative Projects providing social services.

The use of the 3-year population base in the allocation formula is required by

[1] Eligibility for refugee social services include refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Viet Nam who are admitted to the U.S. as immigrants, certain Amerasians from Viet Nam who are U.S. citizens, and victims of a severe form of trafficking who receive certification or eligibility letters from ORR. *See* 45 CFR 400.43 and ORR State Letter #01–13 on the Trafficking Victims Protection Act, dated May 3, 2001, as modified by ORR State Letter # 02–01, January 4, 2002. Due to recent legislative changes, certain family members who are accompanying or following to join victims of severe forms of trafficking also are eligible for ORR-funded benefits and services. These individuals have been granted nonimmigrant visas under 8 U.S.C. 1101(a)(15)(T)(ii). The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services.

section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1992 social services notice published in the **Federal Register** on August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (*see* Footnote 1 on page 1 for service populations). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (*see* ORR State Letter No. 00–12, effective June 15, 2000, as clarified by ORR State Letter No. 00–15, August 3, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR are eligible from the date on the certification letter (*see* ORR State Letter No. 01–13, May 3, 2001, as modified by ORR State Letter No. 02–01, January 4, 2002). Certain family members of a victim of a severe form of trafficking who has been awarded a T visa are also eligible to the same extent as refugees if they have been awarded Derivative T Visas. In the case of an individual who is already present in the U.S. on the date the Derivative T Visa is issued, the date of entry is the Notice Date on the I–797, notice of action of approval of that individual's Derivative T Visa. For an individual who enters the United States on the basis of a Derivative T–Visa, the date of entry is the date of entry stamped on that individual's passport or I–94 Arrival Record. *See* Trafficking Victims Protection Act of 2000, 8 U.S.C. 7105(b)(1), as amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108–193. A State Letter will soon be issued on this subject.

Services to refugees must be provided in accordance with the rules of 45 CFR part 400 subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400 152(b)).

Under waiver authority at 45 CFR 400.300, the Director of ORR may issue a waiver of the limitation on eligibility for social services contained in 45 CFR 400.152(b). There is no blanket waiver of this provision in effect for FY 2004. States may apply for a waiver of 45 CFR 400.152(b) in writing to the Director of ORR. Each waiver request will be reviewed based on supporting data and information provided. The Director of ORR will approve or disapprove each waiver request as expeditiously as possible.

A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections that the State may wish to provide must be submitted to and approved by the Director of ORR as required under 45 CFR 400.155(h).

Service Priorities

In accordance with 45 CFR 400.147, States are required to provide social services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S. who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence. In order for refugees to leave Temporary Assistance for Needy Families (TANF) quickly, States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

ORR encourages States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond the provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the newly arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services that are provided to refugees who participate in Wilson/Fish projects which can be administered by public or private non-profit agencies, including refugee, faith-based and community organizations. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate standing notice with respect to applications for such projects. The notice can be found in the **Federal Register** (volume 69, FR 65, pages 17692–17700 (April 5, 2004)).

States are encouraged to consider eligible sub-recipients for formula social service funds, including public or private non-profit agencies such as, refugee, faith-based, and community organizations.

II. Comment and Response

Twenty-two (22) States submitted data to ORR by the established deadline. In the Notice of Proposed Allocations, ORR notified States that it would count asylees in its arrival numbers if the asylee received approval of his/her asylum claim between October 1, 2001, and September 30, 2003, and was served

by the State through its refugee resettlement program or its social service system. Twenty-two States sent their list of asylees served to ORR. After review and verification, ORR included 15,702 asylees in the distribution formula. The majority of these asylees resided in four of the twenty-two States, namely California, Florida, Maryland, and New York. The names and A-numbers of asylees were compared with the ORR's asylee database compiled from the U.S. Bureau of Citizenship and Immigration Services (USBCIS), formerly INS/Asylum Corps, and the Executive Office of Immigration Review (EOIR) of the Department of Justice. A substantial number of these individuals were dropped from the State-supplied lists during the comparison process. The most common reason was that their date of asylum approved occurred outside of the 36-month period ending September 30, 2003. Additionally, a large number of asylees were dropped because their names and A-numbers did not match the USBCIS/EOIR file.

As was the case in FY 2003, one State (Florida) notified ORR that it had served a substantial number of entrants which are currently not captured in the traditional data gathering methods. Currently, entrants are identified as such when they arrive at Miami International Airport (MIA) from Cuba or are processed at the Krome Detention Center. However, many recent Cubans escaped from Cuba by sailing to Mexico and then re-entering the U.S. through a U.S. land border. Additionally, some Cuban parolees fly to airports other than Miami International Airport, and have not been counted to date. The State of Florida compiled a list of these entrants for verification by ORR. After determining that these individuals were not duplicates, ORR counted 4,901 additional entrants, and included these individuals in the distribution formula.

III. Allocation Formulas

Of the funds available for FY 2004 for social services, $79,728,429 is to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by

2. The total number of refugees, Cuban/Haitian entrants, parolees, and Amerasians from Viet Nam, as shown by the ORR Refugee Arrivals Data System (RADS) for FY 2001–2002, Refugee Processing Center (RPC) data for FY 2003, and victims of severe forms of trafficking as shown by the certification and eligibility letters issued by ORR, who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated. This total also includes the total number of asylees who have been served by a State through its refugee resettlement or social services system in FYs 2001, 2002, and 2003. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 2003, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the final allocation of funds in FY 2004 for the formula social service allocation are based on data on refugee arrivals from the ORR Refugee Arrivals Data System, adjusted as of September 30, 2003, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Viet Nam, and Cuban and Haitian entrants. Data on trafficking victims are taken from the total number of trafficking victims' certification and eligibility letters issued by ORR. Additional data on asylees were submitted by twenty-two States, verified by ORR and included in the final allocation for FY 2004.

For Fiscal Year 2004, ORR's final formula social service allocations for the States are based on the numbers of refugees, Amerasians, victims of a severe form of trafficking, entrants and Havana parolees. Refugee numbers are based upon the arrivals during the preceding fiscal years: 2001, 2002, and 2003. After consultation with the Refugee Processing Center (RPC), Department of State (DOS), ORR has decided to use the ORR-Refugee Arrivals Data System (ORR–RADS) database of arrival numbers for FYs 2001, 2002, and the RPC data for FY 2003 as the basis for the final FY 2004 social services allocations.

The final FY 2004 social services allocations reflect adjustments in FY 2003 arrivals, secondary migration, victims of severe forms of trafficking, and asylees who have been served by the States in FYs 2001, 2002, and 2003 through its refugee resettlement program or social service system. These allocations also reflect entrants who entered the U.S. at ports of entry or land borders other than Miami.

The data on secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2003. The total migration reported by each State was due to ORR on January 5, 2004. The total migration is summed by ORR, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised ORR population estimate. ORR calculations are developed separately for refugees and entrants and then combined into a total final 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1 (attached) shows the final 3-year populations, as of October 1, 2003, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3), asylees (col. 4), victims of trafficking (col. 5), total population (col. 6), the proposed formula amounts which the population yields (col. 7), and the final allocation by States (col. 8).

Twenty-two States which have served asylees during the past three years submitted the following information in order to have their population estimate adjusted to include those asylees whose asylum was granted within the 36 month period ending September 30, 2003: (1) Alien number; (2) date of birth; and, (3) the date asylum was granted.

ORR credited one State that have served victims of a severe form of trafficking during the past year with additional numbers as verified with ORR certification letters issued, and reductions were made in two States. States which have served victims of trafficking submitted the following information in order to have their population estimate adjusted to include these trafficking victims: (1) Alien number, if available; (2) date of birth; (3) certification letter number, and, (4) date on the certification letter.

V. Final Allocation Amounts

Funding subsequent to the publication of this final notice will be contingent upon the submission and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

Table 1, attached, represents the final allocation for refugee social services in FY 2004.

VI. Paperwork Reduction Act

This notice does not create any reporting or record keeping requirements requiring OMB clearance.

Dated: June 7, 2004.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

BILLING CODE 4184–01–P

FINAL FY 2004 SOCIAL SERVICES FORMULA NOTICE

Table 1.--Estimated Three-Year Refugee/Entrant/Parolee/Asylee/Trafficking Victim Populations of States Participating in the Refugee Resettlement Program and Final Social Service Formula Allocations for FY 2004 (Adjusted for Secondary Migration Based on the ORR-11)

State	1/ Refugees <1>	Entrants <2>	2/ Havana Parolees <3>	3/ Asylees <4>	Trafficking Victims <5>	Total population <6>	Proposed Formula Amount <7>	Total Final Allocation <8>
Alabama 4/	145	0	18	-	-	163	$ 67,473	$ 96,776
Alaska 4/	211	0	0	19	7	237	98,106	100,000
Arizona	3,624	347	7	-	-	3,978	1,646,682	1,646,682
Arkansas	15	1	0	-	-	16	6,623	75,000
California 4/	19,017	50	69	3,395	81	22,612	9,360,179	9,360,178
Colorado 4/	1,916	3	9	200	5	2,133	882,950	882,950
Connecticut	2,209	19	19	144	-	2,391	989,748	989,748
Delaware	135	8	0	-	-	143	59,194	88,497
Dist. of Columbia	442	3	1	538	1	985	407,738	407,738
Florida	7,214	20,234	23,529	5,752	30	56,759	23,495,237	23,495,237
Georgia	4,725	18	97	-	2	4,842	2,004,333	2,004,333
Hawaii	24	0	0	-	49	73	30,218	75,000
Idaho 4/	1,016	3	0	20	1	1,040	430,505	430,505
Illinois	3,915	16	69	647	6	4,653	1,926,097	1,926,097
Indiana	843	3	9	-	-	855	353,925	353,925
Iowa	1,897	0	0	-	-	1,897	785,258	785,258
Kansas	317	3	10	-	1	331	137,017	137,017
Kentucky 4/	1,643	928	7	-	1	2,579	1,067,570	1,067,570
Louisiana	347	89	23	11	-	470	194,555	194,555
Maine	844	0	1	-	-	845	349,785	349,785
Maryland	1,942	6	19	1,251	9	3,227	1,335,808	1,335,808
Massachusetts 4/	3,257	143	10	495	3	3,908	1,617,706	1,617,706
Michigan	3,279	541	36	-	5	3,861	1,598,251	1,598,251
Minnesota	6,818	5	4	388	4	7,219	2,988,286	2,988,286
Mississippi	112	4	4	-	2	122	50,502	79,804
Missouri	3,702	24	10	-	1	3,737	1,546,921	1,546,921
Montana	36	0	2	-	-	38	15,730	75,000
Nebraska	972	2	0	-	-	974	403,185	403,185
Nevada 4/	723	538	35	-	2	1,298	537,304	537,304
New Hampshire	963	0	1	-	2	966	399,873	399,873
New Jersey	1,620	286	313	256	7	2,482	1,027,417	1,027,417
New Mexico	214	260	0	-	-	474	196,211	196,211
New York	10,282	1,006	107	1,485	25	12,905	5,341,990	5,341,990
North Carolina	3,029	16	46	-	2	3,093	1,280,339	1,280,339
North Dakota 4/	470	0	0	-	-	470	194,555	194,555
Ohio	2,305	3	5	208	2	2,523	1,044,389	1,044,389
Oklahoma	215	0	1	-	52	268	110,938	110,938
Oregon	2,614	305	1	154	-	3,074	1,272,474	1,272,474
Pennsylvania	4,946	356	28	422	26	5,778	2,391,788	2,391,788
Rhode Island	469	5	1	-	-	475	196,625	196,625
South Carolina	225	0	13	-	-	238	98,519	100,000
South Dakota 4/	940	0	0	-	-	940	389,110	389,110
Tennessee	1,467	6	36	-	-	1,509	624,647	624,647
Texas	5,670	901	87	658	97	7,413	3,068,592	3,068,592
Utah	1,572	5	0	77	-	1,654	684,669	684,669
Vermont	418	0	0	11	-	429	177,583	177,583
Virginia	3,101	172	38	533	15	3,859	1,597,423	1,597,423
Washington	10,759	0	3	-	11	10,773	4,459,455	4,459,455
West Virginia	6	0	0	-	-	6	2,484	75,000
Wisconsin	1,041	4	5	28	-	1,078	446,235	446,235
Wyoming 5/								
TOTAL	123,666	26,313	24,673	16,692	449	191,793	79,392,202	79,728,429

1/ Includes Amerasian immigrants.

2/ For all years, Havana Parolee arrivals for all States are based on actual data.

3/ Includes all victims of a severe form of trafficking since program inception in March, 2001

4/ The allocations for Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, South Dakota, Alabama, and for San Diego County, California are expected to be awarded to Wilson/Fish projects.

5/ Wyoming no longer participates in the Refugee Resettlement Program.

[FR Doc. 04–14356 Filed 6–23–04; 8:45 am]

BILLING CODE 4184–01–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18005]

Collection of Information Under Review by Office of Management and Budget: 1625–0004, United States Coast Guard Academy Application and Supplemental Forms

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the reinstatement of a previously approved collection for which approval has expired. This information collection request (ICR) is entitled "United States Coast Guard Academy Application and Supplemental Forms" and is assigned Office of Management and Budget (OMB) control number 1625–0004. Before submitting this ICR to OMB for reinstatement, the Coast Guard is inviting your comments on our request.

DATES: Comments must reach the Coast Guard on or before August 23, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–18005] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery 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. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, 202–267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, DOT, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's "Privacy Act" below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–18005], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Information Collection Request

Title: United States Coast Guard Academy Application and Supplemental Forms.

OMB Control Number: 1625–0004.

Summary: Any person who wishes to compete for an appointment as a Coast Guard Cadet must fill out a preliminary application and supplemental forms.

Need: 14 U.S.C. 182 authorizes the Secretary to ensure that qualified people have every opportunity to compete for appointments as cadets at the U.S. Coast Guard Academy.

Respondents: Individuals or household.

Frequency: Once.

Burden: The estimated burden is 8,300 hours a year.

Dated: June 6, 2004.

Clifford I. Pearson,

Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–14373 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–17659]

Compass Port LLC Liquefied Natural Gas Deepwater Port License Application; Correction

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of application; correction.

SUMMARY: The Coast Guard and the Maritime Administration published a notice of application in the **Federal Register** of May 20, 2004, for the Compass Port LLC Liquefied Natural Gas Deepwater Port. The notice designated Alabama as an adjacent coastal state but it did not include the designation of Mississippi as a second adjacent coastal state.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Kevin Tone, Deepwater Ports Standards Division (G-MSO–5) at (202) 267–0226, or Mr. Keith Lesnick, Maritime Administration (MARAD) at (202) 366–1624.

Correction

In the **Federal Register** of May 20, 2004, in FR Doc. 04–11391, on page 29143, in the first column, under the caption "Application procedure," correct the fifth sentence to read: "Pursuant to 33 U.S.C. 1508, we designate Alabama and Mississippi as adjacent coastal states for this application." This correction is based on the result of a reevaluation of a portion of the proposed pipeline near the Mississippi border with Alabama. Further investigation shows that the pipeline lies within 15 miles of the border, which as defined under the Deepwater Port Act of 1974, as amended, qualifies Mississippi as an adjacent coastal state.

Dated: June 15, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation, Specialist, Deepwater Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 04–14380 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2001–9267]

Shipboard Technology Evaluation Program; Programmatic Environmental Assessment

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability and request for public comments.

SUMMARY: The Coast Guard announces the availability of the draft Programmatic Environmental Assessment (PEA) that evaluates the potential environmental impacts resulting from the implementation of the Shipboard Technology Evaluation Program (STEP). The purpose of STEP is to facilitate the development of effective ballast water treatment technologies to protect U.S. waters against the unintentional introduction of nonindigenous species via ballast water discharges. STEP will create more options for vessels seeking alternatives to ballast water exchange as they manage their ballast water.

DATES: Comments and related materials must reach the Docket Management Facility on or before July 26, 2004.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2001–9267 to the Docket management facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) By mail to the Docket Management Facility (USCG–2001–9267), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20593–0001.

(2) By delivery 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. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying in Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this program, or would like a copy of the PEA, call Mr. Bivan Patnaik, Project Manager at (202) 267–1744 or e-mail: *bpatnaik@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related materials on this notice. Persons submitting comments should include their names and addresses, this notice docket number (USCG–2001–9267), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the **ADDRESSES.** If you choose to submit them by mail or hand delivery, submit them in an unbound format, no longer than 8 1/2 by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period.

Programmatic Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 (section 102(2)(c)), as implemented by the Council on Environment Quality regulations (40 CFR parts 1500–1508) and Coast Guard Policy for Considering Environmental Impacts (COMDTINST M16475.1D), the Coast Guard has prepared a draft PEA to consider the environmental impacts of implementing STEP. The draft PEA identifies and examines those reasonable alternatives needed to effectively implement STEP. The draft PEA analyzes the no action alternative and two action alternatives that could fulfill the purpose and need of STEP. The draft PEA is a program document meant to provide a broad environmental review of a Federal agency's (Coast Guard) national program. In this case, the draft PEA provides a broad, general view of the potential environmental impacts that can be anticipated by implementing STEP. Specifically, the draft PEA considers potential effects to the natural and human environments including: Fish; marine mammals; invertebrates; microbes and plankton; submerged and emergent species; threatened and endangered species; essential fish habitats; and various socioeconomic resources. The draft PEA cannot foresee all possible specific operational sites or cumulative environmental impacts as a result of implementing any of the action alternatives. However, once specific operational sites and individual shipboard ballast water treatment technologies have been identified, these technologies will undergo a more specific environmental review (tiering). This environmental review of individual shipboard ballast water treatment technologies and specific operational sites will result in the issuance of either: (1) Categorical

Exclusion; (2) Finding of No Significant Impact (FONSI) after an Environmental Assessment (EA); or (3) Environmental Impact Statement (EIS).

The purpose of this Notice of Availability is to inform the public, Federal, State, and local governments that the draft PEA is available for review and comment. Therefore, we are requesting your comments on environmental concerns you may have related to the draft PEA. This includes methodologies for use in the draft PEA or possible sources of data or information not included in the draft PEA. Your comments will be considered in preparing a Finding of No Significant Impact (FONSI) and final PEA.

Dated: May 11, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–14369 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Request for Nominations

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The *Exxon Valdez* Oil Spill Trustee Council is soliciting nominations for the Public Advisory Committee, which advises the Trustee Council on decisions related to the planning, evaluation, and conduct of injury assessment, restoration, long-term monitoring, and research activities using funds obtained as part of the civil settlement pursuant to the T/V *Exxon Valdez* oil spill of 1989. Public Advisory Committee members will be selected to serve a 24-month term beginning in October 2004.

DATES: All nominations should be received on or before July 20, 2004.

ADDRESSES: Nominations should be sent to Executive Director, *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501–2340 or by email to PAC Nominations, Executive Director, c/o Brenda Hall, *brenda_hall@evostc.state.ak.us.*

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Designated Federal Officer, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska 99501, 907–271–5011; or Cherri Womac, Exxon Valdez Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501–2340, 907–278–8012 or 800–478–7745. A copy of the charter for the Public Advisory Committee is available upon request.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Committee was created to advise the Trustee Council on matters relating to decisions on injury assessment, restoration activities or other use of natural resources damage recoveries obtained by the governments.

The Trustee Council consists of representatives of the State of Alaska Attorney General; Commissioner of the Alaska Department of Fish and Game; Commissioner of the Alaska Department of Environmental Conservation; the Secretary of the Interior; the Secretary of Agriculture; and the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. Appointment to the Public Advisory Committee will be made by the Secretary of the Interior with unanimous approval of the Trustees.

The Public Advisory Committee consists of 20 members representing the public at large and the following special interests: Aquaculture and mariculture, commercial fishing, commercial tourism, conservation and environmental, local government, Native land owners, Tribal government, recreation users, sport hunting and fishing, subsistence, marine transportation, regional monitoring programs, and science/technical.

Nominees need to submit the following information to the Trustee Council:

1. Nominee's name;
2. Nominee's email address;
3. Nominee's mailing address;
4. Nominee's telephone number;
5. Special interests the nominee represents;
6. A resume or one-page synopsis of the nominee's:
   a. education;
   b. affiliations;
   c. knowledge of the region, peoples or principal economic and social activities of the area affected by the T/V Exxon Valdez oil spill;
   d. expertise in public lands and resource management, if any;
   e. breadth of experience and perspective and length of experience in one or more of the special interests; and
7. Indicate if the person being nominated has been contacted and agrees to consider serving if selected.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–14281 Filed 6–23–04; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session on Friday, August 27 from 8 a.m. to 5 p.m. and Saturday, August 28 from 8 a.m. to 1 p.m. The meeting will be held at the Needles City Council Chambers, located at 1111 Bailey, Needles, California.

Agenda items will updates of ongoing plan amendments, reports by Council members, an overview of the Desert Manager's Group 5-year annual work plan, and a tentative presentation on the Clark County (Nevada) Habitat Conservation Plan.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

ADDRESSES: Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Mr. Doran Sanchez, BLM California Desert District External Affairs (909) 697–5220.

Dated: June 16, 2004.

Linda Hansen,

District Manager.

[FR Doc. 04–14302 Filed 6–23–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0114

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority to collect information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act (GPRA). The Office of Management and Budget (OMB) previously approved the collection and assigned it clearance number 1029–0114.

DATES: Comments on the proposed information collection must be received by August 23, 2004, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783 or electronically at *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0114 and is on the forms along with the expiration date. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–0114.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 300.

Total Annual Burden Hours: 25.

Dated: June 18, 2004.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 04–14325 Filed 6–23–04; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Respondent Leader Way International, Inc. on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") issued by the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to respondent Leader Way International, Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission issued a notice of investigation dated June 16, 2003, naming Auto Meter Products, Inc. ("Auto Meter") of Sycamore, Illinois, as the complainant and twelve companies as respondents. On June 20, 2003, the notice of investigation was published in the **Federal Register**. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos.

1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant, and the investigation was terminated as to three respondents on the basis of consent orders.

On May 25, 2004, the ALJ issued an ID (Order No. 29) terminating the investigation as to respondent Leader Way International, Inc. of Hsinchuang City, Taiwan ("Leader Way") on the basis of a settlement agreement and consent order. The ALJ observed that respondent Leader Way filed a joint (together with complainant Auto Meter) motion to terminate based on a settlement agreement between them, and a proposed consent order. The Commission investigative attorney filed a response in which she stated that she does not oppose the joint motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: June 18, 2004.
By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14280 Filed 6–23–04; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0236 (2004)]

Procedures for the Handling of Discrimination Complaints Under Federal Employee-Protection Statutes; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupation Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to extend OMB approval of the information collection requirements for handling of discrimination complaints under Federal Employee Protection Statutes contained in regulations at: 29 CFR part 24, Procedures for the Handling of Discrimination Complaints under Federal Employee Protection Statutes; 29 CFR part 1979, Procedures for Handling Discrimination Complaints Under Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act 2002; and 29 CFR part 1981 Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002 (*i.e.*, These Regulations). These regulations set forth procedures employees must use to file a compliant with OSHA alleging that their employer violated a Federal statute that prohibits retaliation against employees who report unsafe or unlawful practices used by the employer that may damage the environment.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by August 23, 2004.

Facsimile and electronic transmission: Your comment must be received by August 23, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0236(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0236(2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *http://www.osha.gov.* The complete ICR, containing the OMB 83–I Form, Supporting Statement, and attachments is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Renee Ballou, Office of General Industry Enforcement, Directorate of Enforcement Programs, OSHA, U.S. Department of Labor, Room N–3119, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1850.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so that we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of material by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Agency is responsible for investigating alleged violations of "whistle blower" provisions contained in a number of Federal statutes. These provisions prohibit retaliation by employers against employees who report unsafe or unlawful practices used by the employers that may adversely affect occupational safety and health or the environment. Accordingly, these provisions prohibit an employer from discharging or taking any other retaliatory action against an employee with respect to compensation, or the

term, conditions, or privileges of employment because the employee engages in any of the protected activities specified by the "whistle blower" provisions of the Federal statutes.

These Federal statutes are covered under the following regulations: 29 CFR Part 24, Procedures for the Handling of Discrimination Complaints under Federal Employee Protection (29 CFR Part 24 covers: Safe Water Drinking Act, 42 U.S.C. 300j–9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610); 29 CFR part 1979, Procedures for Handling Discrimination Complaints Under Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act 2002; and 29 CFR part 1981 Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002.

These regulations specify the procedures that an employee must use to file a complaint with OSHA alleging that their employer violated a "whistle blower" provision for which the Agency has investigative responsibility. Any employee who believes that such a violation occurred may file a compliant, or have the complaint filed on their behalf. While OSHA specifies no particular form for filing a complaint, these regulations require that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA proposes to extend OMB's approval of the collection-of-information requirements contained in Regulations Containing Procedures for Handling Discrimination Complaints. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Regulations Containing Procedures for Handling of Discrimination Complaints.

OMB Number: 1218–0236.

Affected Public: Individuals.

Number of Respondents: 368.

Frequency of Recordkeeping: On occasion.

Average Time per Response: 1 Hour.

Estimated Total Burden Hours: 368 hours.

Estimated Cost (Operation and Maintenance): $0

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on June 18th, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–14331 Filed 6–23–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until July 26, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: 12 CFR Part 708b—Mergers of Federally Insured Credit Unions.

OMB Number: 3133–0024.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Description: The rule sets forth merger procedures for federally insured credit unions.

Respondents: All credit unions.

Estimated No. of Respondents/Record keepers: 304.

Estimated Burden Hours Per Response: 15 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 4,560.

Estimated Total Annual Cost: $67,853.00.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14347 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax no. 703–518–6669, e-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Federal Credit Union (FCU) Membership Applications and Denials.

OMB Number: 3133–0052.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Article II, section 2 of the FCU Bylaws requires persons applying for membership in an FCU to complete an application. The Federal Credit Union Act directs the FCU to provide the applicant with written reasons when the FCU denies a membership application.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,722.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Recordkeeping, reporting and on occasion.

Estimated Total Annual Burden Hours: 1,722.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14348 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax no. 703–518–6669, e-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Part 715, NCUA Rules and Regulations (Existing Parts 701.12 and 701.13).

OMB Number: 3133–0059.

Form Number: NA.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: The rule specifies the minimum annual audit a credit union is required to obtain according to its charter type and asset size, the licensing authority required of persons performing certain audits, the auditing principles that apply to certain audits, and the accounting principles that must be followed in reports filed with the NCUA Board.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 12,000.

Estimated Burden Hours Per Response: 5.75 hours.

Frequency of Response: Reporting and annually.

Estimated Total Annual Burden Hours: 100,906 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14349 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Written Reimbursement Policy.

OMB Number: 3133–0130.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Each Federal Credit Union (FCU) must draft a written reimbursement policy to ensure that the FCU makes payments to its director within the guidelines that the FCU has

established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

Respondents: All Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 6,897.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. Once and update.

Estimated Total Annual Burden Hours: 3,462 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14350 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Designation of Low Income Status.

OMB Number: 3133–0117.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Under section 107(6) of the Federal Credit Union Act, 12 U.S.C. 1757(6), and section 701.34 of NCUA Regulations, 12 CFR 701.34, credit unions that serve predominantly low-income members can accept nonmember share accounts from any source if the credit union obtains a low income designation from NCUA.

Respondents: Certain credit unions that serve predominantly low income members.

Estimated No. of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Response: 15 hours.

Frequency of Response: Recordkeeping and other, once.

Estimated Total Annual Burden Hours: 225 hours.

Estimated Total Annual Cost: $3,600.00.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14351 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement of Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0137.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Community Development Revolving Loan Program for Credit Unions Application for Technical Assistance.

Description: NCUA requests this information from credit unions to ensure that the funds are distributed to aid in providing member services, and enhancing credit union operations.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 116.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 116 hours.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14352 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Credit Committee Records.
OMB Number: 3133–0058.
Form Number: N/A.
Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.
Description: The standard FCU Bylaws require an FCU to maintain records of its loan approvals and denials.
Respondents: All Federal Credit Unions.
Estimated No. of Respondents/ Recordkeepers: 6,888.
Estimated Burden Hours Per Response: 8 hours.
Frequency of Response: Recordkeeping. Other, twice a month.
Estimated Total Annual Burden Hours: 55,104 hours.
Estimated Total Annual Cost: $926,298.24.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14353 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 23, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: 12 CFR Part 703 Investment and Deposit Activities
OMB Number: 3133–0133.
Form Number: None.
Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.
Description: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.
Respondents: Federal credit unions.
Estimated No. of Respondents/ Recordkeepers: 6,147.
Estimated Burden Hours Per Response: 44.82 hours.
Frequency of Response: Recordkeeping. Reporting. On Occasion. Quarterly.
Estimated Total Annual Burden Hours: 275,527 hours.
Estimated Total Annual Cost: None.

By the National Credit Union Administration Board on June 14, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14354 Filed 6–23–04; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that an emergency teleconference meeting of the Leadership Initiatives Advisory Panel (Literature section) to the National Council on the Arts will be held on Thursday, July 1, 2004 from 1 p.m. to 1:30 p.m. e.d.t., from Room 722 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting was scheduled on an emergency basis to address issues and review materials related to activities that must begin prior to the end of the fiscal year, and must be brought before a mid-July meeting of the National Council on the Arts, which is the last meeting of that body for this fiscal year. The meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 22, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–14447 Filed 6–23–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Nuclear Management Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Nuclear Management Company, LLC (the licensee) to withdraw its January 16, 2004, application for proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the Technical Specifications (1) to allow the containment equipment hatch to be open during refueling operations and/or

during movement of irradiated fuel assemblies within containment, (2) to require verification of the ability to close the equipment hatch periodically during refueling operations, and (3) to include requirements for operability of the control room post accident recirculation system during fuel handling operations in which the fuel that is being moved has been irradiated within less than 30 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 17, 2004 (69 FR 7525). However, by letter dated June 8, 2004, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 16, 2004, and the licensee's letter dated June 8, 2004, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 16th day of June, 2004.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–14298 Filed 6–23–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of 2004–09; Regulatory Issue Summary for Status on Deferral of Active Regulation of Ground-Water Protection at In Situ Leach Uranium Extraction Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has developed Regulatory Issue Summary (RIS) 2004–09, "Status on Deferral of Active Regulation of Ground-Water Protection at *In Situ* Leach (ISL) Uranium Extraction Facilities," to inform interested parties of NRC's proposal to defer active ground-water regulation at ISL facilities to the U.S. Environmental Protection Agency (EPA)-authorized States. The NRC shares the regulatory oversight of ground-water at ISL facilities with the EPA and EPA-authorized States, under the Safe Drinking Water Act (SDWA). The RIS summarizes the process that the NRC plans to use to assure that EPA-authorized States' ground-water protection programs provides adequate protection of public health and safety, and the environment, equivalent to the NRC program. On February 23, 2004, the NRC issued RIS 2004–02, requesting interested parties to submit information, on a voluntary basis, regarding the proposed action. RIS 2004–09 summarizes the comments received from interested parties and supersedes RIS 2004–02 in its entirety. No specific action or written response is required to this RIS.

ADDRESSES: Electronic copies of this document are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). RIS 2004–09 is under Adams Accession Number ML041540558. The document is also available for inspection or copying for a fee at the NRC's Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. This guidance document is not copyrighted, and Commission approval is not required to reproduce it.

FOR FURTHER INFORMATION CONTACT: John Lusher, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Mail Stop T–8A33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7694, or by e-mail to *jhl@nrc.gov*.

Dated at Rockville, Maryland this 14th day of June, 2004.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Chief, Uranium Processing Section, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–14297 Filed 6–23–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda; Board of Governors

DATE OF MEETING: June 15, 2004.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 69 FR 31647, June 4, 2004.

ADDITION: Proposed Filing with the Postal Rate Commission for Repositionable Notes (RPNs) Pricing Experiment.

At its closed meeting on June 15, 2004, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

William T. Johnstone,

Secretary.

[FR Doc. 04–14516 Filed 6–22–04; 3:09 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49885; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage Relating to the Handling of Principal Acting as Agent Orders

June 17, 2004.

I. Introduction

On February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 27, 2004, the International Securities Exchange, Inc. ("ISE"), American Stock Exchange, LLC ("Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), Pacific Exchange, Inc. ("PCX"), Philadelphia

Stock Exchange, Inc. ("Phlx"), and Boston Stock Exchange, Inc. ("BSE") (collectively the "Participants") respectively submitted to the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan").[1] The amendment proposes to modify the manner in which a member of a Participant may send Principal Acting as Agent Orders ("P/A Orders") that are larger than the Firm Customer Quote Size ("FCQS").

The proposed amendment to the Plan was published in the **Federal Register** on May 19, 2004.[2] No comments were received on the proposed amendment. This order approves the proposed amendment to the Plan.

II. Description of the Proposed Amendment

In Joint Amendment No. 10, the Participants explain that currently, the Linkage Plan provides a market maker with two ways to handle principal acting as agent ("P/A") Orders[3] that are larger than the Firm Customer Quote Size ("FCQS").[4] First, the market maker may send a P/A Order larger than the FCQS representing the entire customer order for manual processing at the receiving Participant. Second, the market maker may send an initial P/A Order for up to the FCQS. If the market maker then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

Proposed Joint Amendment No. 10 addresses the handling of P/A orders if the market maker chooses the second alternative, the sending of multiple P/A Orders. As currently drafted, the Linkage Plan does not recognize the possibility that a Participant's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed Amendment specifies that a market maker sending a second P/A Order may limit such order to the lesser of: The remaining size of the customer order; 100 contracts; or the size of the receiving Participant's disseminated quotation.

In addition, the Participants believe that there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a market maker must send the entire order to one Participant or can send orders to multiple Participants, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. The Amendment clarifies the Linkage Plan to specify that a market maker may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size of the customer order or 100 contracts. However, a market maker may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

Finally, the proposed Amendment modifies the provisions of the Linkage Plan relating to the time period within which a receiving Participant must inform the sending Participant of the amount of the order executed and the amount, if any, that was canceled, and the time period for which a sending Participant must wait while the receiving Participant continues to disseminate the same price at the national best bid or offer before sending a second P/A Order. Currently, the applicable time period for each such circumstance is 15 seconds. The proposed Amendment would permit the Options Linkage Authority to determine different applicable time periods for both circumstances, subject to approval by the Commission.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan seeking to extend the current pilot is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Plan is consistent with Section 11A of the Act[5] and Rule 11Aa3–2 thereunder,[6] in that it should help to clarify the Participant's obligations in handling P/A Orders, which should facilitate the efficient and active trading of P/A Orders through the Linkage in furtherance of the goals of a national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[7] and Rule 11Aa3–2 thereunder,[8] that the proposed Joint Amendment No. 10 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14301 Filed 6–23–04; 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 the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[2] *See* Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953.

[3] A P/A Order is an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. *See* Section 2(16)(a) of the Linkage Plan.

[4] The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange's automatic execution system is available. *See* Section 2(11) of the Linkage Plan.

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 240.11Aa3–2.

[7] 15 U.S.C. 78k–1.

[8] 17 CFR 240.11Aa3–2.

[9] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 28, 2004:

A closed meeting will be held on Thursday, July 1, 2004, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter for the closed meeting scheduled for Thursday, July 1, 2004, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Litigation matter;
Report on investigation;
Consideration of amicus participation; and an Opinion

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: June 22, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14448 Filed 6–20–04; 11:59 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49855; File No. SR–Amex–2004–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Extend on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable To Trading in Nasdaq Securities

June 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 10, 2004, the Amex amended the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend paragraph (j) of Amex Rule 118 ("Trading in Nasdaq National Market Securities") and Commentary .05 of Amex Rule 205 ("Manner of Executing Odd-Lot Orders") that were implemented on a pilot program basis and to extend the pilot program for an additional six-month period ending on December 27, 2004. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) Odd-Lot Orders—Odd lot orders in Nasdaq National Market securities shall be executed in the following manner:

(i) Market and Executable Limit Orders—A market or executable limit order shall be executed, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File. An order entered through the Amex Order File shall receive automatic execution at such price.

All market odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round Lot (PRL) transaction on the Exchange. Executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall be executed manually at the price of the first round-lot or PRL transaction on the Exchange.

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

(ii) Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop limit orders shall be executed in accordance with Rule 205, Parts A(2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C (1).

(iii) Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C (2).

(iv) Locked and Crossed Market Conditions

(a) For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.

(b) Crossed Market Condition—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by $.05 or less, market orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest $.01. When the national best displayed bid is higher than the offer by more than $.05, an odd-lot market order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate. An executable limit order will receive automatic execution at the crossed market national best displayed bid (in the case of an order to sell) or at the crossed market national best displayed offer (in the case of an order to buy).

(v) No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).

(vi) Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 7, 2004, replacing Form 19b–4 in its entirety ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

(k) No change.

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Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04—No Change.

.05 Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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

The Commission originally approved, and the Exchange implemented, a pilot program for odd-lot order [6] executions in Nasdaq securities transacted on the Exchange pursuant to unlisted trading privileges.[7] Paragraph (j) of Amex Rule 118 describes the Exchange's odd-lot execution procedures for Nasdaq securities, and Commentary .05 to Amex Rule 205 references the odd-lot procedures described in Amex Rule 118(j).

The pilot program was originally approved on August 2, 2002, for a six-month period, and was thereafter extended twice. It is currently set to expire on June 27, 2004.[8] The Exchange proposes to extend the pilot program for an additional six months to expire on December 27, 2004.

Under the Exchange's pilot program, after the opening of trading in Nasdaq securities, odd-lot market orders and executable odd-lot limit orders would be executed at the qualified national best bid or offer as defined under proposed Amex Rule 118(j)(i) at the time the order is received at the trading post or through Amex Order File. Odd-lot market orders and executable odd-lot limit orders entered before the opening of trading in Nasdaq securities would be executed at the price of the first round-lot or part of round-lot transaction on the Exchange. Non-executable limit orders, stop orders, stop limit orders, orders filled after the close and non-regular way trades would be executed in accordance with Amex Rule 205, Parts A(2), A(3), A(4), C(1) and C(2), respectively. Orders to buy or sell "at the close" would be filled at the price of the closing round-lot sale on the Exchange. In a locked market condition, odd-lot market orders and executable odd-lot limit orders would be executed at the locked market price. In a crossed market condition, odd-lot market orders would be executed at the mean of the bid and offer prices when the displayed national best bid is higher than the displayed national best offer by $.05 or less. When the displayed national best bid is higher than the displayed national best offer by more than $.05, odd-lot market orders would be executed when the crossed market condition no longer exists. In addition, in a crossed market condition, executable odd-lot limit orders would be executed at the crossed market bid price (in the case of an order to sell) or at the crossed market offer price (in the case of an order to buy). For example, if the bid and offer were 20.10 and 20.00, respectively, an executable odd-lot sell limit order priced at 20.10 or less would be executed at 20.10, and an executable odd-lot buy limit order priced at 20.00 or higher would be executed at 20.00.

The Exchange believes that the existing odd-lot execution procedures have operated efficiently. Furthermore, the Exchange has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange seeks an extension to the pilot program for an additional six-month period ending on December 27, 2004, which would provide the Exchange with time to assess further enhancements to the odd-lot execution procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The Amex has requested that the Commission waive the 30-day operative delay since the proposed rule change only seeks to extend the Exchange's

[6] An odd-lot order is an order for less than 100 shares.

[7] *See* Securities Exchange Act Release Nos. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR–Amex–2002–56); 48174 (July 14, 2003), 68 FR 43409 (July 22, 2003) (SR–Amex–2003–56); and 48995 (December 24, 2003), 68 FR 75670 (December 31, 2003) (SR–Amex–2003–102).

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter period as designated by the Commission.

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 10, 2004, the date on which the Amex filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

pilot program for odd-lot executions in Nasdaq securities for an additional six months and does not seek to alter the current rules of the pilot program in any manner. Furthermore, the Exchange represents that it has experienced no operational problems relating to such executions, and has not received any adverse comments from Amex members regarding the pilot program.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Exchange to continue its pilot odd-lot execution procedures applicable to trading in Nasdaq securities without interruption for an additional six months, expiring on December 27, 2004. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.[14]

In addition, the Commission requests that the Exchange report any problems or complaints from members and the public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–30 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–Amex–2004–30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–30 and should be submitted on or before July 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[14] For purposes of accelerating the operative date of this proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49868; File No. SR–Amex–2004–36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the American Stock Exchange LLC Relating to a Revision and Extension of the Trade-Through Liability Limitation Pilot Program Under the Options Intermarket Linkage Plan

June 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through January 31, 2005, the current pilot program that limits an Exchange member's Trade-Through[3] liability pursuant to the Linkage Plan to 10 contracts per Satisfaction Order[4] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class (the "Pilot Program"). In addition, in connection with the extension of the Pilot Program, the Exchange proposes to increase the limit on Trade-Through liability during the last seven minutes of the options trading day from 10 contracts to 25 contracts per Satisfaction Order.

The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. *See* Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. *See* Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the Amex, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

[4] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16) of the Linkage Plan.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program that limits Trade-Through liability during the last seven minutes of the options trading day. Under the current Pilot Program, an Exchange member's Trade-Through liability is limited to 10 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The proposed rule change, amending Amex Rule 942(a)(2)(ii)(C), would implement proposed Joint Amendment No. 12 to Linkage Plan into the Amex Rules.[5] If approved by the Commission, Joint Amendment No. 12 would amend the Linkage Plan so that the Pilot Program would be extended through January 31, 2005. In addition, Joint Amendment No. 12 would increase the limit on Trade-Through liability during the last seven minutes of the day from 10 contracts to 25 contracts per Satisfaction Order.

As a condition to granting permanent approval of this limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report"). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. This extension would allow the limitation of liability currently in effect to continue, with the increase in liability to 25 contracts per Satisfaction Order, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general and furthers the objectives of section 6(b)(5) of the Act[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change would enhance the national market system for options by extending and revising the Pilot Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–36. 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 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–36 and should be submitted on or before July 15, 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.[8] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further

[5] The Amex has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the Amex Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[10] The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by the Amex's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 19(b) of the Act.[11]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2004–36) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[10] *See supra* note 5.

[11] 15 U.S.C. 78f and 78s(b).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49869; File No. SR–BSE–2004–19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 Thereto, by the Boston Stock Exchange, Inc. for the Extension of a Pilot Program Limiting Liability for Trade-Throughs at the End of the Trading Day

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2004, the Boston Stock Exchange, Inc. ("BSE" 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 BSE. The BSE filed Amendment No. 1 to the proposed rule change on June 1, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Intermarket Options Linkage Rules of the BSE to extend a pilot program for limitations on Trade-Through[4] liability that occur from five minutes before the close of trading of the underlying security to the close of trading in the options class. The pilot program would be extended to January 31, 2005, and would increase the limit on Trade-Through liability during the last seven minutes of the day from 10 contracts to 25 contracts per Satisfaction Order.

The text of the proposed rule change, as amended, is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The purpose of the proposed rule change is to make the rules of the Boston Options Exchange, a facility of the Exchange, consistent with the other options exchanges in regard to end-of-day Trade-Through liability under the Linkage Plan. The Participants have submitted a Linkage Plan amendment to extend the Linkage Plan's pilot provision limiting Trade-Through liability during the last seven minutes of the trading day.[5] Pursuant to the pilot currently in effect, a BSE Options Participant's Trade-Through liability is limited to 10 contracts per Satisfaction Order[6] for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The Participants are proposing to extend the pilot for an additional seven months, until January 31, 2005. In addition, the Participants propose to increase the limit on Trade-Through liability during the last seven minutes of the trading day from 10 contracts to 25 contracts per Satisfaction Order. This increase in the limit on liability would be effective on July 1, 2004, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from John Boese, Chief Regulatory Officer, BSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 8, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule text submitted to the Commission.

[4] A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. *See* Section 2(29) of the Linkage Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. *See* Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the BSE.

[5] The BSE has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[6] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16) of the Linkage Plan.

As a condition to granting permanent approval of this limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report"). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. This extension will allow the limitation to continue in effect, with the increase in liability to 25 contracts per Satisfaction Order, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and 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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–BSE–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 BSE. 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–BSE–2004–19 and should be submitted on or before July 15, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the BSE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[11] The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by the BSE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[12]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–2004–19), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14285 Filed 6–23–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 5.

[12] 15 U.S.C. 78f and 78s(b).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49867; File No. SR–CBOE–2004–29]

Self-Regulatory Organizations; Notice of Filing an Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 thereto, by the Chicago Board Options Exchange, Incorporated Proposing to Extend a Pilot Program Relating to Certain Limitations on Trade-Through Liability.

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The CBOE filed Amendment No. 1 to the proposed rule change on June 2, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to extend a pilot program relating to certain limitations on Trade Through[4] liability during the last seven minutes of the trading day pursuant to the Linkage Plan. The text of the proposed rule change is available at the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Angelo Evangelou, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 2, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the proposed rule text submitted to the Commission.

[4] A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. See Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. See Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the CBOE, the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE has represented that the purpose of the proposed rule change is to conform CBOE Rule 6.83 to a recent Linkage Plan amendment to extent the pilot provision limiting Trade-Through liability during the last seven minutes of the trading day.[5] Pursuant to the pilot currently in effect, an Exchange member's Trade-Through liability is limited to 10 contracts per Satisfaction Order[6] for the time period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The Participants are proposing to extend the pilot for an additional seven months, until January 31, 2005. In addition, the Participants are proposing to increase the limit on Trade-Through liability during the last seven minutes of the trading day from 10 contracts to 25 contracts per Satisfaction Order. This increase in the limit on Trade-Through liability would be effective on July 1, 2004, when the current pilot expires. The time period during the trading day in which this limit would apply would remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

[5] The CBOE has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. See Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. See Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. See Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[6] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16) of the Linkage Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it should promote just and equitable principles of trade, serve to 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–29. 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

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–29 and should be submitted on or before July 15, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. As discussed in Joint Amendment No. 12, as a condition to granting permanent approval of the Trade-Through limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the "Report"). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[11] The Commission received no comments in response to public of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by the CBOE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[12]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2004–29), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14284 Filed 6–23–04; 8:45 am]

BILLING CODE 8010–01–M

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 5.

[12] 15 U.S.C. 78f and 78s(b).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49866; File No. SR–ISE–2004–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the International Securities Exchange, Inc. Relating to Limitations on End-of-Day Trade-Through Liability

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2004, the International Securities Exchange, Inc. ("ISE" 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing two changes to the current limitations on Trade-Through[3] liability during the last seven minutes of the trading day pursuant to the Linkage Plan. First, the limit on Trade-Through liability would be raised from 10 contracts to 25 contracts per Satisfaction Order as of July 1, 2004. Second, the pilot program that implemented a limitation on liability would be extended to January 31, 2005.

The text of the proposed rule change is available at the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Trade-Through" is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. *See* Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). A "Participant" is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. *See* Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the ISE, the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item 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

The purpose of the proposed rule change is to amend ISE Rule 1902 (Order Protection) to correspond to proposed Joint Amendment No. 12 to the Linkage Plan,[4] which would, among other things, amend the limitation on end-of-day Trade Through liability.[5] By way of background, the Linkage Plan requires Participants to impose liability on their members who trade at prices inferior to those displayed on competing exchanges. Among other things, in the event that a member trades through a customer limit order on another market, the exchange that is traded through can send a Satisfaction Order,[6] requiring the member to fill the customer limit order. Generally, the member is liable for the entire size of the customer order (up to the size of the Trade-Through). However, because it may be difficult for a member to hedge a position it acquires at the end of the day when filling a Satisfaction Order, the Participants currently limit this liability to 10 contracts per Satisfaction Order for the last seven minutes of options trading.[7]

The 10-contract limit is a temporary pilot program that is scheduled to expire on June 30, 2004.[8] The Participants are working with the Commission to determine whether to make a limitation on Trade-Through liability during the last seven minutes of the trading day permanent, and the Commission has requested that the Participants provide data justifying the continuation of the exemption. Pending this review of the exemption, along with the other Participants, the ISE is proposing to extend the exemption through January 31, 2005, and raise the limit on liability from 10 contracts to 25 contracts per Satisfaction Order.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[9] that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposed rule change would implement a provision in the Linkage Plan, providing a common limitation on liability for all participants in the options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2004–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–14 and should be submitted on or before July 15, 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

[4] The ISE has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[5] Telephone conversation among Michael Simon, Senior Vice President and General Counsel, ISE, Timothy Fox, Attorney-Advisor, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney-Advisor, Division, Commission on May 25, 2004.

[6] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16) of the Linkage Plan.

[7] *See supra* note 4.

[8] *See* Order approving Joint Amendment No. 8, *supra* note 4.

[9] 15 U.S.C. 78f(b)(5).

exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into ISE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[12] The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by ISE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[13]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–ISE–2004–14) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14283 Filed 6–23–04; 8:45 am]

BILLING CODE 8010–01–P

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 4.

[13] 15 U.S.C. 78f and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49881; File No. SR–Phlx–2004–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Corporate Governance

June 17, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 8, 2004, the Exchange filed Amendment No. 1 to the proposal.[3] On June 15, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On June 17, 2004, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] *See* letter from Carla Behnfeldt, Director, New Product Development Group, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 7, 2004 ("Amendment No. 1"). In Amendment No. 1, the Phlx made certain clarifications with respect to the applicability and compliance dates of the proposed rules, and proposed to restate a provision currently in Phlx Rule 849, regarding Written Affirmations, in proposed new Rule 867.

[4] *See* letter from Carla Behnfeldt, Director, New Product Development Group, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 14, 2004 ("Amendment No. 2"). In Amendment No. 2, the Phlx clarified that closed-end funds would be required to comply with proposed Rule 867.15, which requires issuers to provide to the Exchange written affirmations regarding certain enumerated audit committee requirements.

[5] *See* letter from Carla Behnfeldt, Director, New Product Development Group, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 17, 2004 ("Amendment No. 3"). Amendment No. 3 was a technical amendment and is not subject to notice and comment.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Exchange Rule 867, relating to corporate governance standards for listed companies.

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Rule 849. Audit Committee/Conflicts of Interest

Introductory Note: The requirements set forth in this Rule 849 shall continue to apply pending implementation of Rule 867.

(a)–(k) No Change.

Commentary * * *

(1)–(4) No Change.

867 Corporate Governance

General Application

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Rule 867. Certain provisions of Rule 867 are applicable to some listed companies but not to others.

Equity Listings

Section 867 applies in full to all companies listing common equity securities, with the following exceptions:

Controlled Companies

A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Rules 867.01, .04 or .05. A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC. Controlled companies must comply with the remaining provisions of Rule 867.

Limited Partnerships and Companies in Bankruptcy—

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Rules 867.01, .04 or .05. However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Rule 867.

Closed-End Funds and Open-End Funds—

The Exchange considers many of the significantly expanded standards and requirements provided for in Rule 867 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, registered closed-end funds must comply with the requirements of Rules 867.06, .07(a) and (c), .12 and .15. Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Commentary to 867.07(a), which calls for disclosure of a board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 867 applicable to domestic issuers other than Rule 867.02 and .07(b). For purposes of Rules 867.01, .03, .04, .05 and .09, a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A–3 under the Exchange Act, open-end funds (which can be listed as Index Fund Shares) are required to comply with the requirements of Rules 867.06 and .12(b). Rule 10A–3(b)(ii) under the Exchange Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management company, as well as employees of the management company. This responsibility must be addressed in the audit committee charter.

Other Entities

Except as otherwise required by Rule10A–3 under the Exchange Act (for example, with respect to open-end funds), Rules 867 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A–3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Rules 867.06 and .12(b).

Foreign Private Issuers

Listed companies that are foreign private issuers (as such term is defined in Rule 3b–4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Rule 867, except that such companies are required to comply with the requirements of Rule 867.06, .11 and .12(b).

Preferred and Debt Listings

Rule 867 does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A–3 under the Exchange Act, all companies listing only preferred or debt securities on the Phlx are required to comply with the requirements of Rules 867.06 and .12(b).

Effective Dates/Transition Periods

Listed companies will have until the earlier of their first annual meeting after July 15, 2004, or October 31, 2004, to comply with the new standards contained in Rule 867, although if a company with a classified board would be required (other than by virtue of a requirement under Rule 867.06) to change a director who would not normally stand for election in such annual meeting, the company may continue such director in the office until the second annual meeting after such date, but no later than December 31, 2005. In addition, foreign private issuers and small business issuers will have until July 31, 2005, to comply with Rule 867. As a general matter, the existing audit committee requirements provided for in Rule 849 continue to apply to listed companies pending the transition to the new rules.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on generally the same schedule as is permitted pursuant to Rule 10A–3 under the Exchange Act for audit committees, that is, one independent member at the time of listing, a majority of independent members within 90 days of listing and fully independent committees within one year. Such companies will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Rule 867 other than sections 867.06 and .12(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. The Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 867 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rules 867.06 and .12(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A–3(b)(1)(iv)(A) under the Exchange Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act.

Companies listing upon transfer from another market have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market will not apply to the requirements of Rule 867.06 unless a transition period is available pursuant to Rule 10A–3 under the Exchange Act.

References to Form 10–K

There are provisions in this Rule 867 that call for disclosure in a company's Form 10–K under certain circumstances. If a company subject to such a provision is not a company required to file a Form 10–K, then the provision shall be interpreted to mean the annual periodic disclosure form that the company does file with the SEC. For example, for a closed-end fund, the appropriate form would be the annual Form N–CSR. If a company is not required to file either an annual proxy statement or an annual periodic report with the SEC, the disclosure shall be made in the annual

report required under Rule 837, Annual Reports.

1. Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

2. In order to tighten the definition of "independent director" for purposes of these standards:

(a) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.

Commentary: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "company" would include any parent or subsidiary in a consolidated group with the company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

The basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

(i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.

Commentary: Employment as an interim Chairman or CEO shall not disqualify a director from being considered independent following that employment.

(ii) A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not considered independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

Commentary: Compensation received by a director for former service as an interim Chairman or CEO need not be considered in determining independence under this test. Compensation received by an immediate family member for service as a non-executive employee of the listed company need not be considered in determining independence under this test.

(iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until three years after the end of the affiliation or the employment or auditing relationship.

(iv) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.

(v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 ($1 million if the listed company is also listed on the New York Stock Exchange), or 5% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold.

Commentary: In applying the test in Rule 867.02(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Charitable organizations shall not be considered "companies" for purposes of Rule 867.02(b)(v), provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of $200,000 ($1 million if the listed company is also listed on the New York Stock Exchange), or 5% of such charitable organization's consolidated gross revenues. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Rule 867.02(a) above.

General Commentary to Rule 867.02(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Rule 867.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become

incapacitated. In addition, references to the "company" would include any parent or subsidiary in a consolidated group with the company.

Transition Rule. Each of the above standards contains a three-year "look-back" provision. In order to facilitate a smooth transition to the new independence standards, the Exchange will phase in the "look-back" provisions by applying only a one-year look-back for the first year after adoption of these new standards. The three-year look-backs provided for in Rule 867.02(b) will begin to apply only from June 17, 2005 (the "Three-Year Look-Back Date"). As an example, until the Three-Year Look-Back Date, a company need look back only one year when testing compensation under Rule 867.02(b)(ii). Beginning on the Three-Year Look-Back Date, however, the company would need to look back the full three years provided in Rule 867.02(b)(ii).

3. To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

Commentary: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not company officers (as that term is defined in Rule 16a–1(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees.

In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirements of Rule 10A–3(b)(3) under the Exchange Act, as applied to listed companies through Rule 867.06.

While this Rule 867.03 refers to meetings of non-management directors, if that group includes directors who are not independent under this Rule 867, listed companies should at least once a year schedule an executive session including only independent directors.

4. (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) The committee's purpose and responsibilities—which, at minimum, must be to: Identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management; and

(ii) An annual performance evaluation of the committee.

Commentary: A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: Committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

5. (a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) The committee's purpose and responsibilities—which, at minimum, must be to have direct responsibility to:

(A) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; and

(B) Make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and

(C) Produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or annual report on Form 10–K filed with the SEC;

(ii) An annual performance evaluation of the compensation committee.

Commentary: In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws.

The compensation committee charter should also address the following items: Committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to

delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

Nothing in this provision should be construed as precluding discussion of CEO compensation with the board generally, as it is not the intent of this standard to impair communication among members of the board.

6. Listed companies must have an audit committee that satisfies the requirements of Rule 10A–3 under the Exchange Act.

Commentary: The Exchange will apply the requirements of Rule 10A–3 in a manner consistent with the guidance provided by the Securities and Exchange Commission in SEC Release No. 34–47654 (April 1, 2003). Without limiting the generality of the foregoing, the Exchange will provide companies the opportunity to cure defects provided in Rule 10A–3(a)(3) under the Exchange Act.

7. (a) The audit committee must have a minimum of three members.

Commentary: Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. While the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set out in Item 401(h) of Regulation S–K, a board may presume that such a person has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC.

(b) In addition to any requirement of Rule 10A–3(b)(1), all audit committee members must satisfy the requirements for independence set out in Rule 867.02.

(c) The audit committee must have a written charter that addresses:

(i) The committee's purpose—which, at minimum, must be to:

(A) Assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the company's internal audit function and independent auditors; and

(B) Prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement;

(ii) An annual performance evaluation of the audit committee; and

(iii) *The duties and responsibilities of the audit committee—which, at a minimum, must include those set out in Rule 10A–3(b)(2), (3), (4) and (5) of the Exchange Act, as well as to:*

(A) At least annually, obtain and review a report by the independent auditor describing: The firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

Commentary: After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(B) Discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";

(C) Discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Commentary: The audit committee's responsibility to discuss earnings releases as well as financial information and earnings guidance may be done generally i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(D) Discuss policies with respect to risk assessment and risk management;

Commentary: While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the

audit committee, but they need not be replaced by the audit committee.

(E) Meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Commentary: To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(F) Review with the independent auditor any audit problems or difficulties and management's response;

Commentary: The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: Any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(G) Set clear hiring policies for employees or former employees of the independent auditors; and

Commentary: Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(H) Report regularly to the board of directors.

Commentary: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.General Commentary to Rule 867.07(c): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) Major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

(d) Each listed company must have an internal audit function.

Commentary: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

General Commentary to Rule 867.07: To avoid any confusion, note that the audit committee functions specified in Rule 867.07 are the sole responsibility of the audit committee and may not be allocated to a different committee.

8. Requirements relating to shareholder approval of equity compensation plans and broker voting are set forth in Rule 850.

9. Listed companies must adopt and disclose corporate governance guidelines.

Commentary: No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual report on Form 10-K filed with the SEC must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management,

The following subjects must be addressed in the corporate governance guidelines:

- Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Rules 867.01 and .02. Companies may also address other substantive qualification requirements, including policies limiting the number of boards, on which a director may sit, and director tenure, retirement and succession.
- Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.
- Director access to management and, as necessary and appropriate, independent advisors.
- Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of

director compensation, and the independence of a director.

• Director orientation and continuing education.

• Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

• Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

10. Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Commentary: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers. Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report on Form 10–K filed with the SEC must state that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it. Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

• Conflicts of interest. A "conflict of interest" occurs when an individual's private interest interferes in any way—or even appears to interfere—with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

• Corporate opportunities. Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.

• Confidentiality. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

• Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

• Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.

• Compliance with laws, rules and regulations (including insider trading laws). The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

• Encouraging the reporting of any illegal or unethical behavior. The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

11. Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under Phlx listing standards.

Commentary: Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under Phlx listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

12. (a) Each listed company CEO must certify to the Phlx each year that he or she is not aware of any violation by the company of Phlx corporate governance listing standards.

Commentary: The CEO's annual certification to the Phlx that, as of the

date of certification, he or she is unaware of any violation by the company of Phlx's corporate governance listing standards will focus the CEO and senior management on the company's compliance with the listing standards. Both this certification to the Phlx, and any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the companies annual report on Form 10–K filed with the SEC.

(b) Each listed company CEO must promptly notify the Phlx after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Rule 867.

13. The Phlx may issue a public reprimand letter to any listed company that violates a Phlx listing standard.

Commentary: Suspending trading in or delisting a company can be harmful to the very shareholders that the Phlx listing standards seek to protect; the Phlx must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the Phlx to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the Phlx may issue a public reprimand letter to any listed company, regardless of type of security listed or country of incorporation, that it determines has violated a Phlx listing standard. For companies that repeatedly or flagrantly violate Phlx listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards set forth in Rules 803, 804 and 805, or that fail to comply with the audit committee standards set out in Rule 867.06. The processes and procedures provided for in Rule 811, Delisting Policies and Procedures, govern the treatment of companies falling below those standards.

14. Related Party Transactions. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404.

15. Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) Any determination that the company's board of directors has made regarding the independence of directors pursuant to Section 867.02 above;

(ii) The financial literacy of the audit committee members as required by Section 867.07 above;

(iii) The determination that at least one of the audit committee members has accounting or related financial management expertise as required by Section 867.07 above; and

(iv) The annual review and reassessment of the adequacy of the audit committee charter as required by Section 867.07 above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx states that the purpose of the proposed rule change is to adopt new Rule 867, Corporate Governance, to conform with corporate governance rules recently approved by the Commission for the New York Stock Exchange ("NYSE").

On November 4, 2003, the Commission approved SR–NYSE–2002–33, a proposed rule change amending the NYSE Listed Company Manual to implement significant changes to NYSE's listing standards that were aimed to ensure the independence of directors of listed companies and to strengthen corporate governance practices of listed companies.[6] In the approval order, the Commission stated that in 1998, the NYSE and National Association of Securities Dealers, Inc. ("NASD") sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees ("Blue Ribbon Committee"). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to enhance their effectiveness. Additionally, in February 2002, in light of several high-profile corporate failures, the Commission's Chairman at that time requested that the NYSE and NASD, as well as the other exchanges, including Phlx, review their listing standards, with an emphasis this time on all corporate governance listing standards, and not just those provisions relating to audit committees.

In January 2003, pursuant to the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), the Commission proposed Rule 10A–3 under the Exchange Act, which directs each national securities exchange and national securities association to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements specified in that rule. The Commission adopted Rule 10A–3 in April 2003. As noted above, on November 4, 2003, the Commission approved the rule changes set forth in SR-NYSE–2002–33, including rule changes made in compliance with the requirements of Rule 10A–3, as well as additional, extensive changes to other aspects of the NYSE's corporate governance listing standards.

On November 25, 2003, the Commission approved a Phlx proposed rule change filed by the Exchange in compliance with the audit committee listing standards required by Rule 10A–3 under the Act.[7] That rule change also included additional requirements, but generally did not change Phlx's listing standards other than listing standards applicable to audit committees. The Exchange is now proposing amendments to its listing standards to conform, for the most part, to the listing standards adopted by the NYSE in SR–NYSE–2002–33. Those listing standards cover a range of corporate governance matters beyond those applicable to audit committees. However, the Phlx is also proposing to amend its audit committee

[6] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of the Nasdaq Stock Market, Inc. and the NYSE).

[7] *See* Securities Exchange Act Release No. 48836 (November 25, 2003), 68 FR 67719 (December 3, 2003) (SR–Phlx–2003–51).

standards, in the interest of conforming more closely to those of the NYSE. The Phlx believes that aligning its listing standards more closely with the NYSE's will facilitate compliance by most of Phlx's listed companies, which are currently also listed at the NYSE.

According to the Phlx, the listing standards proposed herein are designed to further the ability of honest and well-intentioned directors, officers, and employees of listed issuers to perform their functions effectively. The Phlx believes that the proposal should also allow shareholders to more easily and efficiently monitor the performance of companies and directors in order to reduce instances of lax and unethical behavior. A summary of the proposal is set forth below. The applicability of certain requirements is subject to the exceptions discussed at the end of this section.

Independence of Majority of Board Members

Phlx Rule 867.01 generally would require the board of directors of each listed company to consist of a majority of independent directors.[8] Pursuant to Phlx Rule 867.02, no director would qualify as "independent" unless the board affirmatively determines that the director has no material relationship with the company (either directly or as a partner, shareholder, or officer of an organization that has a relationship with the company). The company would be required to disclose the basis for such determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the Commission. In complying with this requirement, a board would be permitted to adopt and disclose standards to assist it in making determinations of independence, disclose those standards, and then make the general statement that the independent directors meet those standards.

Definition of Independent Director

In addition, in proposed Rule 867.02(G), the Phlx would tighten its current definition of independent director as follows. First, a director who is an employee, or whose immediate family member is an executive officer, of the company would not be independent until three years after the end of such employment relationship. Employment as an interim Chairman or CEO would not disqualify a director from being considered independent following that employment.

Second, a director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, except for certain permitted payments, would not be independent until three years after he or she ceases to receive more than $100,000 per year in such compensation.

Third, a director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company would not be independent until three years after the end of the affiliation or the employment or auditing relationship.

Fourth, a director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee would not be independent until three years after the end of such service or the employment relationship.

Fifth, a director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of $200,000 ($1 million if the listed company is also listed on the NYSE), or 5% of such other company's consolidated gross revenues, would not be independent until three years after falling below such threshold. Charitable organizations would not be considered "companies" for purposes of this provision, provided that the listed company discloses in its annual proxy statement, or if the listed company does not file an annual proxy statement, in its annual report on Form 10–K filed with the Commission, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, such contributions in any single year exceeded the greater of $200,000 ($1 million if the listed company is also listed on the NYSE) or 5% of the organization's consolidated gross revenues. Additionally, both the payments and the consolidated gross revenues to be measured would need to be those reported in the last completed fiscal year. The look-back provision would apply solely to the financial relationship between the listed company and the director or immediate family member's current employer. A listed company would not need to consider former employment of the director or immediate family member.

For purposes of these provisions, "immediate family member" would be defined to include a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. References to "company" would include any parent or subsidiary in a consolidated group with the company.

The Exchange further proposes to phase in the look-back requirements discussed above by applying a one-year look-back for the first year after adoption of these new standards. The three-year look-back periods would begin to apply from the date that is the first anniversary of Commission approval of the proposed rule change.

Separate Meetings for Board Members

The Exchange proposes to require the non-management directors of each Phlx-listed company to meet at regularly scheduled executive sessions without management.[9]

In addition, listed companies would be required to disclose a method for interested parties to communicate directly with the presiding director of such executive sessions, or with the non-management directors as a group. Companies would be permitted to utilize the same procedures they have established to comply with Rule 10A–3(b)(3) under the Act.

Nominating/Corporate Governance Committee

The Exchange proposes to require each listed company to have a nominating/corporate governance committee composed entirely of independent directors.[10] Such committee would be required to have a written charter that addresses, among other items, the committee's purpose and responsibilities, and an annual performance evaluation of the nominating/corporate governance committee. The Exchange further proposes to clarify that the committee would be required to identify individuals qualified to become board members, consistent with the criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders, among other

[8] *See infra* note 19 and accompanying text regarding entities excepted from this requirement.

[9] *See id.*

[10] *See id.*

responsibilities that would be required to be specified by the committee charter.

Compensation Committee

The Exchange proposes to require each listed company to have a compensation committee composed entirely of independent directors.[11] Such committee would be required to have a written charter that addresses, among other items, the committee's purpose and responsibilities—which would need to include, at a minimum, specified responsibilities with respect to compensation of the Chief Executive Officer ("CEO"), among other responsibilities—and an annual performance evaluation of the compensation committee. The compensation committee also would be required to produce a compensation committee report on executive compensation, as required by Commission rules to be included in the company's annual proxy statement or annual report on Form 10–K filed with the Commission. Further, the Exchange proposes to add a provision to the commentary on this section indicating that discussion of CEO compensation with the board generally is not precluded.

Audit Committee

Under the proposal, Exchange Rules 867.06, 867.07, 867.12(b), 867.14, and 867.15 would replace and supersede current Rule 849. As noted above, the Exchange is proposing to adopt the same format and language used by the NYSE in order to facilitate compliance by Phlx-listed companies that are also listed on the NYSE.[12]

a. Composition

Proposed Rules 867.06 and 867.07 would require each Phlx-listed company to have a minimum three-person audit committee composed entirely of directors that meet the independence standards of both Exchange Rule 867.02, discussed above, and Commission Rule 10A–3. The Phlx also proposes to add the following commentary: "The Exchange will apply the requirements of Rule 10A–3 in a manner consistent with the guidance provided by the Securities and Exchange Commission in SEC Release No. 34–47654 (April 1, 2003). Without limiting the generality of the foregoing, the Exchange will provide companies with the opportunity to cure defects provided in Rule 10A–3(a)(3)."

In addition, the Commentary to Exchange Rule 867.07(a) would require that each member of the audit committee be financially literate, as such qualification is interpreted by the board in its business judgment, or become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee would be required to have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. The Exchange also proposes to clarify that while the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set forth in Item 401(e) of Regulation S–K, a board may presume that such a person has accounting or related financial management experience.

If an audit committee member simultaneously serves on the audit committee of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, each board would be required to determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and to disclose such determination.

b. Audit Committee Charter and Responsibilities

Exchange Rule 867.07(c) would require the audit committee of each listed company to have a written audit committee charter that addresses: (i) The committee's purpose, including certain specified aspects of such purpose; (ii) an annual performance evaluation of the audit committee; and (iii) the duties and responsibilities of the audit committee.

The rule would specify the duties and responsibilities of the audit committee that must be addressed in the audit committee charter. These would include, at a minimum, those set out in Rule 10A–3(b)(2), (3), (4) and (5), as well as the responsibility to annually obtain and review a report by the independent auditor; discuss the company's annual audited financial statement and quarterly financial statements with management and the independent auditor; discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies; discuss policies with respect to risk assessment and risk management; meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function), and with independent auditors; review with the independent auditors any audit problems or difficulties and management's response; set clear hiring policies for employees or former employees of the independent auditors; and report regularly to the board.

The Written Affirmation requirements in current Phlx Rule 849 would be restated in proposed new Rule 867.15.[13]

Internal Audit Function

Exchange Rule 867.07(d) generally would require each listed company to have an internal audit function.[14]

Cross Reference to Shareholder Approval of Equity Compensation Plans

New Rule 867.08 would cross-reference Exchange Rule 850, which governs requirements relating to shareholder approval of equity compensation plans and broker voting.[15]

Corporate Governance Guidelines

Exchange Rule 867.09 generally would require each listed company to adopt and disclose corporate governance guidelines.[16] The following topics would be required to be addressed: Director qualification standards; director responsibilities; director access to management and, as necessary and appropriate, independent advisors; director compensation; director orientation and continuing education; management succession; and annual performance evaluation of the board. Each company's website would be required to include its corporate governance guidelines and the charters of its most important committees, and the availability of this information on the website or in print to shareholders would need to be referenced in the company's annual report on Form 10–K filed with the Commission.

Code of Business Conduct and Ethics

Exchange Rule 867.10 generally would require each listed company to adopt and disclose a code of business conduct and ethics for directors, officers and employees, and to promptly disclose any waivers of the code for directors or executive officers.[17] The commentary to this section would set forth the most important topics that should be addressed, including conflicts

[11] *See id.*

[12] *See also infra* note 19 and accompanying text regarding applicability of these requirements.

[13] *See* Amendment No. 1.

[14] *See infra* note 19 and accompanying text.

[15] Exchange Rule 850 was recently amended. *See* Securities Exchange Act Release No. 48736 (October 31, 2003), 68 FR 63180 (November 7, 2003).

[16] *See infra* note 19 and accompanying text.

[17] *See id.*

of interest; corporate opportunities; confidentiality of information; fair dealing; protection and proper use of company assets; compliance with laws, rules and regulations (including insider trading laws); and encouraging the reporting of any illegal or unethical behavior. Each code would be required to contain compliance standards and procedures to facilitate the effective operation of the code. Each listed company's website would be required to include its code of business conduct and ethics, and the availability of the code on the website or in print to shareholders would need to be referenced in the company's annual report on Form 10–K filed with the Commission.

CEO Certification

Exchange Rule 867.12(a) would require the CEO of each listed company to certify to the Exchange each year that he or she is not aware of any violation by the company of the Exchange's corporate governance listing standards.[18] This certification would be required to be disclosed in the company's annual report or, if the company does not prepare an annual report to shareholders, in the company's annual report on Form 10–K filed with the Commission.

In addition, Exchange Rule 867.12(b) would require the CEO of each listed company to promptly notify the Phlx in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of the new requirements.

Public Reprimand Letter

Exchange Rule 867.13 would allow the Phlx to issue a public reprimand letter to any listed company that violates a Phlx listing standard.

Exceptions to the Phlx Corporate Governance Proposals [19]

The Exchange proposes to exempt any listed company of which more than 50% of the voting power is held by an individual, a group, or another company ("Controlled Company") from the requirements that its board have a majority of independent directors, and that the company have nominating/corporate governance and compensation committees composed entirely of independent directors. A company that chose to take advantage of any or all of these exemptions would be required to disclose that choice, that it is a Controlled Company, and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the Commission. Limited partnerships and companies in bankruptcy proceedings also would be exempt from requirements that the board have a majority of independent directors and that the issuer have nominating/corporate governance and compensation committees composed entirely of independent directors.

The Exchange considers many of the requirements of proposed Rule 867 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940 ("Investment Company Act"), given the pervasive federal regulation applicable to them. However, the Exchange proposes that registered closed-end management investment companies ("closed-end funds") would be required to: (1) Have a minimum three-member audit committee that satisfies the requirements of Rule 10A–3 under the Act and meets the requirements of proposed Phlx Rule 867.07(a); (2) comply with the requirements of the proposed Phlx Rule 867.07(c) concerning audit committee charter requirements; and (3) comply with the certification and notification provisions regarding non-compliance, as well as the written affirmation requirements. Closed-end funds would be excluded from the disclosure requirement relating to an audit committee member's simultaneous service on more than three audit committees, but would be subject to the requirement for the board to determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee.

The Phlx also proposes to require business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act that are not registered under the Investment Company Act, to comply with all the provisions of Phlx Section 867 applicable to domestic issuers, except that the directors of such companies, including audit committee members, would not be required to satisfy the independence requirements set forth in Phlx Section 867.02 and 867.07(b). For purposes of Phlx Sections 867.01, .03, .04, .05, and .09, a director of a business development company would be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act.

Open-end management investment companies ("open-end funds"), which can be listed as Index Fund Shares, would be required to: (1) Have an audit committee that satisfies the requirements of Rule 10A–3 under the Act, and (2) notify the Exchange in writing of any material non-compliance.

In addition, the Exchange proposes to require the audit committees of closed-end and open-end funds to establish procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company, of concerns regarding questionable accounting or auditing matters. This responsibility would be required to be addressed in the audit committee charter.

The Exchange proposes that except as otherwise required by Rule 10A–3 under the Act, the new requirements also would not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A–3 applies to a passive business organization, listed derivative, or special purpose security, the requirement to have an audit committee that satisfies the requirements of Rule 10A–3, and the requirement to notify the Phlx in writing of any material non-compliance, also would apply.

The new requirements generally would not apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A–3, however, all companies listing only preferred or debt securities on the Exchange would be required to: (1) Have an audit committee that satisfies the requirements of Rule 10A–3, and (2) notify the Exchange in writing of any material non-compliance.

Application to Foreign Private Issuers

Exchange Rule 867 would permit Phlx-listed companies that are foreign private issuers, as such term is defined in Rule 3b–4 under the Act, to follow home country practice in lieu of the new requirements, except that such companies would be required to: (1) Have an audit committee that satisfies the requirements of Rule 10A–3 under the Act; (2) notify the Exchange in writing after any executive officer becomes aware of any non-compliance with any applicable provision; and (3) provide a brief, general summary of the significant ways in which its

[18] *See id.*

[19] *See* the "General Applicability" section in the text of proposed Rule 867.

governance differs from those followed by domestic companies under Exchange listing standards. Listed foreign private issuers would be permitted to provide this disclosure either on their website (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States. If the disclosure is made available only on the website, the annual report would be required to state this and provide the web address at which the information may be obtained.

Proposed Implementation of New Requirements

Listed companies would have until the earlier of their first annual meeting after July 15, 2004, or October 31, 2004, to comply with the new standards.[20] However, if a company with a classified board is required to change a director who would not normally stand for election in such annual meeting, the company would be permitted to continue such director in office until the second annual meeting after such date, but no later than December 31, 2005.

Notwithstanding the foregoing, foreign private issuers and small business issuers would have until July 31, 2005, to comply with Rule 867.

Companies listing in conjunction with their initial public offering would be required to have one independent member at the time of listing, a majority of independent members within 90 days of listing, and fully independent committees within one year. They would be required to meet the majority of independent board requirement within 12 months of listing.

Companies listing upon transfer from another market would have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company would have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market would not apply to the audit committee requirements of Rule 10A–3 unless a transition period is available under Rule 10A–3.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act[21] in general and furthers the objectives of Section 6(b)(5)[22] in particular in that it is designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–33. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–33 and should be submitted on or before July 15, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In

[20] The requirements set forth in current Rule 849 would continue to apply pending implementation of Rule 867. By the terms of Rule 849, listed issuers (other than small business issuers and foreign private issuers) are required to be in compliance with the applicable requirements set forth in Rules 849(b)–(j) and Commentary Sections (1)–(4) of Rule 849 by the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004 or October 31, 2004. The expanded corporate governance provisions of Rule 867—including paragraphs (6), (7), 12(b), (14), and (15), which replace and supersede Rule 849—begin to apply (for listed issuers other than small business issuers and foreign private issuers) the earlier of the listed issuer's first annual shareholders meeting after July 15, 2004, or October 31, 2004. Thus, listed issuers whose first annual shareholder meeting after January 15, 2004 is held subsequent to July 15, 2004 would be required to be in compliance with the provisions of Rule 867 (rather than the aforementioned provisions of Rule 849) by the time of such annual meeting, but in any event no later than October 31, 2004. Listed issuers whose first annual shareholder meeting after January 15, 2004 is held before July 15, 2004, and thus are required to comply with Rule 849(b)–(j) and Commentary Sections (1)–(4) by the date of such annual meeting, would be required to be in compliance with the expanded, superseding provisions of Rule 867 beginning on October 31, 2004. For small business issuers and foreign private issuers, Rule 867 would supersede Rule 849(b)–(j) and Commentary Sections (1)–(4) and begin to apply on July 31, 2005. The first sentence of Rule 849 will continue to apply to all listed companies until Rule 849(b)–(j) and Commentary Sections (1)–(4) or Rule 867 become applicable.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's

Continued

particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[24] in that it is designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change, as amended, will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of Phlx-listed issuers. The proposal, as amended, also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the Phlx has designed its proposal in a way that largely harmonizes it with rule changes recently approved by the Commission for other self-regulatory organizations.[25]

The Phlx has requested that the Commission grant accelerated approval to the proposed rule change. The Commission believes that the proposed rule change will significantly align the corporate governance standards proposed for companies listed on the Phlx with the standards approved by the Commission for companies listed on other SROs. The Commission believes it is appropriate to accelerate approval of the proposed rule change so that the comprehensive set of strengthened corporate governance standards for companies listed on the Phlx may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[26] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] *See, e.g.*, Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approving changes to the corporate governance listing standards of the Nasdaq Stock Market, Inc. and the NYSE).

[26] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–2004–33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14287 Filed 6–23–04; 8:45 am]

BILLING CODE 8010–01–P

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 26, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number (202) 395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

Title: Size Standards Declaration.

No.: 480.

Frequency: On occasion.

Description of Respondents: SBIC Financing Reports.

Responses: 4,200.

Annual Burden: 4,200.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–14332 Filed 6–23–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 26, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov*, fax number (202) 395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

Title: Stockholders Confirmation (Corporation); Ownership Confirmation (Partnership).

No.: 1405, 1405A.

Frequency: On occasion.

Description of Respondents: Newly Licensed SBICs.

Responses: 600.

Annual Burden: 600.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–14333 Filed 6–23–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4749]

Culturally Significant Object Imported for Exhibition Determinations: "Games for the Gods: The Greek Athlete and the Olympic Spirit"

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 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition, "Games for the Gods: The Greek Athlete and the Olympic Spirit," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the Museum of Fine Arts, Boston, Massachusetts, from on or about July 21, 2004, to on or about November 28, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information about the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: June 18, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–14345 Filed 6–23–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4737]

ITAC Meeting To Review Results of ITU–T Study Group 3 Meeting of June 2004

SUMMARY: A meeting of the International Telecommunication Advisory Committee to review results of ITU–T Study Group 3 (Tariff and accounting principles) of June 2004 has been scheduled.

The International Telecommunication Advisory Committee (ITAC) will meet on July 7, 2004 from 9:30–noon debrief the June 2004 meeting of ITU–T Study Group 3 (Tariff and accounting principles) and to make plans for continuing the work at following meetings. The meeting will be hosted at the offices of Squire, Sanders, & Dempsey, 1201 Pennsylvania Avenue, NW., Washington, DC 20044–0407. A detailed agenda will be published on the following e-mail reflector: *SGA@eblist.state.gov*. People desiring to attend the meeting who are not on this list may request the information from the Secretariat at *minardje@state.gov*.

Dated: June 19, 2004.

Marian R. Gordon,

Director, Telecommunication & Information Standardization, , Department of State.

[FR Doc. 04–14344 Filed 6–23–04; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than August 23, 2004.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0524." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for

FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Railroad Communications (Formerly Radio Standards and Procedures).

OMB Control Number: 2130–0524.

Abstract: The Federal Railroad Administration (FRA) amended its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to re-title this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals, and other forms of wireless communications to convey emergency and need-to-know information. The new rule establishes safe, uniform procedures covering the use of radio and other wireless communications within the railroad industry.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
220.8—Waivers	685 railroads	1 letter	60 minutes	1 hour	$37
220.25—Instruction of Employees	685 railroads	70,000 sessions	30 minutes	35,000 hours	1,190,000
—Sub Yrs.—Instr	685 railroads	12,540 sessions	30 minutes	6,270 hours	213,180
—Operational Testing of Empl	685 railroads	100,000 tests	15 minutes	25,000 hours	850,000
220.35—Testing Radio/Wireless Communication Eq.	685 railroads	780,000 tests	30 seconds	6,500 hours	221,000
220.61—Transmission of Mandatory Dir.	685 railroads	7,200,000 directives.	1.5 minutes	180,000 hours	6,120,000
—Marketing Man. Dir	685 railroads	624,000 marks	15 seconds	2,600 hours	88,400

Total Responses: 8,786,541.

Estimated Total Annual Burden: 255,371 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on June 17, 2004.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–14379 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 18375]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JOKAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18375 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18375. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JOKAR is:

Intended Use: "Sightseeing, entertainment charter".

Geographic Region: "New York, Connecticut, New Jersey".

Dated: June 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–14276 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 18373]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PERELANDRA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18373 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18373. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PERELANDRA is:

Intended Use: "Passenger Charter.

Geographic Region: "Gulf of Mexico and Bahamas".

Dated: June 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–14275 Filed 6–23–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34510]

Watco Companies, Inc.—Continuance in Control Exemption—Kaw River Railroad, Inc.

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Kaw River Railroad, Inc. (KRR), upon KRR's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or shortly after June 1, 2004, the effective date of the exemption.

The transaction is related to STB Finance Docket No. 34509, *Kaw River Railroad, Inc.—Acquisition and Operation Exemption—The Kansas City Southern Railway Company*, wherein KRR seeks to acquire by: (1) Lease from The Kansas City Southern Railway Company (KCS) and operate approximately 7.5 miles of rail lines in Kansas City, KS; (2) sublease from KCS and operate approximately 4.5 miles of rail lines in Kansas City, KS, and Kansas City, MO, that are owned by Kansas City Terminal Railway Company (KCT); and (3) assignment from KCS operating authority over approximately 6.2 miles of KCT rail lines in order to access the leased KCS and KCT trackage.

Watco owns 100% of the issued and outstanding stock of KRR, and controls through stock ownership and management eight other Class III rail carriers: South Kansas and Oklahoma Railroad Company (SKO), Palouse River & Coulee City Railroad, Inc. (PRCC), Timber Rock Railroad, Inc. (TIBR), Stillwater Central Railroad (SLWC), Eastern Idaho Railroad, Inc. (EIRR), Kansas & Oklahoma Railroad, Inc. (K&O), Pennsylvania Southwestern Railroad, Inc. (PSWR), and Great Northwest Railroad, Inc. (GNR).[1]

As pertinent here, SKO's lines are located in the southeastern portion of Kansas and southwestern portion of Missouri, and are a substantial distance from the lines being leased by KRR. K&O's Kansas lines are located in the central and western portions of the State and also are a substantial distance from the lines being leased and subleased by KRR.

Watco states that: (i) The rail lines of KRR will not connect with any of the lines of the railroads under its control or within its corporate family, (ii) the transaction is not a part of a series of anticipated transactions that would connect the rail lines being leased and subleased by KRR with any other railroad in its corporate family, and (iii) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] SKO's lines are located in Missouri, Kansas, and Oklahoma; PRCC's lines are located in Washington, Oregon, and Idaho; TIBR's lines are located in Texas and Louisiana; SLWC's lines are located in Oklahoma; EIRR's lines are located in Idaho; K&O's lines are located in Kansas and Colorado; PSWR's line is located in Pennsylvania; and GNR's lines are located in Idaho and Washington.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34510, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: June 18, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14327 Filed 6–23–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34511]

Belvidere & Delaware River Railway Company, Inc.—Lease and Operation Exemption—Black River & Western Corp. d/b/a Black River & Western Railroad

The Belvidere & Delaware River Railway Company, Inc. (B&DR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from Black River & Western Corp. d/b/a Black River & Western Railroad (BR&W), and operate approximately 10 miles of rail line between milepost 6.2 at Ringoes and milepost 16.2 at Three Bridges, in Hunterdon County, NJ. The line interchanges with Norfolk Southern Railway Company, at Three Bridges.[1]

B&DR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that such revenues will not exceed $5 million annually. The transaction was scheduled to be consummated no sooner than June 9, 2004, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34511, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Fiorilla, Esq., Watson, Stevens, Fiorilla & Rutter, LLP, 390 George St., P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 17, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14238 Filed 6–23–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34509] [1]

Kaw River Railroad, Inc.—Acquisition and Operation Exemption—The Kansas City Southern Railway Company

Kaw River Railroad, Inc. (KRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by: (1) Lease from The Kansas City Southern Railway Company (KCS) and operate approximately 7.5 miles of rail lines in Kansas City, KS; (2) sublease from KCS and operate approximately 4.5 miles of rail lines in Kansas City, KS, and Kansas City, MO, that are owned by Kansas City Terminal Railway Company (KCT); and (3) assignment from KCS operating authority over approximately 6.2 miles of KCT rail lines in order to access the leased KCS and KCT trackage.

The lines KRR seeks to acquire by lease are: (1) Between the facilities of Inland Container located on Kansas Avenue and the facilities of Constar Plastics, Inc., located on Armourdale Parkway, in Kansas City, KS; (2) between the facilities of Lite-Weight Products, Inc. located on Kansas Avenue, and the facilities of Ace Pallet, located on Argentine Boulevard, in Kansas City, KS; (3) KCS's 12th Street Yard located south of 12th Street in Kansas City, MO; and (4) KCS's Armourdale Yard, located near the facilities of Kaw River Shredding on South 12th Street, in Kansas City, KS.

The KCT-owned lines KRR seeks to acquire by sublease are: (1) Between the facilities of Kansas City Star, located on Grand Boulevard, and a point near Pennsylvania Avenue in Kansas City, MO; (2) between the facilities of Proctor and Gamble Mfg., Co., located on Kansas Avenue, and Osage Avenue, near the facilities of Constar Plastics, Inc., in Kansas City, KS; and (3) KCT's Mill Street Yard, located between Mill Street and South 12th Street, in Kansas City, KS.

The KCT-owned main lines over which KRR seeks to acquire the assignment of operating authority are as follows: (1) Between milepost 4.0, near Grand Avenue, and KCS's 12th Street Yard, located south of 12th Street, in Kansas City, MO; (2) between a point near the Kansas-Missouri State line and the facilities of Thomas & Associates Wholesale Lumber on Shawnee Avenue in Kansas City, KS; and (3) between Osage Avenue, near the facilities of Constar Plastics, Inc., and the facilities of Thomas & Associates Wholesale Lumber.[2]

This transaction is related to STB Finance Docket No. 34510, *Watco Companies, Inc.—Continuance in Control Exemption—Kaw River Railroad, Inc.*, wherein Watco Companies, Inc., seeks to continue in control of KRR upon KRR's becoming a Class III rail carrier.

KRR certifies that its projected revenues as a result of this transaction will not result in KRR becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

KRR indicates that it expected to consummate the transaction on or shortly after June 1, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34509, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–

[1] B&DR indicates that it has reached an agreement with BR&W on a 1-year lease for B&DR's operation of the line.

[1] On May 27, 2004, the Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), filed a petition for stay of the transaction. The stay request was denied by decision served on May 28, 2004. On June 10, 2004, KRR filed a motion for protective order, which was granted by decision served June 18, 2004. On June 4 and 14, 2004, respectively, BLET and the United Transportation Union filed petitions to revoke the exemption. The revocation requests will be addressed in a separate Board decision.

[2] KRR states that there are no milepost designations associated with the rail lines it seeks to lease and sublease. As to the rail lines over which it seeks operating authority, there is one milepost designation (milepost 4.0 near Grand Avenue and KCS's 12th Street Yard). Other than the specified milepost, there are no milepost designations associated with the rail lines over which it seeks operating authority.

0001. In addition, one copy of each pleading must be served on Karl Morell, Suite 225, 1455 F St., NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: June 18, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14326 Filed 6–23–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Veterans' Illnesses and Deployment Health Scientific Merit Review Board; Notice of Establishment

As required by section 9(a)(2) of Public Law 92–463 (Federal Advisory Committee Act), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Gulf War Veterans' Illnesses and Deployment Health Scientific Merit Review Board. The Secretary of Veterans Affairs has determined that establishing the Board is both necessary and in the public interest.

The Board is expected to make recommendations that will improve the quality of VA research pertaining to the health consequences of participation in the Gulf War (Operations Desert Shield/Desert Storm, August 1990–July 1991) and other military deployments. Focused advice from subject matter experts on the Board will enhance the Department's efforts to restore the capabilities of veterans with deployment-related disabilities and to improve the quality of their lives by promoting their functional independence.

The Board will advise VA's Office of Research and Development (ORD) leadership on the scientific merit, technical merit, and mission relevance of research pertaining to the health effects of participation in the Gulf War and other military deployments before and since that conflict. The Board will: (1) Review Gulf War veterans' illnesses and deployment health research and development proposals administered locally by VA facilities for scientific and technical merit; (2) prepare summary recommendations to ORD leadership on all proposals based upon independent review, Board discussions, and site visits, where necessary; and (3) advise ORD leadership regarding the status of Gulf War veterans' illnesses and deployment health research and development as applicable to the Board members' areas of expertise.

Dated: June 17, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

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Part II

Patent and Trademark Office

37 CFR Parts 1, 10, and 11
Changes to Representation of Others Before the United States Patent and Trademark Office; Final Rule

PATENT AND TRADEMARK OFFICE

37 CFR Parts 1, 10 and 11

[Docket No.: 2002–C–005]

RIN 0651–AB55

Changes to Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) is updating the procedures regarding recognition to practice before the Office in patent cases. The update is done to take advantage of computerized delivery of examinations, and to enable registration applicants to benefit in several ways, including scheduling the examination a their convenience and having more opportunities to take the examination.

DATES: *Effective Date:* July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Harry I. Moatz ((703) 305–9145), Director of Enrollment and Discipline (OED Director), directly by phone, or by facsimile to (703) 305–4136, marked to the attention of Mr. Moatz, or by mail addressed to: Mail Stop OED—Ethics Rules, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: The Office published proposed rules regarding "Changes to Representation of Others Before The United States Patent and Trademark Office" on December 12, 2003 (68 FR 69442) and provided a sixty-day comment period that ended on February 10, 2004. The proposed rules included Subpart A, General Provisions, Subpart B, Recognition To Practice Before The Office, Subpart C, Investigations and Disciplinary Proceedings, and Subpart D, United States Patent and Trademark Office Rules of Professional Conduct. The Office published in the **Federal Register** an initial extension on January 29, 2004 (69 FR 4269) of the period for public comment regarding the ethics rules in Subpart D of the proposed rules. Additional time for public comment was allowed for consideration of whether the Rules for Professional Conduct should include the revisions to the Model Rules as amended by the American Bar Association at the end of its February 2002 Midyear Meeting, also known as the Ethics 2000 revision. The Office thereafter published in the **Federal Register** notice on March 3, 2004 (69 FR 9986) of an extension for public comment on proposed rules 1.4(d)(2), 1.8(a)(2)(iii)(A), 1.21(a)(6) through (a)(9), 1.21(a)(11), 1.21(a)(12), 2.11, 2.17, 2.24, 2.33, 2.61, 11.2(b)(4) through 11.2(b)(7), 11.3(b) and (c), 11.5(b), 11.8(d), 11.9(c) (last two sentences), 11.9(d), 11.10(c) (second sentence), 11.10(d) (second sentence), 11.10(e) (second sentence), 11.11(b) through (f), 11.12 through 11.62, and 11.100 through 11.900 as well as the definitions in proposed rule 11.1 of terms that are used only in rules in Subparts B, C and D, USPTO Rules of Professional Conduct.

Time was not extended to comment upon the provisions in proposed rules 1.1, 1.21(a)(1) through (a)(5), 1.21(a)(10), 1.31, 1.33(c), 1.455(a), 11.2(a) through 11.2(b)(3), 11.2(c) through 11.2(e), 11.3(a) and (d), 11.4 through 11.5(a), 11.6 through 11.8(c), 11.9(a) through 11.9(c) (first sentence), 11.10(a) through 11.10(c) (first sentence), 11.10(d) (first sentence), 11.10(e) (first and third sentences), and 11.11(a), as well as the definitions in proposed rule 11.1 of terms used in the rules.

The rules adopted at this time apply only prospectively.

At this time, nearly 29,000 individuals are registered as patent attorneys and agents, of whom about 80% have indicated that they are attorneys. Most have been registered by taking and passing a paper registration examination that was usually offered twice a year. The existing rules, adopted in 1985, largely continued the practices and procedures adopted and followed since the 1930's. They were well suited to support delivery of a paper registration examination twice a year to several hundred applicants.

The number of persons seeking registration has grown from a few hundred to several thousand annually. Giving the examination twice a year requires biannual filing of thousands of applications. More than 6,000 persons filed applications seeking registration in 2003. The frequency of giving the examination has increased from once each nine months in the 1970's to twice annually in the last several years.

Under the new computerized examination procedure, there are no fixed application deadlines. Applications may be submitted throughout the year. The applications will be reviewed, and persons admitted to the examination will schedule the examination at their convenience with a commercial entity engaged to deliver the examination. The commercial entity is equipped to provide the exam at over 400 locations around the United States. A person approved to take the examination will schedule with the contractor the date and location where he or she desires to take the examination. The person will have a ninety-day window, beginning five business days after the mailing date of the letter admitting the person to the examination, within which he or she must take the examination.

Providing the examination in this manner will benefit persons seeking registration by enabling them to apply at any time, schedule the examination at a location and date convenient to them, and receive their results more quickly. Those failing the examination will be able to re-take the examination within approximately thirty days rather than waiting six months, as has previously been the case.

Applicants for registration will benefit in several ways from a computerized examination. It is now possible to deliver the registration examination on a daily basis by computer. They will be able to take the examination more frequently, get their results sooner, and be registered sooner. There will be no registration application filing deadline. With more than 400 locations around the country where the examination will be offered each business day, the examination sites will be conveniently closer to applicants. Applicants will also be able to reschedule the examination.

The computerized examination will be offered beginning with the effective date of this rule package. The examination can be administered each business day throughout the year. The format of the examination will remain unchanged. The examination will have 100 multiple choice questions—50 in the morning session and 50 in the afternoon session. During an initial period while the Office observes the implementation of the computerized examination, applicants will receive exam results approximately six weeks after electronic testing. Thereafter, immediate exam results will be provided on-site.

Computer-based licensure testing will not be unique to the Office. A wide variety of professional organizations utilize computer-based testing for their licensure. For example, both the General Securities Representative Examination (Series 7), and the Uniform Certified Public Accountant (CPA) Examination are administered on computers.

Applicants will benefit from the program by the elimination of application filing deadlines and the new ability to schedule the exam at their convenience. In the past, the cyclical nature of giving the examination twice a year was inefficient to both the Office

and persons seeking registration. Invariably, applications were filed late and were necessarily disapproved. Many incomplete applications could not be completed by the deadline. In short, offering the exam twice a year meant that application deficiencies could not be cured until the next time the test was offered—approximately six months later.

Applicants benefit by being able to schedule when they want to take the examination. Applicants can schedule the examination date within a ninety-day period. They can also reschedule the examination on another date within the ninety-day period for any reason.

The old method of paper testing required a significant devotion of Office of Enrollment and Discipline (OED) resources during peak periods to process and evaluate applications, as well as process the results. A majority of applicants used to file their application just prior to or on the deadline. Obviously, applicants will be better served if their examination results are received more quickly. Those who pass the examination and have no good moral character and reputation issues will be registered sooner. The Office is better served by having a less cyclical exam process. The computerized examination will produce a more even flow of new applications for processing. The computerized examination can be administered daily, and its results released more quickly.

The new rules do not change the scientific and technical training requirements for registration.

The new rules change procedures for the examination. These changes will improve the Office's processes for handling applications for registration, petitions, and moral character investigations.

Discussion of Specific Rules

Section 1.1: Section 1.1(a)(5) is added to provide an address for correspondence directed to OED in enrollment, registration and investigation matters.

Section 1.21: Section 1.21(a) is added to designate the registration examination fee in paragraph (1)(ii)(A) for test administration by the commercial entity, and in paragraph (1)(ii)(B) for test administration by the USPTO.

Section 1.21(a)(5)(i) is added for a new fee for review by the OED Director of an initial decision by a staff member of OED.

Section 1.21(a)(5) has been redesignated (a)(5)(ii), and section citation of § 10.2(c) is amended to § 11.2(d).

Sections 1.21(a)(6) through 1.21(a)(9) are reserved.

Section 1.21(a)(10) is added for a fee for any of the following: On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty. For persons suspended or disbarred, the fee applies to a person after suspension or disbarment on ethical grounds, as opposed to a person suspended on only non-ethical grounds, such as failure to pay State bar dues or failure to complete continuing legal education requirements. The amount of the fee, $1,600, recovers a portion of the average cost of processing an application filed by a person described in this section.

Section 1.31: This section is amended to revise the references to §§ 11.6 and 11.9, respectively.

Section 1.33: Section 1.33(c) is amended to revise the references to §§ 11.5 and 11.11, respectively.

Section 1.455: This section is amended to revise the reference to § 11.9.

Title 37 of the Code of Federal Regulations, Part 10, is amended as follows:

Section 10.2: This section is removed and reserved.

Section 10.3: This section is removed and reserved.

Section 10.5: This section is removed and reserved.

Section 10.6: This section is removed and reserved.

Section 10.7: This section is removed and reserved.

Section 10.8: This section is removed and reserved.

Section 10.9: This section is removed and reserved.

Section 10.10: This section is removed and reserved.

Section 10.11: This section is revised by deleting paragraph (a) and deleting the designation (b) of paragraph (b).

Title 37 of the Code of Federal Regulations, Part 11, is added as follows:

Section 11.1: This section defines terms used in Part 11. The defined terms include attorney, belief, conviction, crime, Data Sheet, fiscal year, fraud, good moral character and reputation, knowingly, matter, OED, OED Director, OED Director's representative, Office, practitioner, proceeding before the Office, reasonable, registration, roster, significant evidence of rehabilitation, state, substantial, suspend or suspension, United States, and USPTO Director. These terms are used in the rules that address the recognition of individuals to practice before the Office. An "application for reissue" has been added to the definition of "proceeding before the Office" to clarify its inclusion within the definition. "Other jurisdiction" has been added to the definition of "suspend" or "suspension" to clarify that the terms include temporary debarring from practice before the Office or another jurisdiction.

Section 11.2: Section 11.2(a) is added to provide for the appointment of the OED Director.

Section 11.2(b) sets forth the duties of the OED Director. The duties of the OED Director include managing the Office of Enrollment and Discipline, receiving and acting upon applications, and conducting investigations concerning the moral character and reputation of individuals seeking registration. The duties also include conducting investigations into possible violations by practitioners of Disciplinary Rules, initiating disciplinary proceedings under § 10.132(b) with the consent of the Committee on Discipline, and performing such other duties in connection with investigations and disciplinary proceedings as may be necessary. The investigation and disciplinary duties recited in § 10.2(b) have been moved to § 11.2(b)(4) to consolidate in one section all of the OED Director's duties. The provisions in proposed § 11.2(b)(4) remain subject to comment. The investigation and disciplinary duties in § 11.2(b)(4) will be subject to change following the comments on proposed § 11.2(b)(4).

Sections 11.2(b)(5) through (b)(7) are reserved.

Section 11.2(c) is added to provide a requirement that any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director. A provision added to the final rule requiring the petition to be filed within sixty days from the mailing date of the action or notice from which relief is requested clarifies the point in time, not otherwise provided for in the proposed rule, from which the petition must be filed. A fee, required by 37 CFR 1.21(a)(5), would be charged for the petition. A petition not

filed within the sixty-day period will be dismissed as untimely.

Section 11.2(d) is added to provide for a petition from a final decision of the OED Director to the USPTO Director. A provision added to the final rule requiring the petition to be filed within sixty days from the mailing date of the final decision of the OED Director clarifies the point in time, not otherwise provided for in the proposed rule, from which the petition must be filed. The petition must be accompanied by the fee in § 1.21(a)(5). The petition will be dismissed if not filed within sixty days from the mailing date of the final decision of the OED Director.

Section 11.3: Section 11.3 is added to provide for suspension of any requirement of the regulations of Part 11 which is not a requirement of the statutes in an extraordinary situation, when justice requires.

Recognition To Practice Before the USPTO

Section 11.4: Section 11.4 is reserved. Upon further consideration, the Office has concluded that it is unnecessary to provide for a Committee on Enrollment and has eliminated it in the rules. The Committee's principal function has been the vetting of registration examination questions. Office personnel have been developing a data bank of questions for the registration examination and examiner certification test. These personnel are not limited to members of the Committee. Further, the proposed rules, § 11.7(j), contemplated using the Committee to conduct hearings about an individual's good moral character and reputation. The final rules provide an individual an opportunity to create a record, to respond to the OED Director's show cause order, and to obtain review of the OED Director's decision by petition to the USPTO Director. An individual dissatisfied with the decision of the OED Director may petition the USPTO Director under § 11.2(d) for review of the decision. Accordingly, the rules will not provide for or utilize a Committee on Enrollment to conduct a hearing for good moral character and reputation determinations.

Section 11.5: Section 11.5 is added to provide for maintaining a single register of attorneys and agents registered to practice before the Office.

Section 11.6: Section 11.6(a) is added to provide qualifications for attorneys to register to practice before the Office in patent matters.

Section 11.6(b) is added to provide qualifications for non-attorneys to register as patent agents to practice before the Office in patent matters.

Section 11.6(c) is added to provide for qualifications for limited reciprocal registration of any foreign person who is registered in good standing before the patent office of the country in which he or she resides and practices.

Section 11.6(d) is added to provide that the Chief Administrative Patent Judge or Vice Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences will determine whether and the circumstances under which an attorney who is not registered may take testimony for an interference under 35 U.S.C. 24, or under § 1.672 of this subchapter.

Section 11.7: Sections 11.7(a)(1) and 11.7(a)(2) require that an individual apply for registration, and establish possession of good moral character and reputation, legal, scientific and technical qualifications, and competence to advise and assist patent applicants.

Section 11.7(b)(1)(i) requires that an individual file a complete application for registration on a form supplied by the OED Director, pay the fees required by § 1.21(a)(1), and present satisfactory proof of sufficient basic training in scientific and technical matters. Aliens are also required to present affirmative proof that recognition to practice before the USPTO is not inconsistent with the terms of their visa or entry into the United States. The proposed rule provided for filing a complete application for each administration of the examination. Inasmuch as the computer delivered examination will be administered each business day, § 11.7(b)(1)(i) has been revised to provide that a complete application for registration must be filed each time admission to the examination is requested.

Section 11.7(b)(1)(ii), which appeared as § 11.7(b)(4) in the proposed rules, requires that individuals seeking registration pass the examination unless the examination is waived as provided for in § 11.7(d) to enable the OED Director to determine whether the individual possesses the required legal and competence qualifications. Section 11.7(b)(1)(ii) has been revised to provide that an individual failing the examination must wait thirty days after the date the individual last took the examination before retaking the examination. The revision reduces the interval in the proposed rule between opportunities to take and pass the examination. This section also sets forth the documents and fees that must be filed by an individual reapplying after failing the examination.

Section 11.7(b)(1)(iii), which appeared as § 11.7(b)(6) in the proposed rules, requires the individual to provide satisfactory proof of possession of good moral character and reputation.

Section 11.7(b)(2) is added to provide that an individual failing to file a complete application will be given notice and required to complete the application within sixty days of the mailing date of the notice. Inasmuch as the proposed rule did not specify when the sixty-day period began, the final rule clarifies that the sixty-day period begins with the mailing date of the notice. Individuals filing incomplete applications will not be admitted to the examination. Applications that are incomplete as originally submitted will be considered only when they have been completed and received by OED within the sixty-day period. Thereafter, a new and complete application must be filed to establish an individual's qualifications and demonstrated intent to take the examination. A proposed provision, appearing in proposed § 11.7(b)(4) as well as 37 CFR 10.7, and prohibiting administration of the examination as an academic exercise, has been revised inasmuch as it did not specify the qualifications for admission to the examination. As revised, the provision has been moved in the final rules to § 11.7(b)(2). The revision permits only an individual approved as satisfying the requirements of §§ 11.7 (b)(1)(i)(A), 11.7(b)(1)(i)(B), 11.7(b)(1)(i)(C) and 11.7(b)(1)(i)(D) to be admitted to the examination.

Section 11.7(b)(3), which appeared as § 11.7(b)(5) in the proposed rules, requires an individual first reapplying more than one year after the mailing date of a notice of failure to again comply with § 11.7(b)(1) by filing a complete new application. The proposed rule did not specify the date from which the one year would begin. The final rule, by specifying the mailing date of the notice, eliminates uncertainty in the proposed rule of the starting date of the one-year period.

Section 11.7(c) provides that each individual seeking registration is responsible for updating all information and answers submitted in or with the application for registration. The application must be updated within thirty days after the date of the occasion that necessitates the update. In the notice of proposed rule making, § 11.7(c) provided for a petition to the OED Director. Proposed § 11.2(c) also provided for a petition to the OED Director. The redundancy is unnecessary and the provision for the petition in § 11.7(c) has been removed in the final rules. There were also

redundant provisions in §§ 11.7(b)(2) and 11.8(c) of the proposed rules requiring individuals to update their applications. The provisions have been removed from §§ 11.7(b)(2) and 11.8(c), and merged into § 11.7(c) in the final rules.

Section 11.7(d) is added to provide for waiver of the examination for former patent examiners and certain other employees. Section 11.7(d)(1) addresses registration of former patent examiners who by July 26, 2004, had not actively served four years in the patent examining corps, and were serving in the corps at the time of their separation. The examination may be waived if the individual demonstrates that he or she actively served in the patent examining corps, received a certificate of legal competency and negotiation authority, was thereafter rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner, and was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps. For consistency, the effective date of § 11.7(d) has been reduced from sixty days indicated in the proposed rules, to thirty days following publication of the final rules.

Section 11.7(d)(2) is added to address registration of former patent examiners who on July 26, 2004, had actively served four years in the patent examining corps, and were serving in the corps at the time of their separation. The examination may be waived when the individual demonstrates that he or she actively served for at least four years in the patent examining corps of the Office by July 26, 2004, was rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner in the Office, and was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

Section 11.7(d)(3) is added to address registration of certain former Office employees who were not serving in the patent examining corps upon their separation from the Office. The OED Director may waive the registration examination in the case of a former Office employee meeting the requirements of § 11.7(b)(1)(i)(c) who by petition demonstrates possession of the necessary legal qualifications. The former employee must show that as a result of having been in a position of responsibility in the Office, he or she has an equivalent comprehensive knowledge of patent law. In the position, the individual must have provided substantial guidance on patent examination policy, including the development of rule or procedure changes, patent examination guidelines, changes to the Manual of Patent Examining Procedure, development of training or testing materials for the patent examining corps; development of materials for the registration examination or continuing legal education; or represented the Office in patent cases before Federal courts. The individual must establish that he or she was rated at least fully successful in each quality performance element of his or her performance plan for said position for the last two complete rating periods in the Office, and was not under an oral or written warning regarding performance elements relating to such activities at the time of separation from the Office.

Section 11.7(d)(4) limits the eligibility period for seeking waiver of the examination by an individual formerly employed by the Office within the scope of §§ 11.7(d)(1), 11.7(d)(2) and 11.7(d)(3). An individual filing an application for registration more than two years after separation from the Office is required to take and pass the registration examination. Employees and former employees not satisfying the requirements of §§ 11.7(d)(1) through 11.7(d)(3) must comply with §§ 11.7(a) and 11.7(b) and take and pass the registration examination to be registered. Therefore, it is redundant to include a provision in § 11.7(d)(4) requiring compliance with §§ 11.7(a) and 11.7(b). The provision in § 11.7(d)(4) has been removed from the final rule.

Section 11.7(e) is added to eliminate the regrading of examination answers. The language in the proposed rule has been simplified in the final rule. Within sixty days of the mailing date of a notice of failure, the individual is entitled to inspect, but not copy, the questions and answers he or she incorrectly answered. The inspection will occur under supervision. Applicants will not be permitted to take any notes relating to the questions or answers.

Section 11.7(f) is added to provide that applicants seeking reciprocal recognition under § 11.6(c) must file an application and pay the application fee set forth in § 1.21(a)(1)(i).

Section 11.7(g) is added to provide for soliciting information bearing on the good moral character and reputation of individuals seeking recognition, and for investigation of an individual's good moral character and reputation.

Sections 11.7(g)(2) and 11.8(a) in the proposed rules address publication of information to solicit information bearing on the good moral character and reputation of applicants passing the examination or seeking recognition. The redundancy has been removed by providing for the procedure in § 11.8(a). Sections 11.7(g)(3)(i) and 11.7(g)(3)(ii) have been renumbered 11.7(g)(2)(i) and 11.7(g)(2)(ii).

Section 11.7(g)(2)(i) requires that the OED Director conduct an investigation into the good moral character and reputation of an applicant if information is received "that reflects adversely" on the applicant's good moral character and reputation. The proposed rule authorized investigation upon receipt of information "tending to reflect" adversely the good moral character. The final rule narrows the circumstances when an investigation should occur.

Section 11.7(h) is added to provide guidance when lack of good moral character and reputation exists. The provisions relating to felonies and crimes have been clarified in the final rule to reference conviction of a felony, conviction of a crime involving moral turpitude, and a conviction of a crime involving breach of fiduciary duty. Unlike the proposed rule that did not provide for conviction of "a crime," the final rule clarifies that a conviction of the respective crimes is evidence of lack of good moral character and reputation.

Section 11.7(h)(1)(i) provides that an individual convicted of a felony or any misdemeanor identified in §§ 11.7(h) and 11.7(h)(1) is not eligible to apply for registration during the time of any sentence, deferred adjudication, period of probation or parole as a result of the conviction, and for a period of two years thereafter. The proposed rule also provided for ineligibility for registration. The latter provision has been removed from the final rule because ineligibility to apply for registration precludes registration. Pursuant to § 11.3, an individual may request waiver of the two-year period upon showing an extraordinary situation where justice requires waiver, such as when a conviction is overturned.

Section 11.7(h)(4)(iii) specifies the defenses available to an individual seeking registration who has been disbarred, suspended on ethical grounds, or resigned in lieu of a disciplinary proceeding. The proposed rule did not indicate the purpose of the defenses. The final rule limits the defenses to an underlying disciplinary matter where the individual contests the relevance of the disciplinary matter to his or her good moral character and

reputation. The defenses are the same as those that are available to a practitioner in a reciprocal disciplinary proceeding.

Section 11.7(i) identifies factors that may be taken into consideration when evaluating rehabilitation of an applicant seeking a good moral character determination for registration. Section 11.7(i)(8), which addresses misconduct attributable in part to a medically recognized mental disease, disorder or illness, is revised to remove a minimum period of time for which recovery must be shown, and to provide that letters from the treating psychiatrist/psychologist must verify that the medically recognized mental disease, disorder or illness will not impede the individual's ability to competently practice before the Office. The change reflects the Office's standard for recognizing an individual's recovery efforts and a professional's assessment. Proposed § 11.7(i)(11) has been removed as providing a presumption that education equates to ethical conduct. Section 11.7(i)(12) has been revised to remove references to particular programs designed to provide social benefits or ameliorate social problems. The revision enlarges the scope of acceptable programs providing the same benefits. Proposed §§ 11.7(i)(12) and 11.7(i)(13) have been renumbered as §§ 11.7(i)(11) and 11.7(i)(12).

Section 11.7(j) is added to provide for the OED Director to inquire into the good moral character and reputation of an individual seeking registration, to provide the individual with an opportunity to respond and create a record on which a decision is made. The OED Director will consider the response and record, and issue a notice to show cause if the OED Director is of the opinion that an individual has not satisfactorily established that he or she possesses good moral character and reputation. After a notice to show cause is issued, the OED Director will consider the record and response filed by the individual, and issue a decision on whether the individual has sustained his or her burden. An individual may seek review of the OED Director's decision pursuant to § 11.2(d).

Section 11.7(k) is added to set forth conditions for reapplication when an application for registration has been rejected because of lack of good moral character and reputation. An applicant may reapply for registration two years after the date of the decision denying the individual registration. The application must include the fee required by § 1.21(a)(10). Pursuant to § 11.3, an individual may request waiver of the two-year period upon showing an extraordinary situation where justice requires waiver, such as when a conviction is overturned.

Section 11.8: Section 11.8(a) provides for the OED Director to promptly publish a solicitation for information concerning the individual's moral character and reputation, including the individual's name, and business or communication postal address.

Section 11.8(b) provides procedures for registration as a patent attorney or agent, or being granted limited recognition. This section also provides that within two years of issuance of notice of a passing grade on the registration examination, the requirements for completion of registration must be met. An individual seeking registration as a patent attorney must demonstrate that he or she is a member in good standing with the bar of the highest court of a state.

Section 11.8(c) provides that an individual who does not comply with the requirements of § 11.8(b) within the two-year period will be required to retake the registration examination. This provision appeared in § 11.8(a) in the proposed rules.

Section 11.9: Section 11.9(a) provides for limited recognition of individuals to practice before the Office in a particular patent application or patent applications.

Section 11.9(b) provides for granting limited recognition to a nonimmigrant alien who resides in the United States and fulfills the provisions of §§ 11.7(a) and (b) if the nonimmigrant is authorized to be employed or trained in the United States in the capacity of representing a patent applicant by preparing or prosecuting the applicant's patent application. A provision in the proposed rules, making nonimmigrant aliens authorized to receive training ineligible for limited recognition, is withdrawn. Another proposal, limiting recognition to being granted in increments of one year, has also been withdrawn. Limited recognition will be granted for a period consistent with the terms of authorized employment or training. These changes are consistent with the law, will reduce burdens on applicants, and facilitate administrative procedures.

Section 11.9(c) provides for limited recognition of an individual not registered under § 11.6 to prosecute an international patent application only before the U.S. International Searching Authority and the U.S. International Preliminary Examining Authority.

Section 11.10: Section 11.10 is added to address restrictions on practice in patent matters for former employees of the Office. Section 11.10(a) is added to permit only practitioners who are registered under § 11.6 or individuals given limited recognition under § 11.9(a) or (b) to prosecute patent applications of others before the Office. Individuals granted limited recognition under § 11.9(c) may prosecute an international patent application only before the United States International Searching Authority and the United States International Preliminary Examining Authority, but may not otherwise practice before the Office, such as in an application filed under 35 U.S.C. 111 or 371. Accordingly, § 11.10(a) addresses only individuals granted limited recognition under §§ 11.9(a) or 11.9(b), but not § 11.9(c).

Section 11.10(b) is added to set forth post employment provisions for any registered former Office employee. The provisions parallel basic restrictions of 18 U.S.C. 207(a) and (b) on a registered former Office employee acting as representative or communicating with intent to influence a particular matter in which the employee personally participated or for which the employee had official responsibility within specified time periods. In addition, the provision proscribes the similar conduct occurring behind the scenes by prohibiting conduct that "aids in any manner" the representation or communication with intent to influence.

Section 11.10(c) is added to clarify that the restrictions of § 11.10(c) are in addition to those imposed on all Government employees by other statutes and regulations.

Section 11.10(d) is added to continue to prohibit employees of the Office from prosecuting or aiding in any manner in the prosecution of a patent application.

Section 11.10(e) is added to make clear that practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility. A statement in the proposed rule making, "noncompliance with said conflict of interest laws, regulations or codes of professional responsibility shall constitute misconduct under §§ 11.804(b) or 11.804(h)(8)," will be separately addressed when adoption of proposed §§ 11.804(b) or 11.804(h)(8) is considered.

Section 11.11: Section 11.11 is added to require a registered practitioner to notify OED, separately from any notice given in any patent application, of the business postal address, business e-mail address, business telephone number, and of every change to any of those addresses or telephone numbers, within thirty days of the date of the change. Practitioners who are attorneys in good standing with the bar of the highest

court of one or more states must provide the OED Director with the State bar identification number associated with each membership. Further, this section identifies the information that the OED Director will routinely publish on the roster about each registered practitioner recognized to practice before the Office in patent cases.

Response to comments: The Office published a notice on December 12, 2003, proposing changes to rules by updating the procedures regarding enrollment and discipline, and introducing new USPTO Rules of Professional Conduct, largely based on the Model Rules of Professional Conduct of the American Bar Association. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 68 FR 69442 (December 12, 2003), 1278 Off. Gaz. Pat. Office 22 (January 6, 2004) (proposed rule). The Office received 112 written comments (27 from intellectual property or other organizations and 85 by patent practitioners) in response to this notice. The comments regarding the rules adopted at this time and the Office's responses to the comments follow.

Comment 1: One comment suggested that privatized administration of the registration examination will result in problems stemming from the introduced profit motive, including increased costs associated with sitting for the examination, and a decreased quality of practitioners allowed to pass the examination. The comment opined that the profit motive will result in a degradation of the examination process itself and of the examination results if the private tester reduces manpower and materials required to effectively administer the exam.

Response: To the extent the comment is suggesting that the Office maintain the status quo for the examination procedure, the suggestion has not been adopted. The commercial entity will be responsible only for computer-based administration of the examination. Candidates will continue to apply to OED, which will continue to review applications and grant approval to sit for the examination only to persons possessing the necessary scientific and technical training qualifications. The Office retains complete control over (1) the qualifications of the candidates, (2) determining each candidate's moral character, (3) the content of the examination, and (4) the qualifications to pass the examination. The USPTO will continue to set the passing score. The USPTO will maintain control over the development and content of the examination. The questions seek to ascertain that a candidate knows the practices, policies, and procedures applicable to patent prosecution as related in the Manual. Only Office personnel generate, develop, vet and clear the questions for use on the examination. The questions and answers are carefully checked against the Manual to confirm that there is one correct answer. The Manual will be available to candidates on a computer, and where they may confirm the correctness of the answer they have selected. The Office is the only entity that determines whether a question will be withdrawn for any reason, or reused. Thus the Office will continue to maintain the same high standards for registration.

In the past, the examination was administered twice a year in about 37 cities, whereas the commercial entity can administer the examination each business day in over 400 sites. Accordingly, the examination will be more widely available. The total fees for the computerized examination are $350 (the sum of $200 examination development fee charged by the Office, and the $150 fee charged by the commercial entity administering the examination). This is an increase of only $40 over the $310 examination fee previously charged by the Office.

The computerized examination enables candidates to realize a substantial savings for other costs associated with the examination. For example, expenses that candidates may have incurred traveling to 37 cities to take the examination should be significantly reduced or eliminated with more test facilities available on a daily basis. Scheduling will also be more convenient for candidates. They can schedule the examination anytime within a set ninety-day period at the commercial entity's testing site closest to their home or office. They can also arrange with the commercial entity to reschedule the examination within the same ninety-day period.

The Office will also offer applicants the option of taking a paper examination administered by the Office once a year. The fee for the Office-administered paper examination will be $450. Inasmuch as one paper examination was already administered in fiscal year 2004, the OED Director will announce when the Office will offer a paper examination.

Comment 2: One comment suggested that the $130 petition fee for review of any decision of the OED Director not be adopted because it is an inequitable monetary penalty imposed upon a practitioner for the privilege of seeking review of what may very well be an erroneous action on the part of the OED Director.

Response: The suggestion has not been adopted. It is not a penalty to charge a fee for a petition to review an official's decision. Since 1985 the Office has charged applicants for registration and practitioners a petition fee for review of a variety of decisions by the OED Director. *See* 37 CFR 1.21(a)(5) (imposing a fee for review under § 10.2(c)). The Office also charges for petitions to review other decisions by agency officials. *See* 37 CFR 1.17(h) (imposing a fee for filing a petition under § 1.295 for review of refusals to publish a statutory invention registration, § 1.377 for review of decisions refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent, and § 1.378(e) for reconsideration of a decision on petition refusing to accept delayed payment of maintenance fee in an expired patent). The $130 fee is consistent with the fee charged for the foregoing petitions in § 1.17(h).

The fee is for review of the official's decision and the benefits delivered by the opportunity for review and decision. The fee is not punitive, nor is it a sanction against petitioners.

Comment 3: Two comments observed that the proposal to amend § 1.1(a) by adding new paragraph (a)(4), the address for correspondence intended for the United States Patent and Trademark Office, is based upon an outdated version of § 1.1(a).

Response: The suggestion has been adopted. The provisions of § 1.1 have been revised to remove the reference to paragraph (a)(2), and to change the numbering of proposed paragraph (a)(4) to (a)(5).

Comment 4: One comment suggested that § 1.31 be amended to recognize the situation in which joint applicants choose to file and prosecute their own case before the USPTO.

Response: The suggestion is not adopted with this rule. The matter is addressed in another rule titled "Clarification of Power of Attorney Practice, and Revisions to Assignment Rules," RIN 0651–AB63. This final rule has been submitted to the **Federal Register** for publication at this time.

Comment 5: One comment suggested for clarity, each definition in § 11.1 should be separately numbered, *e.g.* by (1), (2) * * *, etc., to facilitate citation of each definition.

Response: The suggestion has not been adopted. The omission of paragraph numbers facilitates the ease of addition or deletion of definitions in § 11.1 without having to renumber the definitions if their position in the list of

definitions changes. The definitions will be maintained in alphabetical order to facilitate citation and location of each definition.

Comment 6: One comment suggested that the definition of "good moral character" appearing in the first sentence of § 11.7(h) be moved to § 11.1 because the term is used in a number of other proposed rules without reference to the definition in § 11.7(h). Therefore a person reading a rule other than § 11.7(h) may not know that the term had been defined in § 11.7(h) and would naturally seek the definition in § 11.1.

Response: The suggestion has been adopted. The first sentence of § 11.7(h) defining "good moral character and reputation" has been moved to § 11.1.

Comment 7: One comment pointed out that, although proposed Sec 11.1 defined "application" as a patent or trademark application, the term "application" is also used in proposed §§ 11.2, 11.7, 11.8, 11.10 and 11.11 to refer to an application for registration. It was suggested that the phrase "application for registration" be defined in § 11.1 and be the term that is used in §§ 11.2(b)(2), 11.7(b)(1)(i), 11.7(f), 11.7(j)(1), 11.7(j)(3), 11.8(c), 11.10 and 11.11. The latter section uses the term "application," and the definition of "application" includes only patent and trademark applications. Introduction and use of the term "application for registration" would avoid confusion with "application."

Response: The suggestion has been adopted in part. The term "application for registration" need not be defined in § 11.1, but the term has replaced "application" in §§ 11.2(b)(2), 11.7(b)(1)(i), 11.7(f), and 11.7(j). Inasmuch as there is no reference to an "application for registration" in § 11.8(c) as amended, and § 11.10, it was not necessary to modify "application" in this manner. The suggestion as to proposed §§ 11.7(j)(1) and 11.7(j)(3) is now moot inasmuch as they are not adopted. Section 11.11 addresses the necessity for registered practitioners to separately provide written notice to the OED Director in addition to any notice of change of address and telephone number filed in individual applications. Therefore, where an introductory reference to an "application" occurs in §§ 11.10 and 11.11, the term "application" has been modified with "patent."

Comment 8: One comment suggested that the definition of "belief" or "believes" in § 11.1 is indefinite because the meaning of phrases "actually supposed" and "inferred from circumstances" are not clear, and urged that the terms be defined as meaning that "an individual assents to the truth of something offered for acceptance and that the individual's belief may be inferred from factual circumstances."

Response: The suggestion has not been adopted. The definition comes from the Model Rules of Professional Conduct of the American Bar Association. One of the purposes of generally conforming the USPTO rules to the Model Rules is that those rules have been widely adopted by states. As a result, decisional law through state auspices should facilitate the development of a body of case law that will help provide practitioners guidance on the meaning of terms that are necessarily broad because they need to cover a variety of circumstances. At this time, no change will be made while comments continue to be received regarding the proposed professional conduct rules.

Comment 9: One comment opined that the definitions of "fraud" or "fraudulent" and the terms "knowingly," "known," or "knows" in § 11.1 can be clarified. The definition of "fraud" or "fraudulent," as "failure to apprise another of relevant information" could encompass a deceit which under the definition would not constitute fraud or a fraudulent act, and suggested that the terms be tailored to practice before the Office in light of 37 CFR 1.56, and that they be defined as "conduct having a purpose to deceive, and not merely negligent misrepresentation or negligent failure to apprise another of relevant information." It was suggested that the definition of "knowingly," "known," or "knows" as "inferred from circumstances" is not understood, and that the definition be replaced with the phrase "inferred from circumstantial evidence."

Response: The suggestions have not been adopted. The definitions come from the Model Rules of Professional Conduct of the American Bar Association. At this time, no change will be made while comments continue to be received regarding the proposed professional conduct rules.

Comment 10: One comment suggested that the definitions of "suspended or excluded practitioner," and "non-practitioner" be separated out of the definition of "practitioner" to facilitate ease of finding the definitions.

Response. The suggestion has been adopted in part. The definitions of "suspended or excluded practitioner," and "nonpractitioner" have been separated from "practitioner," and are not included in this rule.

Comment 11: One comment suggested that § 11.2(a) provide for appointment of an acting Director where the OED Director must recuse himself or herself from a case.

Response: The suggestion has been adopted. The second sentence has been amended to read "In the event of the absence of the OED Director or a vacancy in the Office of the OED Director, or in the event that the OED Director recuses himself or herself from a case, the USPTO Director may * * *." The appointment would contain any necessary directions limiting the Acting OED Director's authority to act only in the matter from which the OED Director is recused.

Comment 12: Two comments suggested that § 11.2(c) be modified to change the proposed one-month period in § 11.2(c) to two months, and one comment suggested that no fee be required to be consistent with 37 CFR 1.181. A third comment suggested that the proposed one-month period be increased to ninety days.

Response: The suggestion has been adopted in part. The thirty-day period for filing a petition has been enlarged to sixty days. Charging a fee is consistent with the provisions of 37 CFR 1.181(d). As the staff of OED with respect to individual cases generally exercises independent judgment, charging a fee for review of that judgment by the OED Director is in keeping with circumstances under which the USPTO generally charges fees for consideration of petitions. The decisions address the merits of a variety of situations, including, but not limited to, incompleteness of applications for registration, scientific and technical qualifications, and refunds. The Office charges fees for review of decisions by other officials in a variety of situations. *See,* for example, the fees charged in 37 CFR 1.17(h) for petitions under § 1.295 (for review of refusal to publish a statutory invention registration), petitions under § 1.377 (for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent), petitions under § 1.378(e) (for reconsideration of a decision on petition refusing to accept delayed payment of maintenance fee in an expired patent), and petitions under §§ 1.644(e) and 1.166(f) (in an interference and for requesting reconsideration of a decision on petition).

Comment 13: Two comments suggested that if a fee is charged under § 11.2 for filing a petition, it should be refunded if it is determined that the OED Director acted improperly.

Response: The suggestion has not been adopted. A petition seeks a determination that a decision should be reversed or modified. Such a

determination is obtained by the decision on petition. Under 35 U.S.C. 42(d), the Director is authorized to refund any fee paid in excess of the amount required, or that is paid by mistake. Upon receiving a decision, the petitioner who has paid the amount required is not entitled to a refund of the petition fee inasmuch as the fee was not paid by mistake or in excess. The fee, like other petition fees charged by the Office, is designed to support the agency's cost of the procedure. The petitioner obtained that which he or she sought, the determination.

Comment 14: One comment suggested that the third sentence of § 11.2(c) be deleted because it would discourage individuals who seek registration from filing legitimate appeals of an improper decision of an OED staff member, while not providing any assurance that a decision by the OED Director would be promptly decided to avoid interfering with rights of the petitioner or applicant for registration; and if kept, the phrase "other proceedings" be defined.

Response: The suggestion has been adopted in part. The third sentence has been amended to delete "including the timely filing of an application for registration," as being unnecessary. The third sentence now states "[t]he filing of a petition will not stay the period for taking other action which may be running, or stay other proceedings." The language in the third sentence of § 11.2(c), including "other proceedings," corresponds substantially to the language of the first sentence of 37 CFR 1.181(f). Inasmuch as the third sentence now corresponds substantially to the first section of § 1.181(f), it is believed that the third sentence will not discourage the filing of legitimate appeals. On the contrary, the third sentence encourages all applicants for registration to pursue legitimate actions that are not stayed by the filing of a petition.

Comment 15: One comment suggested that the fourth sentence of § 11.2(c) be revised to state that "[a]ny request for reconsideration of the OED Director's decision waives a right to appeal * * *."

Response: The suggestion is now moot since all reference to a request for reconsideration has been removed from § 11.2(c) as further discussed in response to Comment 16.

Comment 16: Two comments suggested that the fourth sentence of § 11.2(c) be deleted because it is punitive, unnecessary, denies due process, and encourages numerous unnecessary appeals to the USPTO Director because a practitioner dissatisfied with a decision of the OED Director cannot reasonably risk loss of the right of appeal.

Response: The suggestion has been adopted in part. All reference to a request for reconsideration has been removed from § 11.2(c). The fourth sentence of § 11.2(c) has been amended to clarify that "[a] final decision by the OED Director may be reviewed in accordance with the provisions of" § 11.2(d).

Comment 17: Two comments suggested that the thirty-day time periods set in § 11.2 should be increased. One comment suggested that the Office, absent a compelling reason, consider setting a uniform period in §§ 11.2(d) and 11.2(e), for example, the two-month period found in 37 CFR 1.181, for filing a petition to any USPTO official seeking review of an action taken by the USPTO and seeking reconsideration. Another comment suggested that the time in § 11.2(d) be increased to ninety days and be extendable to one hundred twenty days to provide due process.

Response: The suggestion to adopt a uniform period has been adopted in part, but the suggestion that the period be extendable has not been adopted. Section 11.2(d) has been revised to refer to a sixty-day period for filing a petition from a final decision of the OED Director. Section 11.2(d) provides that "[a]ny petition not filed within sixty days from the mailing date of the final decision of the OED Director will be dismissed as untimely." A thirty-day period is provided for filing a request for reconsideration. The penultimate sentence of § 11.2(d) provides that a "request for reconsideration of the decision of the USPTO Director will be dismissed as untimely if not filed within thirty days from the mailing date of said decision." Section 11.2(e) has been deleted.

The sixty-day period is independent of the different lengths of the months, and provides consistency. The sixty-day period has been adopted wherever possible. Sixty days is substantially the same time period provided for in § 1.181, and thereby provides sufficient time to permit individuals and practitioners to determine whether they will seek review by petition and to prepare a petition.

A thirty-day period is adopted for requesting reconsideration of the USPTO Director's decision. Under 35 U.S.C. 32, the United States District Court for the District of Columbia reviews a decision refusing to recognize or suspending or excluding an individual upon petition filed within thirty days of the decision. Providing an individual the same thirty-day period to seek reconsideration is consistent with the time available to seek review.

Comment 18: One comment suggested that the term "one OED Director" in § 11.2(e) be revised to read "former OED Director or an acting OED Director" to provide clarity.

Response: The suggestion is moot since proposed § 11.2(e) has not been adopted.

Comment 19: One comment suggested that inasmuch as § 11.3(a) does not define the phrase "OED Director's representative," reference be made to proposed § 11.40(b) and the phrase be defined in § 11.1.

Response: The suggestion has been adopted in part. Section 11.1 has been revised to include a definition of the OED Director's representative. It is unnecessary to reference § 11.40(b).

Comment 20: Five comments suggested that the provisions in proposed § 11.3(d) regarding qualified immunity not be adopted because the present rules provide sufficient safeguards, and the proposal may encourage Office employees to file frivolous complaints.

Response: The suggestion has been adopted. Some states provide by regulation the proposed safeguards. However, upon further reflection, it is believed that adequate safeguards are already available. Accordingly, the proposed § 11.3(d) has not been adopted.

Comment 21: One comment suggested several reasons why the USPTO Director should draw on persons who are not employees of the USPTO to serve on the Committee of Enrollment.

Response: The suggestion is now moot since § 11.4(a), which proposed the use of the Committee on Enrollment in "good moral character and reputation" determinations has been deleted from § 11.7. Determining the content of the examination is an inherently governmental function that cannot be assigned to non-governmental employees.

Comment 22: One comment suggested that in view of provisions in the North American Free Trade Agreement (NAFTA), Canadian citizens should be entitled to registration under the proposed §§ 11.6(a) or 11.6(b) in the same manner as United States citizens.

Response: The suggestion has not been adopted. The provisions of NAFTA provide for each Party to accord no less favorable treatment to another party than that it accords, in like circumstances, to its own service providers, including representation in patent applications. The NAFTA Services Chapter did envisage phaseout of nationality requirements for patent

attorneys and agents. However, neither Party has phased out the nationality requirement. Under the treaty, the only recourse for failure to do so is for other Parties to maintain their requirements. At this time, the USPTO, in accordance with the treaty, continues to maintain its requirements, and need not act unilaterally. *See* NAFTA Art. 1210.3 (no penalty for phaseout).

Comment 23: One comment suggested that any non-immigrant alien who is resident in the United States and who has passed the USPTO registration exam should be eligible to be registered and remain registered under 37 CFR 11.6(a) or (b) for as long as he or she remains resident in the United States.

Response: The suggestion has not been adopted. Pursuant to 35 U.S.C. 2(b)(2)(D), persons seeking registration must demonstrate that they are of good moral character and reputation. Empowering nonimmigrant aliens to engage in employment or training contrary to their status under the immigration laws would be inconsistent with the requirement that they possess good moral character. USPTO's registration should not create the occasion for violation of the immigration laws.

Comment 24: One comment suggested that § 11.6 be modified to strip away all citizenship requirements against a prospective patent attorney or agent to be registered—or for an existing patent attorney or agent to maintain his or her registration.

Response: The suggestion has not been adopted. Foreign patent attorneys and agents may be registered to practice before the Office in patent cases upon compliance with the provisions of § 11.6(c). Under § 11.6(c), registration is available if the patent office, where the foreign attorney or agent is registered and resides, grants substantially reciprocal privileges to practitioners registered to practice before the Office. At this time, only the Canadian Patent Office is recognized as providing substantially reciprocal privileges, and practitioners registered by both offices benefit from the reciprocal recognition. Practitioners in other countries may similarly benefit if the provisions of § 11.6(c) are satisfied.

Comment 25: One comment suggested that any individual registered under proposed § 11.6(c) should be required to pass the USPTO's registration examination since this section does not require familiarity with the USPTO's rules and procedures. The examination assures that all registered individuals are fully competent to act in patent matters before the USPTO. The commenter observed that in many material respects, practice before the USPTO is considerably different from practice before the Canadian Patent Office (and other patent offices).

Response: The suggestion has not been adopted. Since about 1934, the USPTO and Canadian Patent Office have provided for reciprocal recognition of each other's registered attorneys and agents. Neither Office has required the attorneys and agents of the other Office to take and pass their registration examination. Moreover, the Canadian Patent Office does not require that persons registered to practice before the USPTO complete a period of service in the Canadian Patent Office or work in Canada in the area of Canadian patent law, or take the Canadian qualifying examination prior to registration.

Comment 26: One comment suggested that § 11.6(d) should also include public use proceedings under 37 CFR 1.292 since these proceedings, like interference proceedings, allow the taking of testimony which could be done by unregistered attorneys.

Response: The suggestion has not been adopted. The provisions of § 11.6(d) empower the Chief Administrative Patent Judge or Vice Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences to determine whether and the circumstances under which an attorney who is not registered may take testimony for an interference under 35 U.S.C. 24, or under § 1.672. Unlike interference proceedings, the taking of testimony for a public use proceeding does not occur under the authority of the Board of Patent Appeals and Interferences. The USPTO Director may designate an appropriate official to conduct the public use proceeding, and the official may set the time for taking testimony. *See* 37 CFR 1.292. The OED Director, in consultation with the designated official, may authorize an unregistered attorney to take testimony for a public use proceeding. Accordingly, the authority cannot be placed on the Chief Administrative Patent Judge or Vice Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences to administer the taking of depositions in public use proceedings.

Comment 27: One comment said that the Office admits to practice whole categories of lawyers who are not possessed of the required technical background. Although no category of lawyers was specified, the comment refers to practitioners registered under the current provisions of 37 CFR 10.6(c).

Response: All individuals admitted to practice must demonstrate that they possess the required scientific and technical background. Persons seeking registration under § 11.6(c) must demonstrate that they possess the "qualifications stated in § 11.7," which includes the scientific and technical training requirements of § 11.7(a)(2)(ii). The same is required under current 37 CFR 10.6(c) and 10.7(a)(2)(ii).

Comment 28: One comment pointed out that although the commentary at 68 Fed. Reg. at 69446 stated that "[p]aragraph (a)(3) of § 11.7 would explicitly place the burden of proof of good moral character and reputation on the applicant, and provide 'clear and convincing' as the standard of proof," there is no paragraph (a)(3) in § 11.7 corresponding to this statement, and suggested that commentary conform with the rules.

Response: The comment is correct that § 11.7 does not include paragraph (a)(3). Section 11.7(b)(1)(iii) establishes the burden of proof and requires an individual to "provide satisfactory proof of possession of good moral character and reputation." Individuals seeking registration have been required by current 37 CFR 10.7(a)(2)(i), and its predecessor rules, to establish to the "satisfaction" of the Director that they are of good moral character and reputation. This is unchanged by the new rules and may be met in most instances by candid answers to all questions in the application for registration, and production of complete explanations and required documents in accordance with instructions included in the application. The Office plans to adopt an application form containing substantially the same questions that attorneys commonly answer in State bar applications. Thus, attorneys will submit substantially the same questionnaire for the State bar, and agents will fill out this questionnaire for the first time.

Comment 29: One comment suggested that the terms or phrases "a form supplied by the OED Director," "application for admission," "registration application," "complete application," "applications," "application," "application form," and "application form supplied by the OED Director" in § 11.7 be replaced by "application for registration" to provide clarity and consistency. It also suggested that the phrase "complete application" wherever it is used in the proposed rules be changed to be "complete application for registration" for consistency in terms.

Response: The suggestions have been adopted. Inasmuch as the terms or phrases "a form supplied by the OED Director," "application for admission," "registration application," "complete

application," "application," "applications," "application form," and "application form supplied by the OED Director" all reference the application for registration, and the components of a complete application for registration are set forth in the provisions of § 11.7(b), the terms and phrases have been replaced as suggested. The change also distinguishes the application for registration from patent and trademark applications when the term "application" is used in other rules.

Comment 30: One comment suggested that if registration is to continue and to fulfill the statutorily required qualifications of drafting patent applications and claims the OED must reinstate the essay question format that required demonstration of claim drafting skills as an integral part of the examination.

Response: The suggestion has not been adopted. Regardless of the efforts taken to establish standards for grading essay examinations, the process of grading essays remains subjective and subject to heightened dispute. Grading an essay examination is an expensive, time-consuming, resource-intensive program requiring diversion of the Office's employees to provide a subjective evaluation. Grading essay examinations inevitably creates uncertainties and the potential for subjectivity in test answer evaluation. Processing and evaluating 6000 essays would require a massive commitment of USPTO resources without a concomitant benefit to the patent system. In contrast, both candidates for registration and the Office benefit from a multiple choice examination. A multiple choice examination is objectively graded. Moreover, multiple choice examinations, unlike essay examinations, cover a broader multitude of topics and elicit the candidate's ability to distinguish correct from incorrect practices, policies, and procedures as well as addressing application and claim drafting. Multiple choice examinations may be administered more frequently than essay examinations, thereby increasing the opportunity for registration. The passing rate over the past five years has ranged between 37% and 72%, and the overall average passing rate was 53.6%. Despite the fact that in the same period prior examinations were made public and some questions were reused, the multiple choice examination has not become a means to become registered by memorization. On the contrary, the examination provides a reasonable means for safeguarding the public from incompetent representation.

Comment 31: One comment suggested that the questions on the proposed examination not be publicly available because if questions are reused, it would be possible to simply memorize the publicly available questions and answers, and the examination would not measure a person's legal and technical competence. Another comment was to assure that the examination include questions covering 35 U.S.C. 101, 102, 103 and 112.

Response: The suggestions are noted. The comments in the proposed rules regarding § 1.21 stated that the data bank of questions and answers would be publicly available. However, the comments for § 11.7(e) said that it would be necessary to cease publication of the questions and the corresponding answers to reuse questions, and reduce pressure on the Office staff, as well as preserve the fairness of the test for later applicants. Any confusion resulting from these statements is regretted. The data bank of questions and answers will not be published or otherwise made available to the public. The registration examination will utilize a data bank of multiple choice questions that can be reused in subsequent examinations. Further, everyone practicing in patent cases before the Office must be familiar with the provisions of 35 U.S.C. 101, 102, 103 and 112. Accordingly, the examination will include questions covering these sections.

Comment 32: One comment suggested that there should be two or more questions that contain drawings in every examination to demonstrate that persons who pass the examination are competent to assist patent applicants by the ability to read and understand simple drawings, patents and technical publications. The comment suggested that an examination without drawings does not fulfill § 11.7(a)(4).

Response: The suggestion has not been adopted at this time. Presumably, the comment is referencing § 11.7(a)(2)(iii) as there is no § 11.7(a)(4) in the proposed rules. A drawing is not necessary to understand the claimed subject matter of every application as drawings are only required for applications "where necessary for the understanding of the subject matter sought to be patented." 35 U.S.C. 113. Thus, inclusion of one or two drawings is not required for the examination to test whether the persons passing the examination are capable of rendering competent assistance to patent applicants. Nevertheless, consideration is being given to the development of questions having drawings for inclusion in future computer-delivered registration examinations.

Comment 33: One comment suggested that before admitting an individual to the registration examination, the individual should be required to complete a minimum period of apprenticeship or work involving the preparation and prosecution of patent applications before the USPTO under the supervision of one or more registered practitioners, that only practitioners registered for at least a certain number of years should be deemed competent to provide such supervision, and that compliance be verified by requiring a written declaration from the candidate and a registered practitioner supervisor.

Response: The suggestion has not been adopted. Between 1922 and 1934, registration applicants demonstrated their qualifications by submitting evidence of experience in patent work, such as patent prosecution. Non-attorneys were required to show three years of experience preparing and prosecuting patent applications under the guidance of a registered patent attorney. Attorneys were required to show actual work experience in patent prosecution, but the experience was not required to extend over any particular period. The showing of experience was ordinarily made by affidavit of the registered practitioner under whom the applicant had worked.

The procedure was administratively difficult due, in part, to the lack of any objective standards. It is understood that Congressional correspondence on behalf of individual applicants was voluminous. Commissioner Robertson, in a 1933 report termed the registration system based upon submission of affidavits as neither reliable nor satisfactory. Commissioner Robertson regarded the applicant's showing of "several examples of his ability to prosecute a patent application" as "perfunctory" and "certainly not sufficient." Additionally, the Commissioner cited the required affidavit as being "subject to the great weakness of friendship between attorneys and the applicant," and that an "established attorney hesitates to refuse to make an affidavit as to competency of one of his employees who is ambitious and is striving to climb the ladder of success." The practice was ended in 1934 with the introduction of the registration examination. It would be difficult to avoid the weaknesses in the apprenticeship system employed prior to 1934 if the Office were to adopt the proposed apprenticeship or work system, even when coupled with the registration examination.

Comment 34: Two comments suggested that the location of § 11.7(c) seems to be out of place in the sequence of other provisions. One suggested that it should be located just before the hearing provision in § 11.7(j).

Response: The suggestion has been adopted in part. The petition provision in proposed § 11.7(c) is redundant with the petition provision in § 11.2(c). Accordingly, the provision for petitions in proposed § 11.7(c) is unnecessary, and has been removed from this section, and retained in § 11.2(c). Sections 11.7(b)(2) and 11.8(c) each addressed the necessity for an individual seeking recognition to update his or her application for registration. These provisions have been merged and moved into § 11.7(c).

Comment 35: One comment suggested that § 11.7(d) be subtitled "Waiver of the registration examination for former Office employees" followed by subsections (1), (2), *etc.*, to immediately apprise the reader that the rule is directed to waiver of the registration examination for former PTO employees.

Response: The suggestion has been adopted. The revision would apprise individuals who never served in the Office that the provisions of § 11.7(d) do not pertain to them.

Comment 36: One comment suggested that the phrase "actively served" in §§ 11.7(d)(1), (d)(2), and (d)(3) be defined to resolve whether a person is a "patent examiner" who has or has not "actively served" in the examining corps. The metes and bounds of "actively served" are not immediately apparent. The commenter suggested that the definition would resolve whether the examination would be waived for a former examining technical center director who never served as a patent examiner, but served more than four years as group director at the time of separation from the examining corps, or for a special program examiner who was not a patent examiner, but who served more than four years in the examining corps at the time of separation from the Office.

Response: The suggestion has not been adopted. The practice of waiving the examination for persons who actively served in the patent examining corps is well established. "Actively served" is not a new term of art. It has been used in predecessor rules since at least 1959. *See* 37 CFR 10.7(b) (1985), and 37 CFR 1.341(c) (1959). "Actively served" is found only in §§ 11.7(d)(1) and (d)(2), and is used in its ordinary sense. §§ 11.7(d)(1) and (d)(2) apply to only former examiners who were serving in the patent examining corps at the time of their separation from service. Obviously, a technical center group director who never was a patent examiner is not within the scope of §§ 11.7(d)(1) or (d)(2). Similarly, a special program examiner is not in the patent examining corps, and is not subject to the provisions of §§ 11.7(d)(1) or (d)(2). However, they would be among the "certain former Office employees" addressed in § 11.7(d)(3) for whom waiver of the examination and registration is available upon a satisfactory showing of the qualifying conditions set forth in § 11.7(d)(3).

Comment 37: One comment suggested that examining technical center directors, special program examiners, individuals who served as Assistant Commissioners for Patents, and administrative patent law judges at the Board of Patent Appeals and Interferences who have not "actively served" in the examining corps should be exempt from making a showing under § 11.7(d)(3) of possessing legal qualifications to render to patent applicants and others valuable service in the preparation and prosecution of patent applications. In contrast, three comments suggested that the proposal in § 11.7(d)(3) to exempt certain USPTO employees from the registration examination not be adopted. The latter comments opined that Office employees are only skilled in the application of rules concerning patentability, have not practiced patent law, and have no training how to properly describe and claim an invention. One of the latter comments suggested that the period of service in the Office be extended to five years to ensure broad experience.

Response: The suggestions have not been adopted. Many individuals in the foregoing positions supervise patent examiners and/or have authority to review and reverse decisions of patent examiners. These individuals have an opportunity to demonstrate possession of legal qualifications to render patent applicants and others valuable service in the preparation and prosecution of patent applications. Their positions in the Office have exposed them to proper description and claim practices, and given them the opportunity to evaluate the practices. Further, their positions and responsibilities enable them to readily find answers in the Manual of Patent Examining Procedure, rules and laws.

Mere qualification based on years of service in a position has not and should not be the standard for waiver of the examination. Accordingly, § 11.7(d)(3) requires that certain former Office employees show that they have exhibited a comprehensive knowledge of patent law equivalent to that shown by passing the registration examination as a result of having been in a position of responsibility in the Office, that they are rated at least fully successful in each quality performance element of their performance plans, and are not under an oral warning regarding performance elements relating to such activities at the time of separation from the Office. Moreover, waiver of the examination is not automatic; it is in the discretion of the OED Director. For that purpose the second sentence in each of §§ 11.7(d)(1), 11.7(d)(2) and 11.7(d)(3) have been revised by replacing the term "would" with the term "may." Further, §§ 11.7(d)(1) and 11.7(d)(2) are revised to delete §§ 11.7(d)(1)(v) and 11.7(d)(2)(iv), which provided for waiver of the criteria of these sections upon a showing of good cause. Any individuals believing the requirements of §§ 11.7(d)(1) or 11.7(d)(2) should be waived may avail themselves of the provisions of § 11.3, which provides the standard for suspension of any requirement of the regulations in Part 11 that is not a requirement of statute.

Waiver of the examination is not automatic for former patent examiners. Former patent examiners have been required to take the examination where there is evidence that they did not possess the legal qualifications to render patent applicants and others valuable service in the preparation and prosecution of patent applications. *See* Legal01 decision in the FOIA Reading Room of the Office Web site at *www.uspto.gov/web/offices/com/sol/foia/oed/legal/legal.htm*. The same will apply to former Office employees in all positions. The public and Office must be assured that the examination is waived only in appropriate circumstances. Accordingly, § 11.7(d) requires comprehensive knowledge of patent law equivalent to that shown by passing the registration examination, that the individual be rated at least fully successful in each quality performance element of his or her performance plan for their position for the last two complete rating periods in the Office, and that the individual not be under an oral warning regarding performance elements relating to such activities at the time of separation from the Office.

Comment 38: One comment inquired whether administrative patent judges at the Board of Patent Appeals and Interferences would qualify for registration under § 11.7(d)(3)(i)(A) when they leave the Office and wish to be registered to practice, and suggested a section be added to § 11.7 that would cover Administrative Patent Judges.

Response: This suggestion has not been adopted. Upon leaving the Office

administrative patent judges may be registered under the provisions of § 11.7(d)(3)(i)(A).

Comment 39: Four comments suggested that § 11.7(e) not be adopted. Three of the comments suggested that the Office continue to permit substantive review and regrading of registration examinations. One comment suggested that perhaps applicants would be willing to entertain a slightly higher examination cost to maintain the current system. Another comment said that the proposed process could be punitive. Two comments said denial of regrades would prevent applicants from receiving due process if a question is incorrectly graded. In contrast, another comment said that while the elimination of regrades perhaps meets the minimal requirements to pass muster under law, the provisions of § 11.7(e) seem to miss the element of fundamental fairness embodied in the present system, that is usually the cornerstone of PTO rules and practice. One comment opined that § 11.7(e) is an effort to minimize the burden of USPTO personnel in reviewing examination results, and its effect may be to ignore and/or cover up errors in the examination or in the manner that the examination was graded, and inequitably transfer the burden of Office errors to registration applicants. One comment said the possibility of regrades being arbitrary and capricious could arise only if the examination was in a format other than multiple choice.

Response: The suggestions have not been adopted. Thirty states and the Northern Mariana Islands do not have any provision for regrading a bar examination, either prior or subsequent to the publication of the grades. Many of the states that do provide regrades provide so only in limited circumstances that will not arise in connection with a computerized system of delivering a multiple choice examination.

Regrades are not required where the examination is offered again, particularly as frequently as the USPTO plans. Applicants are afforded due process by the ability to sit for the examination again. *See, e.g., Lucero* v. *Ogden,* 718 F.2d 355 (10th Cir. 1983), *cert. denied,* 465 U.S. 1035, 79 L. Ed. 2d 706, 104 S.Ct. 1308 (1984) ("Courts have consistently refrained from entering the arena of regrading bar examinations when an unqualified right of reexamination exists.").

Applicants failing the computerized registration examination will be able to retake the examination more frequently than those failing a State bar exam. Those who fail the examination can take it again in thirty days. The benefit to applicants of providing frequent examinations outweighs the costs of eliminating regrades. It typically requires several months for regrade results to be released. An applicant who retakes and passes the examination may be registered in less time than it would have taken to obtain the regrade result.

Limiting access to the questions will not deny the unsuccessful applicant equal protection of the laws. The Multistate Bar Examination (MBE), like the registration examination, is a multiple choice examination. Questions on the MBE are reused in later years. Inasmuch as some of the questions appear in following years, the questions must be kept secret in order to preserve the fairness of the test for later applicants. *See Fields* v. *Kelly,* 986 F.2d 225, 227 (8th Cir. 1993). An unsuccessful candidate also is not deprived of a property right without due process by limiting access to the questions. The provision of § 11.7(e) of providing an opportunity to review the examination under supervision without taking notes affords the applicant a hearing at the administrative level. *Id.* at 228.

The USPTO will take precautions to ensure the accuracy of questions and answers. Office employees with expertise in various Office organizations, including the Office of the Solicitor, Patent Cooperation Treaty Legal Affairs, Office of Patent Legal Administration, and the Board of Patent Appeals and Interferences, draft the examination questions. All the questions are multiple choice, and each addresses the patent laws, rules and procedures as related in the Manual of Patent Examining Procedure. Different employees then vet the questions to ensure that each question has a correct answer. The employees vetting the questions are drawn from the editorial staff of the MPEP, the Office of the Solicitor, the Board of Patent Appeals and Interferences, and Quality Assurance Supervisory Primary Examiners.

The examination will be administered by a commercial entity with extensive experience in administering computerized examinations. An examination will include 100 questions. After an examination is administered, the statistical performance of each question in the group of 100 questions is reviewed and evaluated by testing experts before the question is included in the computation of each applicant's score. The questions will be reviewed psychometrically to identify questions that appear too difficult. Psychometric analysis involves comparison of the results of each question in the top fifty percentile with the bottom fifty percentile of applicants, and shows the relative difficulty of each question. For example, as in the past, where a psychometrically significant number of applicants passing the examination select an incorrect answer to a question, the question is subject to content review by the Office. This corresponds to the internal review conducted by eleven states before publication of their bar exam results. This final statistical review is conducted to ensure that each question is accurate and psychometrically sound. Based upon the review, corrective action may be warranted, including withdrawal of the question. The questions are all objective-based, selected-response items. Some questions have been used in previous versions of the exam. Over time, each collection of 100 questions will include a number of previously used and reviewed questions, as well as new questions. The new questions will undergo the same psychometric analysis and review necessary to assure that the examination is fair.

Comment 40: One comment opined that adoption of § 11.7(e) would delay feedback from registration candidates, and eliminate both the income generated by the regrade process as well as the teaching tool provided by the regrades posted on the Office's Web site.

Response: The comment is not persuasive. The feedback received by the psychometric analysis provided by the commercial entity will be at least as fast as the feedback now received from the candidates. Psychometric analysis involves comparison of the results on each question of the top fifty percentile with the bottom fifty percentile of applicants, and shows the relative difficulty of each question. The Office will be able to review psychometric feedback received from the commercial entity as frequently as each week. Questions appearing to be too difficult are again reviewed after the examination to ascertain if there is a problem that needs to be addressed, as opposed to being a difficult question. For example, the question would be reviewed to ascertain if anything is misleading or incorrect in the body of the question or in the answer options, if it is readable, or if there is a change or inconsistency in the materials in the MPEP.

The regrade program is not a source of income to the Office. It is an expensive, time-consuming, resource-intensive program requiring diversion of the Office's employees who could be otherwise occupied deciding petitions, representing the Office in court, and examining patent applications.

Diversion of these resources to process and decide regrades does not optimize the USPTO's accomplishment of its statutory mission.

The value of posted regrade decisions as a teaching tool decreases with the passage of time since the patent laws, rules, and procedures change. A collection of regrade decisions can be found on the Office Web site in the Freedom of Information Reading Room. However, the continued posting of the questions has no relation to their value. Nothing on the Web site distinguishes between decisions addressing laws, rules and procedures that are currently followed and those no longer followed.

Comment 41: One comment opined that if the outsourced examination contract is limited to a sole source provider, the Office would be subject to further allegations of supporting arbitrary and capricious decisions regarding best answers, or other administrative interpretations within the USPTO.

Response: The comment is unpersuasive. The commercial entity, selected through full and open competition, does not create the questions or select the correct answers to the questions. As discussed above, the questions are developed within the Office. The examination will be delivered on computers at sites operated by the commercial entity. The commercial entity has extensive experience in administering examinations by computer. Every reasonable precaution has been taken to assure that the questions are not incorrectly graded. All questions and answers are carefully reviewed by the Office to assure that the answer selected by those in the Office vetting the question is the answer identified by the computer to accept as correct.

Comment 42: One comment opined that a "no error" grading of certification examination is unwarranted within the USPTO, and suggested that the Office, like others licensing professionals, including certified public accountants and professional engineers, utilize passing grade levels of approximately 70%.

Response: In referring to the "certification examination", it is presumed that the commentator is referring to the registration examination. It is also presumed that "'no error' grading" refers to requiring candidates to correctly answer all questions. However, there is no proposal to require candidates to correctly answer all questions on the registration examination to pass the examination. The Office plans to continue to use a passing grade of 70%. The Office's proposal to use a form of on-line self-correcting examination as one means of delivering continuing legal education remains subject to comment.

Comment 43: Four comments opposed the elimination of provisions for regrading examinations in § 11.7, at least to the extent that questions in the examination should continue to be subject to review for correctness, readability and fairness; the comment urged that the use of Office Model Answers assured only uniformity, that it is only reasonable and fair to require the Office to regrade/review questions that it has developed, and an applicant should have the right to appeal the result of their exam because, given the nature of patent practice, there will be occasions where there may be more than one correct answer.

Response: The suggestion to retain regrade is not adopted. The suggestion to allow limited access to the questions to review the questions is permitted to the extent provided in § 11.7(e). As discussed above, continuing the regrade program is not a reasonable expenditure of agency resources. Resources used to process regrades must be devoted to the processing of a backlog of over 500,000 patent applications, as well as petitions and appeals. Diversion of these resources to process and decide regrades is not the best use of Office resources. As also discussed above, questions will be psychometrically reviewed to identify those requiring additional, closer review. The psychometric analysis of answers will enable the Office to objectively identify questions that may have issues of correctness, readability and fairness, and to resolve the issues. Also, as in the past, corrective action is taken when warranted, such as by withdrawing a question. Moreover, elimination of regrades conforms to the practice in a majority of State bars.

Comment 44: One comment questioned keeping the questions and answers confidential and another suggested that it would constitute undue hardship to require that applicants travel to a location to review test results.

Response: The suggestion has not been adopted. The questions and answers will be maintained in confidence. This is consistent with confidentiality with which the Multistate Bar Examination is maintained. Maintaining the registration examination in confidence supports the integrity of the examination inasmuch as the questions can appear in following months or years. By maintaining confidentiality, no candidate has the advantage of memorizing questions and answers. The multiple choice, computer-based examination will use questions selected from a large database of questions and answers that will not be publicly available. This will assure that passing the examination depends upon the ability to spot issues and determine a substantively sound result, rather than upon the ability to memorize questions and answers.

Comment 45: One comment, apparently based on the experience with regrades of two other persons, said that their failure was unjustified; that in one case the model answers to one of the essay questions was simply wrong; and in the other case the examination grader did not recognize the candidate's way of writing of the letter "t" (European candidate) and interpreted each instance of this letter as a misspelling.

Response: The comments pertain to results of examinations that were based on essay questions and answers, which have not been used for several years. As the examination is now multiple choice, the possibility of subjectivity in the grading of essay answers has been eliminated.

Comment 46: The summary of § 11.7(g) at 68 FR 69449 sought comments regarding two options for determining good moral character. Four comments favored the second option, which gives deference to State bar determinations for those applicants who are attorneys and reserves authority by the Office for further investigation in the event of a substantial discrepancy between information given to the State bar and information given to the Office.

Response: The suggestion has been adopted. To effectuate the procedure and policy, § 11.7(g)(1) is amended to provide that "[a]n individual who is an attorney shall submit a certified copy of each of his or her State bar applications and moral character determinations, if available." A new paragraph is added, designated § 11.7(g)(2)(ii), which provides "[t]he OED Director, in considering an application for registration by an attorney, may accept a State bar's character determination as meeting the requirements set forth in paragraph (g) of this section if, after review, the Office finds no substantial discrepancy between the information provided with his or her application for registration and the State bar application and moral character determination, provided that acceptance is not inconsistent with other rules and the requirements of 35 U.S.C. 2(b)(2)(D)."

Comment 47: One comment suggested that for agent practitioners, the Office should require a showing of good moral character consistent with that required

by a majority of State bars, that the Office should gather the same information as gathered by the majority of State bar applications, that the information should be included as part of the application for non-attorneys to practice before the Office, and that the Office use this information to conduct an investigation of moral character that is consistent with that made by the majority of State bars.

Response: No regulatory provision is necessary to implement the suggestion. Plans are under way to change the application for registration to gather the same essential information from non-attorney applicants as is gathered by a majority of State bar applications. Any necessary investigation will be conducted.

Comment 48: One comment suggested that attorneys and non-attorneys be subject to same procedures for determining good moral character and reputation by requiring an attorney denied admission to a bar for lack of good moral character and reputation to inform the Office in the application for registration, that the Office should request a certificate of good standing from every bar where the applicant is a member to confirm whether an attorney is a member in good standing, and that at least five character affidavits should be requested from each non-attorney applicant so the treatment of both types of applicants would be on somewhat an equal footing.

Response: As discussed above, plans are under way to change the application to gather from non-attorneys the same essential information as is obtained by a majority of State bar applications. Non-attorneys will have to disclose the same information. The application for registration already requests a certificate of good standing from the highest court of a state, and inquires whether the applicant has been suspended or disbarred from the practice of law on ethical grounds.

Comment 49: Two comments suggested that the first option, namely that the Office give deference to the State bars by permitting patent attorneys to submit a copy of their State bar application and moral character determination, would be preferable. One comment opined that the first option would relieve the Office of an apparently unnecessary burden unless experience has indicated that such an approach could cause problems of some undefined character. The other comment opined that there seems to be no need for the Office to establish new procedures and require new personnel to administer those procedures when the individual State bars already perform the same task and it has not been shown that simply giving deference to a determination by the State bars would in any way permit Office registration of unqualified candidates.

Response: The suggestion has not been adopted. While accepting a State bar's determination on moral character without further review appears to be administratively attractive, experience indicates that the existence of substantial discrepancies can be problematic. A registration application might disclose information that would warrant a disciplinary proceeding. If the Office did not make provision to disallow registration of such an applicant, then following registration, it would be necessary to admit a practitioner and initiate a disciplinary action. Such a step would create a situation in which an attorney or agent whom the Office should have denied registration is representing clients until disciplinary proceedings are concluded. The disciplinary action requires devotion of additional personnel and expenditure of time and funds that would not otherwise be necessary in an enrollment proceeding to protect the public by suspending or excluding the individual. Moreover, the burden of proof shifts in a disciplinary action. An enrollment applicant has the burden of showing that he or she is of good moral character and reputation, whereas in a disciplinary action the OED Director must demonstrate a violation of the disciplinary rules. By following the first option, as opposed to the second, the Office fulfills the responsibility Congress placed on the Director to protect the public while not duplicating efforts already undertaken by the State bars.

Comment 50: One comment suggested that the good moral character determination for both attorneys and agents be administered by the Office in a manner similar to that utilized by the National Council of Examiners for Engineering and Surveying (NCEES), a non-profit organization, whose membership consists of engineering and land surveying licensing boards for all states and territories of the United States. These member boards represent all states and U.S. territorial jurisdictions. The suggestion is that the Office utilize the organizational model of NCEES by having member boards representing all State bar associations serve as a central body for maintaining registered practitioners' representation records comprising pertinent state and Office information. A practitioner's representation record would contain some combination of NCEES-type records and State bar records including professional references, employment verifications, licensure information, and State bar applications, which are all determinants of moral character. The comment also suggested that the Office would share information with State bar associations regarding the conduct of "registered" trademark practitioners for enforcement of ethical standards at the state level.

Response: The suggestion has not been adopted. Congress placed on the Director of the USPTO the primary responsibility of determining who would be recognized to practice before the Office in patent cases and protecting the public. *See* 35 U.S.C. 2(b)(2)(D). The maintenance of the register of registered patent attorneys and agents is an inherently governmental function that cannot be performed by non-employees.

The Office already shares with State bars information regarding conduct of registered practitioners for enforcement of ethical standards at the state level. *See* 37 CFR 10.159. Although the Office does not register trademark practitioners, the Office does share with state bar associations information about the attorneys for enforcement of ethical standards at the State level. *See* 37 CFR 10.159.

It is understood that NCEES has a Records Program that serves as a verifying agency for the engineer or land surveyor who is seeking multiple-jurisdiction licensure. Through this program, an NCEES Council verifies and houses a record holder's file, which contains the college transcripts, licensure information, professional engineer or surveyor references, and employment verifications. The Office will consider whether and how it may communicate with NCEES to obtain records regarding applicants for registration.

Comment 51: One comment suggested that § 11.7(g), which permits the OED Director to list the names of proposed registrants on the Internet and make inquiry regarding the moral character of the individuals listed, not be adopted because it is a tremendous invasion of privacy; and further suggested that the Office should not be involved with regulating moral conduct when it does not concern matters before the Office, citing misdemeanor cases, such as shoplifting or drug dependency, as examples of matters with which the Office should not be concerned.

Response: The suggestion has not been adopted. The statute requires the Office to consider "reputation" of prospective attorneys and agents. In furtherance of that mandate, the Office has long published in the Official

Gazette the names of applicants for registration seeking comments regarding their qualifications. The Official Gazette is published on the Office's Web site on the Internet. The provision has been moved to § 11.8(a), and codifies that which has long occurred with the publication of the Official Gazette in paper and on the Internet.

The Office agrees that the Office should not be involved with regulating moral conduct when it does not concern matters before the Office. Nevertheless, there are instances where conduct not directly occurring in the representation of others before the Office has a nexus with the person's moral character for purposes of representing others; for example, drug dealing, and wire or insurance fraud. There are a number of cases where State bars have denied admission to persons whose conduct involves the conduct of the kind addressed by the commenter. *See* Moral 03 and Moral 04 decisions in the FOIA Reading Room of the Office Web site at *www.uspto.gov/web/offices/com/sol/foia/oed/moral/moral.htm*.

Comment 52: One comment suggested that § 11.7(g)(1), which requires an individual seeking recognition to "answer all questions," clarify the source of the questions.

Response: The suggestion has been adopted. The first sentence of § 11.7(g)(1) has been revised to state "answer[ing] all questions in the application for registration and request(s) for comments issued by OED."

Comment 53: One comment suggested deletion of the third sentence in proposed § 11.7(g)(3), which states, "If the individual seeking registration or recognition is an attorney, the individual is not entitled to a disciplinary proceeding under §§ 11.32–11.57 in lieu of good moral character proceedings under paragraphs (j) through (m) of this section." The commenter noted that only the OED Director can initiate a disciplinary proceeding if the Committee on Discipline finds probable cause, and it is not clear how an attorney who is not yet a registered practitioner would be subject to the disciplinary proceedings.

Response: The suggestion has been adopted. Section 11.7(g)(3) in the proposed rules has been renumbered § 11.7(g)(2)(i) in the final rules. The third sentence of proposed § 11.7(g)(3) has been omitted from the final rule.

Comment 54: One comment suggested that in the fourth sentence of § 11.7(g)(3), the phrase "OED Director" be changed to "Office of Enrollment and Discipline" since in all likelihood questions will be sent through a staff attorney in OED.

Response: The suggestion has been adopted in part. The fourth sentence of proposed § 11.7(g)(3) is the third sentence of § 11.7(g)(2)(i) in the final rule. The reference to "OED Director" has been changed to "OED."

Comment 55: One comment suggested that a typographical error be corrected in the last sentence in § 11.7(h) before the beginning of subsection (1).

Response: The suggestion is now moot inasmuch as the last sentence of proposed § 11.7(h) has been deleted.

Comment 56: One comment inquired whether "good moral character" has the same meaning as "good moral character and reputation." Another comment suggested that the entire phrase "good moral character and reputation," which appears in 35 U.S.C. 2(b)(2)(D), be defined.

Response: The latter suggestion has been adopted. Under 35 U.S.C. 2(b)(2)(D), an individual is required to possess "good moral character and reputation." "Good moral character and reputation" is defined in § 11.1. Webster's Third New International Dictionary defines "reputation" as "the condition of being regarded as worthy or meritorious" (second version under the first definition), and is the source for the definition applied to reputation in the phrase "good moral character and reputation."

Comment 57: One comment opined that §§ 11.7(h)(3) and 11.7(h)(4) contain definitions of good moral character that do not appear to be within the scope of the definition in proposed § 11.7(h).

Response: Good moral character is now defined in § 11.1, and continues to mean the "possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice."

The definition of good moral character is inclusive of the conduct referenced in §§ 11.7(h)(3) and 11.7(h)(4). Section 11.7(h)(3) refers to "[a]n individual's lack of candor in disclosing facts bearing on or relevant to issues concerning good moral character and reputation when completing the application or any time thereafter." Lack of candor is within the ambit of "honesty and truthfulness, trustworthiness and reliability." Similarly, § 11.7(h)(4) refers to an "individual who has been disbarred or suspended from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding * * *." Disbarment reflects a lack of the same traits required for good moral character and reputation.

Comment 58: One comment suggested that the Office define what it considers to be a violation of "moral turpitude" based on decisions in disciplinary proceedings before the Office and add the definition to § 11.1 inasmuch as "moral turpitude" has been open to interpretation by State bars and the disciplinary courts.

Response: The suggestion has not been adopted. The fact that State bars and courts of each State interpret their own State laws and identify those acts that constitute moral turpitude reflects a wide variety of differences among laws under which prosecution may be brought. Federal laws raise similar issues. A wide variety of fact patterns and underlying laws come before OED for consideration. Courts in the state where an applicant's conduct occurred may have issued a decision that an act does or does not constitute moral turpitude. There may be no decision regarding the act in that state. Courts in another state may have issued a decision based on the same or similar law regarding the same or similar conduct. It is unlikely that a rule could be derived from the decisions issued by the state courts that would be clear and unequivocal for all cases.

It seems preferable to allow applicants to make their presentations with respect to concrete circumstances and the particular laws under which the conviction occurred. An applicant may present such analyses of case law and past circumstances for consideration as the applicant deems best to characterize his or her situation. The Office will consider the applicant's presentation as well as relevant case law from the same and other jurisdictions. Such flexibility is most likely to lead to fair results.

Comment 59: One comment pointed out that although § 11.7(h)(1) includes a misdemeanor in the definition of "a crime," the definition of "crime" in § 11.1 does not include a misdemeanor. It is suggested that the rules be consistent in defining repeated terms.

Response: The suggestion has been adopted. The definition of "crime" in § 11.1 has been revised to include "any offense declared to be a felony or misdemeanor by Federal or State law in the jurisdiction where the act occurs."

Comment 60: One comment suggested that the phrase "convicted for said felony" in the third sentence of § 11.7(h)(1) should read "convicted of said felony."

Response: The suggestion has been adopted, and the sentences are restructured.

Comment 61: One comment suggested that the term "compelling proof" and the phrase "at a minimum a lengthy

period of exemplary conduct" in § 11.7(h)(1) be defined.

Response: The suggestion has been adopted in part. Section 11.7 has been revised to delete provisions calling for "compelling proof" and "clear and convincing" evidence of good moral character. Section 11.7 will require individuals to establish to the satisfaction of the OED Director that they are of good moral character. This standard is set forth in the current rules at 37 CFR 10.7(a)(2)(i). Thus, new § 11.7 will continue to apply the same standard whether the individual is a first time applicant, a disbarred attorney, or convicted felon. Applicants in the latter two instances must make a more substantial showing than a first time applicant with no such record because of the need to overcome evidence weighing against a finding of good moral character. Case law recognizes that following disbarment, the burden of proving good moral character is substantially more rigorous for an attorney seeking reinstatement, even in a different jurisdiction, than for a first time applicant. *See In re Menna*, 905 P.2d 944 (Cal. 1995). As in the case of reinstatement after disbarment, even a first time applicant has a heavy burden of showing good moral character after conviction of a felony. *See In re Gossage*, 5 P.3d 186 (Cal. 2000); *In re Dortch*, 486 S.E.2d 311 (W.Va. 1997).

Section 11.7(h)(1) has been revised to delete the provision for a lengthy period of exemplary conduct. Section 11.7(h)(1)(ii)(B) provides a two-year period following completion of the sentence, deferred adjudication, and period of probation or parole, whichever is later, for demonstrating good moral character and reputation.

Comment 62: One comment suggested that the term "provisions" in the first sentence of § 11.7(h)(1)(ii) be changed to "presumptions" since it appears that sections (A) and (B) thereunder are presumptions that will be made by the Office for an individual who has been convicted of a felony or misdemeanor and is seeking registration. The comment further suggested that in § 11.7(h)(1)(ii)(B), the expression "apply for or be registered" be amended to read "apply for registration or be registered" for grammatical correctness. It was still further suggested that since proposed paragraph (C) in § 11.7(h)(1)(ii) is not a presumption, it should be renumbered § (h)(iii) and that proposed § 11.7(h)(iii) be changed to § 11.7(h)(iv). Further, it was suggested that the expression "an application" in proposed § 11.7(h)(1)(iii) be changed to "a complete application for registration and the fee required by § 1.21(a)(1)(ii)."

Response: The suggestions have been adopted in part. In § 11.7(h)(1)(ii), the term "provisions" is changed to read "presumptions." In § 11.7(h)(1)(ii)(B), the expression "apply for or be registered" is revised to read "apply for registration." The numbering of paragraph (h)(1)(ii)(C) in § 11.7 is changed to paragraph (h)(1)(iii), the expression "an application" in proposed § 11.7(h)(1)(iii) is changed to "a complete application for registration and the fee required by § 1.21(a)(1)(ii) of this subchapter," and the numbering of § 11.7(h)(1)(iii) is changed to § 11.7(h)(1)(iv).

Comment 63: One comment suggested that the phrase "from drug or alcohol abuse or dependency" be added after "recovery" in § 11.7(h)(2) to clarify that recovery is from past, as opposed to present, drug or alcohol abuse or dependency.

Response: The suggestion has not been adopted. Section 11.7(h)(2) requires that an individual's record be reviewed as a whole to see if there is a drug or alcohol abuse or dependency issue. Section 11.7(h)(2) covers both past and present abuse and dependency issues. Accordingly, recovery should encompass past or present abuse and dependency issues.

Comment 64: One comment suggested that the procedure in § 11.7(h)(2) for holding an application for registration in abeyance for an applicant who has not established a record of recovery from drug or alcohol dependency, and manner by which an agreement for recovery from the dependency is "initiated" and confirmed can be clarified by ending the last sentence at "time," and adding the following sentence: "If the individual accepts the offer, the individual and the OED Director shall execute an agreement specifying (i) the period of time the application for registration will be held abeyance, (ii) the conditions regarding the initiation and confirmation of treatment; and (iii) conditions that constitute evidence that recovery is confirmed."

Response: The suggestion is now moot inasmuch as the proposal for holding an application in abeyance while an individual complies with a recovery agreement is not adopted. The OED Director will provide the individual with an opportunity to withdraw his or her application in order to avoid its denial with attendant consequences under § 11.7(k). The individual will be notified that he or she may resume the application for registration or reapply when the individual is no longer abusing alcohol or drugs and can satisfactorily demonstrate that he or she is complying with treatment and undergoing recovery. Under § 11.8(b), the individual may resume completion of the application for registration without taking the examination again if, within two years of mailing date of a notice of passing the examination, the individual files a satisfactory showing and complies with the provisions of § 11.8. An individual would reapply if a satisfactory showing is made outside the two-year period.

Comment 65: One comment suggested that § 11.7(h)(4) be expanded to include, in addition to a suspended or disbarred attorney, a non-attorney who, for instance, was disciplined by an institution or government authority for acts of misconduct involving moral character, *e.g.*, students, stock brokers, CPA's, doctors. It was also suggested that § 11.7(h)(4) be revised to organize its provisions to separately and clearly identify individuals ineligible for registration and their respective ineligibility periods, the documents and fees to be filed for registration, as well as the presumptions that arise from the discipline or resignation and the available defenses.

Response: The suggestion has been adopted in part. The provisions of § 11.7(h)(4) have been expanded to include individuals who are disbarred, suspended or have resigned in lieu of disciplinary action in the legal profession as well as other professions. Further, the provisions have been extensively reorganized to more clearly identify the ineligible individuals, their respective ineligibility periods, and the fees and documents they must file. The burden of establishing reform and rehabilitation has been clarified to require a satisfactory showing, which is consistent with § 11.7(h)(1).

Comment 66: One comment suggested that to avoid confusion § 11.7(i) should not introduce the term "applicant" for the first time, and that "applicant" be changed to "individual."

Response: The suggestion has been adopted.

Comment 67: One comment suggested that in § 11.7(i)(2)(xii), the word "religious" replace the word "church" as a sponsor of "programs designed to provide social benefits or to ameliorate social problems," because "church" is limited to a body of Christians.

Response: The suggestion is now moot. Proposed § 11.7(i)(1) and the second and third sentences of proposed § 11.7(i)(2) have been deleted. The first sentence of proposed § 11.7(i)(2) has been renumbered § 11.7(i) in the final rules. Proposed § 11.7(i)(2)(viii) has been deleted, and the remaining

proposed §§ 11.7(i)(2)(i) through 11.7(i)(2)(xiii) have been renumbered §§ 11.7(i)(1) through 11.7(i)(12) in the final rules. Section 11.7(i)(11) in the final rules, which is based on proposed § 11.7(i)(2)(xii), is revised to eliminate any characterization, such as "church," limiting the identity of sponsors.

Comment 68: One comment suggested that the language of the first two sentences of § 11.7(j) be revised as follows: If, after an investigation of moral character and reputation, the OED Director is of the opinion that the evidence of record does not establish that the individual seeking registration possesses good moral character and reputation, the OED Director shall issue to the individual a notice to show cause with reasons why the individual should not be registered. The notice shall give the individual the opportunity for a hearing before the Committee on Enrollment or withdrawing his or her application for registration.

Response: The suggestion has been adopted in part. As discussed with regard to § 11.4, the Office will no longer provide for a Committee on Enrollment, and the proposal to provide for oral enrollment hearings will not be adopted. The first two sentences have been replaced by the following provisions: "[i]f, following inquiry and consideration of the record, the OED Director is of the opinion that the individual seeking registration has not satisfactorily established that he or she presently possesses good moral character and reputation, the OED Director shall issue to the individual a notice to show cause why the individual's application for registration should not be denied." The "individual shall be given no less than ten days from the date of the notice to reply. The notice shall be given by certified mail at the address appearing on the application if the address is in the United States, and by any other reasonable means if the address is outside the United States." Following "receipt of the individual's response, or in the event of the absence of a response, if any, the OED Director shall consider the individual's response and the record, and determine whether, in the OED Director's opinion, the individual has sustained his or her burden of satisfactorily demonstrating that he or she presently possesses good moral character and reputation."

Comment 69: One comment objected to the term "interrogated" in § 11.7(j)(1) as sounding like an inquisition, and suggested that the phrase "to be sworn and interrogated" be changed to read "to provide sworn testimony"; and suggested that "an adverse decision" is indefinite and should be changed to "a decision denying recognition based on lack of good moral character and reputation."

Response: The suggestion is moot since proposed § 11.7(j)(1) has not been adopted.

Comment 70: One comment pointed out that § 11.7(j)(2) needs to clarify that the "individual" is not the "particular person," and suggested that the term "individual" be changed to read "individual seeking registration."

Response: The suggestion is moot since proposed § 11.7(j)(2) has not been adopted.

Comment 71: One comment suggested that § 11.7(j)(2)(ii) refers to "rights" listed in "paragraph (j)(2)(A)," whereas § 11.7(j)(2(ii) should reference § 11.7(j)(2)(i), which is directed to "rules of procedure."

Response: The suggestion is moot since proposed § 11.7(j)(2) has not been adopted.

Comment 72: One comment noted the use of the terms "recommendation" and "decision" in § 11.7(j)(3) is confusing and the need for consistency.

Response: The suggestion is moot since proposed § 11.7(j)(3) as well as proposed §§ 11.7(j)(4) and 11.7(j)(5) have not been adopted.

Comment 73: One comment suggested that the first sentence of § 11.8(a) be clarified to inform an individual who passed the examination that he or she has two years within which to complete registration by revising the sentence to read "an individual passing the registration examination who does not comply with the requirements of paragraph (b) of this section within two years after the date on a notice of passing the examination will be required to retake the registration examination."

Response: The subject of the comment has been moved to § 11.8(c), which has been revised to reflect this comment.

Comment 74: One comment noted that § 11.8(b) requires that an attorney or agent must submit a certificate of good standing from the bar of the highest court of a state, whereas this would not be possible for agents.

Response: The suggestion has been adopted. Section 11.8(b) has been amended to require only attorneys to submit a certificate of good standing from the bar of the highest court of a state.

Comment 75: One comment suggested the requirement in § 11.8(b) that attorneys and agents must file a completed form to obtain the Office's authorization to use a digital signature as a prerequisite for registration before the Office is premature and unnecessary. The purpose for the digital signature is to facilitate electronic filing; however, electronic filing is, currently, not required. Moreover, it is not clear why a registration applicant must complete a form for a digital signature in order to be registered to practice before the Office, yet currently registered attorneys and agents have no such requirement, and a form for a digital signature can be completed when it is appropriate for that attorney or agent to do so.

Response: The suggestion has been adopted. Section 11.8(b) has been revised to remove the provision requiring "a completed form to obtain the Office's authorization to use a digital signature."

Comment 76: One comment suggested that § 11.6(c) appears to conflict with State bar rules, which do not have residency requirements, that the proposed rules do not appear to prohibit aliens who no longer reside in the United States to remain registered, and suggested that aliens no longer residing in the United States may continue to be registered and practice before the Office, that such continued work would not be in contravention of the immigration laws as they would not be working in the United States, and that a former permanent resident would be eligible for re-admission to the United States as a special immigrant.

Response: The suggestion has not been adopted. State law is not applicable. Under 5 U.S.C. 500(e), the Office is empowered to determine who may practice before it with respect to patent matters. New § 11.6(c) continues the practice followed under current 37 CFR 10.6(c). Under § 11.6(c), only aliens residing outside the United States satisfying the requirements of that rule may be registered. Such aliens must show that the patent office of the country where they reside and are registered practitioners grants substantial reciprocity to attorneys and agents admitted to practice before the USPTO in patent cases. At this time, only the Canadian Patent Office is considered to meet the requirements. Aliens in the United States, such as permanent residents, meeting the requirements of §§ 11.6(a) or 11.6(b) can be registered while they remain in the United States. The provisions of § 11.9(b) continue the practice of granting limited recognition to aliens in the United States not meeting the requirements of §§ 11.6(a) or 11.6(b), but who nevertheless show they are authorized to prepare and prosecute patent applications; they may be granted limited recognition under § 11.9(b) to practice while they remain in the

United States. Upon departing the United States, their authorization to practice ceases, and they can be registered only if the provisions of § 11.6(c) are satisfied.

Comment 77: One comment objected to the fifth sentence in § 11.9(b)(2), which states "[a]ny person admitted to the United States to be trained in patent law shall not be admitted to the registration examination or granted recognition until completion of that training." The comment suggested that non-immigrant persons be registered.

Response: The suggestion has been adopted in part. Section 11.9(b) has been revised to provide limited recognition to a nonimmigrant alien who resides in the United States and fulfills the provisions of §§ 11.7(a) and (b) if the nonimmigrant alien is authorized to be employed or trained in the United States in the capacity of representing a patent applicant by preparing or prosecuting a patent application. The fifth sentence in proposed § 11.9(b) has not been adopted.

Comment 78: Three comments suggested it is unclear whether a nonpractitioner assistant would be violating proposed § 11.10(a) if he or she assisted a registered practitioner, for example, in the preparation of a patent application, even under the direction and guidance of a registered practitioner. The question is raised in part, because proposed § 11.5(b) does not define "prosecution."

Response: This suggestion has not been adopted. Section 11.10(a) adds nothing that was not already present in the current 37 CFR 10.10(a). No action has been taken regarding proposed § 11.5(b). It is the registered practitioner, as opposed to the non-practitioner, who is responsible for compliance with § 11.10(a). It is common practice for nonpractitioner assistants to work under the direct supervision of a registered practitioner in conducting many of the activities associated with practice before the Office, and nothing in § 11.10(a) prohibits this activity so long as the registered practitioner supervises and remains responsible for the assistant's work.

Comment 79: One comment suggested that the subtitle of § 11.10(b), "Undertaking for registration by former Office employees" is not clear since the phrase "undertaking for registration" would have no meaning to a person unfamiliar with OED practice.

Response: The suggestion has been adopted. The subtitle of § 11.10(b) has been revised to read "Post employment agreement of former Office employees."

Comment 80: One comment suggested that the first sentence of § 11.10(b), addressing restrictions on registration for current employees, be divided from the second and subsequent sentences, which address restrictions on practice by former employees.

Response: The suggestion has been adopted in part. The first sentence has been deleted. The first sentence prohibited registration of current employees who had not been previously registered. However, current employees who pass the registration examination are permitted to be registered, but their names are endorsed on the register as inactive. They are not permitted to practice in patent cases while they remain employed by the Office.

Comment 81: One comment objected to §§ 11.10(b)(1) and 11.10(b)(2) as intertwining rules of conduct with commentary.

Response: This suggestion has been adopted. The use of examples was proposed to clarify the rules. However, the examples have been removed. It is planned to expand the discussion of restrictions on former examiners in the Manual of Patent Examining Procedure (MPEP). Appropriate examples will be included in the MPEP.

Comment 82: Three comments suggested that §§ 11.10(b)(1) and (b)(2) be revised to change "United States" to "Office" to remove ambiguity. One comment pointed out that all communications to the Office are in some sense to the United States. One comment pointed out that the "or's" in § 11.10(b)(1) result in the rule proscribing preparing someone's tax return or helping to write a letter to their congressman. A fourth comment suggested that it is unnecessary to reference United States or the Office inasmuch as the United States would be a party with respect to the prosecution of a patent application since the Office would be regarded as one party and that the United States has a direct and substantial interest since it is granting the monopoly for a patent or trademark.

Response: These comments have been accepted. Only representation before the Office is within the scope of this part, and the relevant provisions have been revised to more clearly reflect this.

Comment 83: One comment suggested that it is unnecessary to include limitations in § 11.10(b)(1) beyond that it can be construed merely to require that former patent examiners cannot act as a representative or intend to bring influence, including "conduct occurring behind the scenes," for a period of two years in a "particular matter in which he or she personally and substantially participated as an employee of the Office."

Response: This suggestion has not been adopted. The substantive restrictions are set forth in §§ 11.10(b)(1) and 11.10(b)(2). Section 11.10(b)(3) provides definitions for use in interpreting the substantive provisions, but does not impose additional restrictions.

Comment 84: One comment suggested that §§ 11.10(b)(1) and 11.10(b)(2), like 18 U.S.C. 207, not separate appearance and influence portions of the statute into two separate and distinct prohibitions.

Response: These sections have been rewritten to remove the references to communications with the intent to influence, which are already included within the term "representation" as defined by § 11.10(3)(i).

Comment 85: Three comments suggested that the items listed in §§ 11.10(b)(1)(i)–(iii) and 11.10(b)(2)(i)–(iii), should not be in the alternative as proposed, but should be linked with "and" so as to include all three conditions. Another comment suggested §§ 11.10(b)(1) and 11.10(b)(2) appear to present grammar and syntax problems that jam too many thoughts into a single sentence, and do not work.

Response: The suggestion has been adopted. These provisions have been rewritten for clarity.

Comment 86: One comment observed that unlike §§ 11.10(b)(1) and 11.10(b)(2), 18 U.S.C. 207 does not specify that appearance is "formal and informal" or that communications are "oral or written," and that the sections be revised to conform with the statute.

Response: The suggestion has been adopted in part. Section 11.10(b) does not implement or interpret 18 U.S.C. 207. The references to appearances and communications have been removed from §§ 11.10(b)(1) and 11.10(b)(2) as discussed in response to Comment 84.

Comment 87: One comment said the interchanging use in § 11.10(b) of "individual," "any person" and "employee" is somewhat confusing.

Response: The suggestion has not been adopted. The Office does not believe that the use of these terms renders § 11.10(b) ambiguous, or that using different or fewer terms would increase its clarity.

Comment 88: One comment said 18 U.S.C. 207 provides for a one-year restriction while § 11.10(b)(2) provides for a two-year restriction, and suggested that the period in the proposed rule be commensurate with the statutory period.

Response: The suggestion has not been adopted. While § 11.10(b)(2) does

not implement 18 U.S.C. 207, its two-year restriction parallels that of the statute.

Comment 89: One comment suggested that § 11.11(a) be revised to change "state bar" to "State bar" in the rules to conform to the definition of "State" in §§ 11.1 and 11.7(h)(4).

Response: The suggestion has been adopted. The lower case "s" in "state" or "states" has been changed to an upper case "s" wherever found in § 11.11(a). Also, the designation of the first paragraph of § 11.11 as paragraph (a) has been deleted inasmuch as proposed §§ 11.11(b) through 11.11(f) remain under consideration, and no paragraph following the first paragraph has been adopted.

Comment 90: One comment suggested that the second sentence of § 11.11(a) does not parse.

Response: The suggestion has been adopted. Although the language of the sentence is the same as found in 37 CFR 10.11(a), the language has been updated and revised.

Comment 91: One comment suggested that the Office should be able to maintain at least three e-mail addresses for practitioners (*e.g.*, home, work, and "permanent" e-mail addresses), and send electronic communication to all of these addresses to maximize the chance that a message is actually received by the intended practitioner. The cost of doing this is virtually nothing.

Response: The suggestion has been adopted in part. OED will maintain a list of up to three e-mail addresses for a registered practitioner and § 11.11 has been revised to provide for up to three e-mail addresses where the practitioner receives e-mail. Practitioners will be responsible for updating OED with each and every change of e-mail address. OED plans to use all the addresses furnished by a practitioner to communicate with him or her.

Comment 92: One comment suggested that the following groups of alien attorneys and agents should be exempt from the provisions of proposed §§ 11.6(a) and 11.6(b), respectively: (1) aliens who have visas acceptable for practice before the Office under current Rule 10.6, whether or not they have yet entered the United States; and (2) aliens in the midst of the visa application process for practice before the Office acceptable under current Rule 10.6. Requiring aliens in these groups to obtain new visas is unduly burdensome and impractical if the visas are sufficient under the current rule.

Response: The suggestion has not been adopted. As discussed in response to Comment 23, empowering nonimmigrant aliens to engage in employment or training contrary to the immigration laws and their reliance on registration to conduct themselves in that manner would be inconsistent with the requirement that they possess good moral character. Regulations prohibit some nonimmigrant aliens from engaging in employment. *See, e.g.*, 8 CFR 214.1(e). A nonimmigrant alien in the United States may not engage in any employment unless the person has been accorded a nonimmigrant classification which authorizes employment or the person has been granted permission to engage in employment in accordance with regulations found in Title 8 of the Code of Federal Regulations. A nonimmigrant alien who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant alien constitutes a failure to maintain status. *See, e.g.*, 8 CFR 214.1(e). The Bureau of Citizenship and Immigration Services (BCIS) determines which nonimmigrant alien is authorized to be employed while in the United States, the capacity in which they are employed, and who may employ them. The Office has no authority to license nonimmigrant aliens to engage in employment, or to be employed by an employer beyond that which the BCIS has sanctioned.

Comment 93: One comment suggested the phrase "such registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States," in §§ 11.6(a) and 11.6(b), be defined to enable practitioners and the general public to understand what constitutes registration not inconsistent with the terms upon which the alien was admitted to and is residing in the United States.

Response: The suggestion has not been adopted. The admission of aliens to the United States and their authority to be employed is dependent upon regulations promulgated by BCIS and its predecessor, the Immigration and Naturalization Service. Those regulations change with some frequency. It would not be prudent for the Office to adopt definitions that would be rendered inconsistent with the regulations adopted by the BCIS. Case law provides guidance in defining the meaning of the phrase, which has been in use since 1985.

Comment 94: One comment suggested that the circumstances under which an unregistered attorney may take testimony in an interference should be elaborated upon either in § 11.6(d) or in the commentary.

Response: The suggestion has not been adopted. Section 11.6(d) permits the Chief Administrative Patent Judge or Vice Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences to determine whether and the circumstances under which an attorney who is not registered may take testimony for an interference under 35 U.S.C. 24, or under 37 CFR 1.672. The circumstances and necessity for setting forth circumstances can differ between interferences. Accordingly, it is inappropriate to attempt to provide in the rule or commentary an exhaustive listing of circumstances. The Judges will exercise their discretion in determining the circumstances under which the testimony will be taken.

Comment 95: One comment suggested that the registration procedure sequence in § 11.7 contains redundancy regarding scientific and technical training in §§ 11.7(b)(1) and 11.7(b)(3); that the procedure contained in § 11.7(b)(4) for retaking the examination upon failure should be a separate provision; that the qualifications considered are found in § 11.7(b)(i) as well as §§ 11.7(b)(2) to (b)(4) and (b)(6); that the requirement to keep an application updated be separated from § 11.7(b)(2); and it is necessary to clarify why an individual reapplying more than one-year after failing the registration examination must again submit satisfactory proof of his or her scientific training.

Response: The suggestion for reorganizing the regulation is adopted in part. The provisions in proposed § 11.7(b)(3) have been merged into § 11.7(b)(1)(i)(C), and proposed § 11.7(b)(5) has been revised and renumbered § 11.7(b)(3). Proposed §§ 11.7(b)(4) and 11.7(b)(6) has been moved into § 11.7(b)(1) and renumbered §§ 11.7(b)(1)(ii) and 11.7(b)(1)(iii), respectively. The reference to § 11.7(b)(3) in §§ 11.7(d)(1), 11.7(d)(2) and 11.7(d)(3) is revised to read as § 11.7(b)(1)(i)(C). The procedure for retaking the examination upon notice of failure has been moved to § 11.7(b)(1)(ii). It is believed to be preferable to consolidate in one paragraph the provisions for passing the examination and for retaking the examination upon failure. The qualification provisions in § 11.7(b)(1) are not repeated in renumbered §§ 11.7(b)(2) and 11.7(b)(3). The latter sections address two matters not covered in § 11.7(b)(1); the consequence of failing to file a complete application, and the necessity for an individual, who does not reapply until more than one year after the mailing date of the notice of failure, to again comply with § 11.7(b)(1).

Individuals reapplying more than one year after failing the registration examination must again submit

satisfactory proof of their scientific training because their files will have been archived. The Office does not have facilities for on-site long-term storage of files of individuals who fail the examination. Ordering files from archived records could subject applicants to unanticipated delays and does not promote efficiency. While there are plans for scanning the files, resources are limited at this time, and until scanning of all files is available, files older than one year must be archived.

Comment 96: One comment suggested that all practitioners be treated the same with respect to fitness, moral character, and legal competence by: requiring all practitioners to have minimum technical and legal experience if they are to practice before the USPTO; resolve the allegedly inherent "unauthorized practice of law" by agents by eliminating the agent status altogether, allowing agent status for those only who complete the patent academy with four or more years' experience; change the name "agent" to "non-legal agent" or other name in order to protect the public and to put the public on notice that they are not working with an attorney; notify agents that they cannot practice law and further limit their scope of practice to preparing and filing applications, not prosecution of patent applications; and require a registered attorney to sign work done by an agent, and/or require each agent to practice under the supervision of registered attorney.

Response: The suggestion has not been adopted. A requirement for minimum legal experience is subject to the same weakness discussed in response to Comment 33. The Office is neither eliminating registration of patent agents, nor requiring that they practice under the supervision of registered attorneys. This rule making has not addressed any change of status for patent agents. Patent agents serve a variety of purposes, including helping make access to the patent system widely available. The Office will continue to register individuals as patent agents. Issues affecting unauthorized practice of law will be addressed in the rules and commentary pertaining to § 11.5(b). The period for comment on the proposed rules for § 11.5(b) has been extended until June 11, 2004.

Comment 97: One comment suggested that to benefit from patent harmonization, the registration examination given under § 11.7 should place less emphasis on formalities and test each candidate's ability to identify inventions, draft applications to global standards, respond to substantive official actions from all major patent offices, advise on the interpretation of patents and their validity, and advise clients on the global patent positions arising in the commonly encountered business situations.

Response: The suggestion has not been adopted. Under 35 U.S.C. 2(b)(2)(D), registration is for the recognition of agents and attorneys representing applicants or other parties before the Office. Accordingly, the examination is properly confined to aspects of drafting applications to be filed in the Office as well as applications filed under the Patent Cooperation Treaty, and responding to substantive official actions from the Office. A practitioner advising clients on their global patent positions arising in the commonly encountered business situations should have the legal knowledge, skill, thoroughness and preparation *reasonably* necessary to provide the advice. Practitioners without the background should either prepare adequately to provide competent advice or refer the client to other practitioners prepared to provide the advice.

Comment 98: One comment referred to the comments on page 69448 of the Notice which indicated that the registration examination will be "open book" in the sense that the MPEP would be accessible on-line in the computerized examination. The comment suggested that individuals be permitted to utilize a paper copy of the MPEP because prohibiting paper resource material will, to some extent, adversely impact some individuals.

Response: The suggestion has not been adopted. Prior to taking an examination, a tutorial will be provided by the commercial entity to all individuals to show them how to operate the computer, download and search the MPEP, and navigate among the questions. Further, we are in the process of developing a tutorial that will be available either on or through a link from the Office Web site to show how the MPEP will be accessed and navigated during the examination. Use of a computer on this examination, as on tests for driver's licenses, is readily learned.

Comment 99: One comment inquired why candidates are no longer allowed to bring in their notes and/or reference books to the exam, and suggested that they be able to bring notes used in preparing for the exam, an indexed notebook on patent law material, and a hard copy of the MPEP that has been tabbed to the candidate's liking.

Response: The suggestion has not been adopted inasmuch as the rules do not contain a provision addressing the issue. The answer to each examination question is located in the MPEP. The MPEP will be available on the computer and will download quickly. Thus, the source of all correct answers will be made available to all candidates. Additional materials are unnecessary.

Rule Making Considerations

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires agencies to consider the economic impact of regulatory actions on small entities when finalizing a rule making. If the rule is expected to have a significant economic impact on a substantial number of small entities, the agency must prepare a final regulatory flexibility analysis (FRFA). However, section 605(b) of the Regulatory Flexibility Act allows the head of an agency to prepare a certification statement in lieu of a FRFA if the rule making is not expected to have a significant economic impact on a substantial number of small entities. The Deputy General Counsel for General Law [1] of the USPTO hereby certifies to the Chief Counsel for Advocacy, Small Business Administration, that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is as follows:

Factual Basis for Certification

The primary purpose of the rule package is to codify enrollment procedures implementing computerized delivery of the registration examination and to provide procedures for processing registration applications that are more efficient and flexible for the Office and applicants. At the outset, it should be noted that the only persons affected by the fee increases set forth in this rule package are those individuals seeking enrollment to become registered patent practitioners or those individuals seeking registration or reinstatement after certain events led to their disbarment or suspension on ethical

[1] By statute, the USPTO may establish regulations, not inconsistent with law, which "govern the recognition and conduct of agents, attorneys or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office[.]" 35 U.S.C. 2(b)(2)(D). The Under Secretary of Commerce for Intellectual Property and Director of the USPTO has delegated his authority to the USPTO's Deputy General Counsel For General Law. *See* AAO217–2 (2001).

grounds, denial of registration on grounds of lack of good moral character and reputation, or conviction of a felony or crime involving moral turpitude or breach of fiduciary duty.

Both attorneys and non-attorneys can take the registration examination. Inasmuch as the income of attorneys and non-attorneys differs, the discussion contained in this Regulatory Flexibility Act certification considers the respective average incomes of both types of potential applicants. USPTO statistics indicate that over the course of the last four examinations (during 2002 and 2003), on average approximately 19% of applicants are licensed attorneys at the time they seek registration to take the enrollment examination. For April 2002, October 2002, April 2003, and October 2003, the number of applicants indicating they were attorneys was 26%, 16%, 17% and 16%, respectively. Conversely, the USPTO estimates that approximately 81% of applicants are not licensed attorneys at the time they seek registration to take the enrollment examination.

The Office does not require applicants to identify their affiliation with a particular type of employer (law firm, business, solo practitioner, *etc.*) at the time of application. Furthermore, the Office does not require applicants to categorize their employer as a large or small entity. In a customer satisfaction survey answered by 1,651 patent attorneys in 2002, the Office collected data indicating that approximately 63.5% of patent attorneys are affiliated with a law firm. The Office believes that the affiliation of attorney-applicants does not dramatically differ from the affiliation of patent attorneys who responded to the survey. Thus, estimates for attorney income are based on the compensation attorneys receive in law firms.

Only individuals, not legal entities, may take the registration examination. This is true even if the individual is a lawyer having a solo practice. The fees associated with the application and examination may be paid by the individual applicant or by his or her employer. Employers, some of which may qualify as small entities, are not required to pay the fees. Whether the individual or the business (small or large) bears the cost of the fees is at the option of the individual and the employer. Inasmuch as the rules do not require the business (large or small) to bear the cost of the fees, the Small Business Administration's size standards for offices of lawyers are not applicable. Thus, the Office has considered, but rejected, measuring the impact of this rule package on law firms that may qualify as small entities.

Computerized Examination Fee

Section 1.21(a)(1)(ii)(A) establishes a $200 registration examination fee for test administration by a commercial entity. Individuals wishing to take the computerized examination administered by a commercial entity will pay the entity an additional fee of $150. The combined cost of $350 ($200 + $150) is only $40 more than the $310 fee previously charged by the Office. The $40 increase provides applicants with additional conveniences, such as the ability to take the examination in one of over 400 locations throughout the country, thereby reducing travel and associated expenses. The examination is expected to be offered by the commercial entity five days a week, excluding holidays. Consequently, applicants will have more opportunities to take the examination, rather than waiting for the Office to administer the examination only twice per year.

Substantial Number of Persons Affected

Of approximately 5,897 applications filed in Fiscal Year 2003 for recognition to practice before the USPTO in patent cases, approximately 5,338 individuals were admitted to take the examination. Based upon the admission rate (approximately 90%), the USPTO estimates that approximately the same number of individuals will be affected by the change to Sec. 1.21.

Not a Significant Economic Impact

The $40 increase in fees to take the registration examination is insignificant. The previously charged $310 fee has not been increased since 1997. In comparison to examination fees charged by various state bars, the $350 total fee is quite low. *See, e.g.*, Comprehensive Guide to Bar Admissions 2004, Chart XI, Bar Admissions Fees (National Conference of Bar Examiners and American Bar Association Section of Legal Education and Admissions to the Bar), also available on the Internet at *www.ncbex.org/pub.htm*. All state bars charge bar examination fees. For non-attorneys, the state bar examination fee ranges from $100 to $1,450, and for attorneys, the fee ranges from $100 to $2,500. The USPTO examination fee is less than or equal to the fee charged by 34 states for non-attorneys, and less than or equal to the fee charged by 33 states for attorneys.

As previously noted, the Office estimates that approximately 19% of applicants seeking enrollment are attorneys licensed to practice in a U.S. jurisdiction. Of this 19% of applicants, approximately 63.5% of these attorneys work in law firms. The average total compensation of attorneys in a law firm ranges from $102,841 to $299,391, depending on whether the attorney is of-counsel, a staff attorney, an associate attorney, a non-equity partner or an equity partner/shareholder. *See, e.g.*, The 2003 Survey of Law Firm Economics, "National Individual Status Codes Total Compensation," p. 169. The relevant "Total Compensation" chart is also available at *www.altmanweil.com/pdf/2003SLFESample.pdf*. Thus, the $40 increase in total fees to take the registration examination is insignificant to attorneys, in comparison with their average annual income.

For those applicants who are not licensed attorneys at the time they register to take the examination, it is noted that the average income for males in the United States is about $58,000. For females in the United States, the average income is $41,000. *See* "Income In The United States: 2002 Current Population Reports Consumer Income" issued by the U.S. Census Bureau, page 9, *www.census.gov/prod/2003pubs/p60-221.pdf*. It is equally likely that an applicant for registration is a male or female. Accordingly, it is assumed that the average income of an applicant is $49,500, the average of the incomes of males and females in the United States. In comparison to the average income of a citizen of the United States, the $40 increase in total fees to take the computerized examination is not significant.

In addition, the Office is giving applicants the option of taking the examination by computer or by paper (discussed below). Applicants may choose the lower priced option of taking the computerized examination, rather than choosing to take the higher priced paper examination. There is no substantive difference between the computerized and paper versions of the examination. Applicants who take the computerized examination will not be required to purchase computers, software or computer programs.

Paper Examination Fee

Section 1.21(a)(1)(ii)(B) establishes a $450 registration examination fee for test administration by the Office. For the past several decades, the Office of Personnel Management administered a paper examination for the Office, which cost applicants $310. The Office must charge the $450 fee in order to recoup the higher costs of administering the paper examination. The examination provided for under Section 1.21(a)(i)(ii)(B) will be given on paper only once per year at or relatively near

the USPTO headquarters office in Alexandria, Virginia.

Not a Substantial Number of Small Entities

The Office does not believe that a substantial number of applicants will request the Office to deliver the paper examination to them because the administration and grading of such a paper examination will cost more and will take more time to process. Release of results will take much longer than in the case of the electronic examination. As a result, applicants who choose the paper examination will not be eligible for registration as quickly as those passing the computerized examination.

Based on the 5,897 applications received in Fiscal Year 2003, the Office estimates that the change to Sec. 1.21 would impact few (about 2%) registration applicants. It is estimated that approximately 130 individuals will request that the Office administer a paper examination to them and grade it annually. The Office estimates that approximately one half of DC metro area applicants may wish to take the paper examination.

In Fiscal Year 2003, the number of local applicants taking the examination in each of two administrations was 235 and 238, respectively. In Fiscal Year 2002, the number of local applicants taking the examination in each of two administrations was 285 and 252, respectively. In Fiscal Year 2001, the number of local applicants taking the examination in each of two administrations was 270 and 285, respectively. Assuming that one half of the applicants would want to take the paper examination, the Office estimates approximately 130 applicants will desire to take the paper examination provided for under this final rule section. As such, the rule does not affect a substantial number of individuals.

Not a Significant Economic Impact

The $450 fee is an increase of only $140 over the fee previously charged to take the examination.

As previously stated, approximately 19% of applicants are attorneys, and approximately 63.5% of those attorneys earn an average annual income ranging from $102,841 to $299,391. Approximately 81% of applicants are non-attorneys, with an average annual income of $49,500. This fee increase will not have a significant economic impact on attorneys or non-attorneys.

In addition, the paper examination is provided as an alternative to the computerized examination. In this way, the USPTO affords applicants a voluntary, additional option for those who desire to take the examination on paper. Applicants are not required, under this rule making or any other statute or regulation, to take the paper examination. Taking the more expensive paper examination is solely at the discretion of the applicant.

In fact, the commercial entity providing the computerized examination will be able to accommodate those applicants who require a reasonable accommodation. Thus, there is no reason that an applicant would be required to take the paper examination administered by the Office, which costs more than the computerized examination given by a commercial entity.

Petition Fee

Section 1.21(a)(5)(i) establishes a fee of $130 for petitions to the Director of the Office of Enrollment and Discipline.

Not a Substantial Number of Small Entities

The Office initially estimated that there would be approximately 69 petitions impacted by this fee. In Fiscal Years 2002 and 2003, there were, respectively, 67 and 57 petitions to the Director of Enrollment and Discipline filed by registration applicants. The Office is revising its estimate to be 62 petitions, the average of the number of the petitions filed in Fiscal Years 2002 and 2003. Based on 5,897 applications received in Fiscal Year 2003, the Office estimates that the change to Sec. 1.21 would impact few (about 0.1%) of registration applicants. As such, the rule does not affect a substantial number of individuals.

Not a Significant Economic Impact

Adoption of the $130 fee will not have a significant economic impact on a substantial number of small entities. The average total compensation of lawyers in a law firm ranges from $102,841 to $299,391. The average annual income of an individual applicant (non-attorney) is $49,500.

Application/Reinstatement Fee

Section 1.21(a)(10) imposes a $1600 fee on application by applicants for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; and on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.

Not a Substantial Number of Small Entities

The Office initially estimated that there would be approximately two such applications filed annually. In Fiscal Year 2003, one application for registration and three petitions for reinstatement were filed with the Director of Enrollment and Discipline for applicants that would fall within the scope of this rule. In view of the figures for Fiscal Year 2003, the Office is revising its estimate to four applications filed annually that would be affected by the provision in Sec. 1.21(a)(10). Based on the 5,897 applications received in Fiscal Year 2003, the Office estimates that the change to Sec. 1.21 would impact very few (0.06%) applicants. As such, the rule does not affect a substantial number of individuals.

Not a Significant Economic Impact

The $1,600 fee is an increase of $1,560 over the $40 application fee the affected individuals paid under the previous rule, 37 CFR 1.21(a)(1)(i). This fee increase is necessary in order for the Office to cover a portion of the expenses associated with investigating and resolving these types of petitions, based on average hours spent by the OED Director, staff attorneys, paralegals, and clericals.

The adoption of the $1,600 fee will not have a significant economic impact on a substantial number of small entities. For any given fiscal year, the persons who will be required to pay this fee will be attorneys an estimated 75% of the time. Thus, in a majority of the situations where a practitioner must pay this fee, the average total compensation of attorneys in a law firm ranges from $102,841 to $299,391. In the remaining situations, the average income of the person who will be required to pay this fee is approximately $49,500. The $1540 increase does not have a significant economic impact on either attorneys or non-attorneys.

Regulatory Flexibility Act Comments and Responses

The Office received five comments, three from individuals and two from an intellectual property law organization, regarding the impact of these rules upon small entities. With regard to comments about rules promulgated in this final rule making, the comments are summarized and addressed below.

Comment: One comment suggested that the Office is proposing "to registration institute [sic] fees based on assumptions of how much people make." The comment further states, "I am always disturbed that these fee schedules consider only full time and inactive attorneys. There is no consideration given for part time attorneys."

Response: Inasmuch as the comment references "institut[ing]" fees, the comment is construed as referring to the annual fees (not previously charged) that were included in the notice of proposed rule making. The instant rules change only the fees associated with becoming registered to practice. Accordingly, changing the fees to become registered would not involve "institut[ing]" fees for full time, part time, or inactive attorneys who are already registered to practice. The fees considered in the instant final rules do not address the annual fees. Thus, the Office will address the impact of annual fees upon part time attorneys when the final rule adopting annual fees is promulgated.

Comment: One comment suggested improvements in licensing (including preceptorship) in order to assist small businesses and inventors who are not able to judge the qualifications of registered practitioners. The comment opines that the proposed rules allow incompetent practitioners to prey on small businesses and individuals and will increase the cost of obtaining meaningful patent protection for small businesses because of the loss of rights due to drafting inadequate specifications and claims.

Response: The registration requirements set forth in this rule package operate to protect small entities, independent inventors and large entities alike. These rules allow for a practitioner to provide legal services after certain registration requirements are met. Small entities may confidently rely upon the Office's registration of practitioners to the same extent that larger entities do. Thus, the rules do not increase the cost of obtaining meaningful patent protection for either small or large businesses.

The registration rules ensure that all recognized practitioners meet the same scientific and technical competency requirements to practice before the USPTO. Of the 5,897 applicants for registration in Fiscal Year 2003, approximately 5,338 were admitted to the registration examination. About another 120 applicants are registered to practice pursuant to the last sentence of 37 CFR 10.7(b) or reciprocally registered as foreign patent agents pursuant to 37 CFR 10.6(c). All registration requirements are substantially uniform. All applicants have met the scientific and training qualifications found in the regulations. Accordingly, all individuals registered to practice before the Office are believed to possess the requisite level of competence.

The Office does not require preceptorships (a period of training). As discussed in response to Comment 33, *supra*, Commissioner Robertson, in a 1933 report, termed the registration system upon submission of affidavits of attorneys as neither reliable nor satisfactory. Commissioner Robertson regarded the applicant's showing of "several examples of his ability to prosecute a patent application" as "perfunctory" and "certainly not sufficient." Additionally, the Commissioner cited the required affidavit as being "subject to the great weakness of friendship between attorneys and the applicant," and that an "established attorney hesitates to refuse to make an affidavit as to competency of one of his employees who is ambitious and is striving to climb the ladder of success." The practice was ended in 1934. The suggested preceptorship, being subject to the same weaknesses as the affidavit practice rejected by Commissioner Robertson, is not satisfactory for the same reasons.

Comment: One comment said the proposed rules governing recognition of individuals to practice should be carefully considered with regard to adverse consequences on smaller businesses. The comment also suggested that the proposed rules were not well thought-out concerning whether they make access to the USPTO more difficult and costly for small businesses. The comment also alleges that the proposed rules unnecessarily disrupt the prosecution of a significant number of patent applications currently before the USPTO.

Response: The rules adopted in this rule making package do not make access to the Office more difficult or costly for small entities. The rules do not affect the Office fees for patent or trademark applications. In fact, qualifying small entities pay reduced fees to obtain patents under the current fee structure.

The fees in this final rule package affect only individuals seeking registration as attorneys or agents. Only individuals, not businesses or other legal entities, may be registered to practice before the Office in patent cases. To the extent that an individual may qualify as a small entity, the economic impact of the fee increases in this rule package is not significant. For example, as discussed in detail above, for the vast majority of individuals seeking registration, the increase in the fee associated with admission to the examination is only $40. The increase in fees simply does not have a significant economic impact on individuals who may qualify as small entities.

Comment: Two letters from an intellectual property law organization complained, in general, about whether the USPTO has complied with the requirements of the Regulatory Flexibility Act in certifying that the notice of proposed rule making will not have a significant economic impact on a substantial number of small entities.

Response: As noted above, the USPTO has complied with all requirements of the Regulatory Flexibility Act by certifying that this rule making will not have a significant economic impact on a substantial number of small entities. The Office certified, in the Notice of Proposed Rule Making, that an initial Regulatory Flexibility Act analysis was not required because the notice of proposed rule making did not have a significant economic impact on a substantial number of small entities. *See* 68 F.R. 69442, 69510–69511 (Dec. 12, 2003). With respect to this final rule making, for a more detailed explanation of the certification, please see the Factual Basis set forth in this section, above.

None of these comments change the USPTO's assessment that the preparation of a Regulatory Flexibility Act analysis is not required. This rule making will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132: This notice of rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866: This notice of rule making has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act: This notice of rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule introduces new information requirements and fees into collection 0651–0012. Additional information collection activities involved in this notice of rule making are covered under OMB control number 0651–0017.

The title, description, and respondent description of the currently approved information collection 0651–0012 are

shown below with an estimate of the annual reporting burdens.

Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of rule making is to applicants seeking registration as patent attorneys and agents.

OMB Number: 0651–0012.

Title: Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the United States Patent and Trademark Office (USPTO).

Form Numbers: PTO–158, PTO158A, PTO–275, PTO–107A, PTO–1209.

Affected Public: Individuals or households, business or other for-profit, Federal Government, and State, local or tribal governments.

Estimated Number of Respondents: 24,024.

Estimated Time Per Response: The USPTO estimates that it takes the public 30 minutes to complete either an application for registration to practice before the USPTO, or an application for a foreign resident to practice before the USPTO and, depending upon the complexity of the situation, to gather, prepare and submit the application. It is estimated to take 20 minutes to complete undertakings under 37 CFR 10.10(b); 10 minutes to complete data sheets; 5 minutes to complete the oath or affirmation; 45 minutes to complete the petition for waiver of regulations; and 90 minutes to complete the written request for reconsideration of disapproval notice of application and the petition for reinstatement to practice. These times include time to gather the necessary information, prepare and submit the forms and requirements in this collection.

Estimated Total Annual Burden Hours: 6,078.

Needs and Uses: The public uses the forms in this collection to apply for the examination for registration, to ensure that all of the necessary information is provided to the USPTO and to request inclusion on the Register of Patent Attorneys and Agents.

Comments have been invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons were requested to send comments regarding these information collections, including suggestions for reducing this burden, to Harry I. Moatz, Director of Enrollment and Discipline, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the United States Patent and Trademark Office is amending 37 CFR parts 1, 10, and 11 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.1 is amended by revising paragraph (a) introductory text and by adding paragraph (a)(5) to read as follows:

§ 1.1 Addresses for non-trademark correspondence with the United States Patent and Trademark Office.

(a) *In general.* Except as provided in paragraphs (a)(3)(i), (a)(3)(ii), and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either "Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450" or to specific areas within the Office as set out in paragraphs (a)(1), and (a)(3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(5) *Office of Enrollment and Discipline correspondence.* All correspondence directed to the Office of Enrollment and Discipline concerning enrollment, registration, and investigation matters should be addressed to Mail Stop OED, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * * *

■ 3. Section 1.21 is amended by revising paragraph (a) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(1) For admission to examination for registration to practice:

(i) Application Fee (non-refundable)—$40.00

(ii) Registration examination fee

(A) For test administration by commercial entity—$200.00

(B) For test administration by the USPTO—$450.00

(2) On registration to practice or grant of limited recognition under § 11.9(b) or (c)—$100.00

(3) For reinstatement to practice—$40.00

(4) For certificate of good standing as an attorney or agent—$10.00

(i) Suitable for framing—$20.00

(ii) [Reserved]

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c)—$130.00

(ii) Of the Director of Enrollment and Discipline under § 11.2(d)—$130.00

(6)–(9) [Reserved]

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person excluded or suspended on ethical

grounds, or excluded on consent from practice before the Office.—$1,600.00

* * * * *

■ 4. Section 1.31 is revised to read as follows:

§ 1.31 Applicants may be represented by a registered attorney or agent.

An applicant for patent may file and prosecute his or her own case, or he or she may be represented by a registered attorney, registered agent, or other individual authorized to practice before the United States Patent and Trademark Office in patent matters. *See* §§ 11.6 and 11.9 of this subchapter. The United States Patent and Trademark Office cannot aid in the selection of a registered attorney or agent.

■ 5. Section 1.33, paragraph (c), is revised to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record (*See* § 1.34(b)) in the patent file at the address listed on the register of patent attorneys and agents maintained pursuant to §§ 11.5 and 11.11 of this subchapter or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record.

* * * * *

■ 6. Section 1.455 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1.455 Representation in international applications.

(a) Applicants of international applications may be represented by attorneys or agents registered to practice before the United States Patent and Trademark Office or by an applicant appointed as a common representative (PCT Art. 49, Rules 4.8 and 90 and § 11.9). * * *

* * * * *

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

■ 7. The authority citation for 37 CFR Part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2, 6, 32, 41.

§ 10.2 [Removed]

■ 8. Section 10.2 is removed and reserved.

§ 10.3 [Removed]

■ 9. Section 10.3 is removed and reserved.

§ 10.5 [Removed]

■ 10. Section 10.5 is removed and reserved.

§ 10.6 [Removed]

■ 11. Section 10.6 is removed and reserved.

§ 10.7 [Removed]

■ 12. Section 10.7 is removed and reserved.

§ 10.8 [Removed]

■ 13. Section 10.8 is removed and reserved.

§ 10.9 [Removed]

■ 14. Section 10.9 is removed and reserved.

§ 10.10 [Removed]

■ 15. Section 10.10 is removed and reserved.

■ 16. Section 10.11 is revised to read as follows:

§ 10.11 Removing names from the register.

A letter may be addressed to any individual on the register, at the address of which separate notice was last received by the Director, for the purpose of ascertaining whether such individual desires to remain on the register. The name of any individual failing to reply and give any information requested by the Director within a time limit specified will be removed from the register and the names of individuals so removed will be published in the Official Gazette. The name of any individual so removed may be reinstated on the register as may be appropriate and upon payment of the fee set forth in § 1.21(a)(3) of this subchapter.

■ 17. Part 11 is added as follows:

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

Subpart A—General Provisions

General Information

Sec.

11.1 Definitions.
11.2 Director of the Office of Enrollment and Discipline.
11.3 Suspension of rules.

Subpart B—Recognition To Practice Before the USPTO

Patents, Trademarks, and Other Non-Patent Law

11.4 [Reserved]
11.5 Register of attorneys and agents in patent matters.
11.6 Registration of attorneys and agents.
11.7 Requirements for registration.
11.8 Oath and registration fee.
11.9 Limited recognition in patent matters.
11.10 Restrictions on practice in patent matters.
11.11 Notification.

Authority: 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2)(D), 32.

Subpart A—General Provisions

General Information

§ 11.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the United States Patent and Trademark Office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the United States Patent and Trademark Office to accomplish its Federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

Attorney or *lawyer* means an individual who is a member in good standing of the highest court of any State, including an individual who is in good standing of the highest court of one State and under an order of any court or Federal agency suspending, enjoining, restraining, disbarring or otherwise restricting the attorney from practice before the bar of another State or Federal agency. A *non-lawyer* means a person or entity who is not an attorney or lawyer.

Belief or *believes* means that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Conviction or *convicted* means any confession to a crime; a verdict or judgment finding a person guilty of a crime; any entered plea, including *nolo contendre* or Alford plea, to a crime; or receipt of deferred adjudication (whether judgment or sentence has been entered or not) for an accused or pled crime.

Crime means any offense declared to be a felony or misdemeanor by Federal or State law in the jurisdiction where the act occurs.

Data sheet means a form used to collect the name, address, and telephone information from individuals recognized to practice before the Office in patent matters.

Fiscal year means the time period from October 1st through the ensuing September 30th.

Fraud or *fraudulent* means conduct having a purpose to deceive and not merely negligent misrepresentation or

failure to apprise another of relevant information.

Good moral character and reputation means the possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the legal process and the administration of justice, as well as the condition of being regarded as possessing such qualities.

Knowingly, known, or *knows* means actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Matter means any litigation, administrative proceeding, lobbying activity, application, claim, investigation, controversy, arrest, charge, accusation, contract, negotiation, estate or family relations practice issue, request for a ruling or other determination, or any other matter covered by the conflict of interest rules of the appropriate Government entity.

OED means the Office of Enrollment and Discipline.

OED Director means the Director of the Office of Enrollment and Discipline.

OED Director's representatives means attorneys within the USPTO Office of General Counsel who act as representatives of the OED Director.

Office means the United States Patent and Trademark Office.

Practitioner means:

(1) An attorney or agent registered to practice before the Office in patent matters,

(2) An individual authorized under 5 U.S.C. 500(b) or otherwise as provided by § 10.14(b), (c), and (e) of this subchapter, to practice before the Office in trademark matters or other non-patent matters, or

(3) An individual authorized to practice before the Office in a patent case or matters under § 11.9(a) or (b).

Proceeding before the Office means an application for patent, an application for reissue, a reexamination, a protest, a public use matter, an *inter partes* patent matter, correction of a patent, correction of inventorship, an application to register a trademark, an *inter partes* trademark matter, an appeal, a petition, and any other matter that is pending before the Office.

Reasonable or *reasonably* when used in relation to conduct by a practitioner means the conduct of a reasonably prudent and competent practitioner.

Registration means registration to practice before the Office in patent proceedings.

Roster means a list of individuals who have been registered as either a patent attorney or patent agent.

Significant evidence of rehabilitation means satisfactory evidence that is significantly more probable than not that there will be no recurrence in the foreseeable future of the practitioner's prior disability or addiction.

State means any of the 50 states of the United States of America, the District of Columbia, and other territories and possessions of the United States of America.

Substantial when used in reference to degree or extent means a material matter of clear and weighty importance.

Suspend or *suspension* means a temporary debarring from practice before the Office or other jurisdiction.

United States means the United States of America, and the territories and possessions the United States of America.

USPTO Director means the Director of the United States Patent and Trademark Office, or an employee of the Office delegated authority to act for the Director of the United States Patent and Trademark Office in matters arising under this part.

§ 11.2 Director of the Office of Enrollment and Discipline.

(a) *Appointment.* The USPTO Director shall appoint a Director of the Office of Enrollment and Discipline (OED Director). In the event of the absence of the OED Director or a vacancy in the office of the OED Director, or in the event that the OED Director recuses himself or herself from a case, the USPTO Director may designate an employee of the Office to serve as acting OED Director. The OED Director and any acting OED Director shall be an active member in good standing of the bar of a State.

(b) *Duties.* The OED Director shall:

(1) Supervise staff as may be necessary for the performance of the OED Director's duties.

(2) Receive and act upon applications for registration, prepare and grade the examination provided for in § 11.7(b), maintain the register provided for in § 11.5, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(3) Conduct investigations into the moral character and reputation of any individual seeking to be registered as an attorney or agent, or of any individual seeking limited recognition, deny registration or recognition of individuals failing to demonstrate possession of good moral character and reputation, and perform such other duties in connection with enrollment matters and investigations as may be necessary.

(4) The Director shall conduct investigations into possible violations by practitioners of Disciplinary Rules, with the consent of the Committee on Discipline initiate disciplinary proceedings under § 10.132(b) of this subchapter, and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(5)–(7) [Reserved]

(c) *Petition to OED Director.* Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director. Any such petition not filed within sixty days from the mailing date of the action or notice from which relief is requested will be dismissed as untimely. The filing of a petition will not stay the period for taking other action which may be running, or stay other proceedings. A final decision by the OED Director may be reviewed in accordance with the provisions of paragraph (d) of this section.

(d) *Review of OED Director's decision.* An individual dissatisfied with a final decision of the OED Director, except for a decision dismissing a complaint or closing an investigation, may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee set forth in § 1.21(a)(5)(ii) of this subchapter. A decision dismissing a complaint or closing an investigation is not subject to review by petition. Any petition not filed within sixty days from the mailing date of the final decision of the OED Director will be dismissed as untimely. Any petition shall be limited to the facts of record. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The USPTO Director in deciding the petition will consider no new evidence. Copies of documents already of record before the OED Director need not be submitted with the petition. No oral hearing on the petition will be held except when considered necessary by the USPTO Director. Any request for reconsideration of the decision of the USPTO Director will be dismissed as untimely if not filed within thirty days after the mailing date of said decision. If any request for reconsideration is filed, the decision on reconsideration shall be the final agency action.

§ 11.3 Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of statute may be suspended or waived by the USPTO Director or the designee of the USPTO Director, *sua sponte* or on petition of any party, including the OED Director or the OED Director's representative,

subject to such other requirements as may be imposed.

Subpart B—Recognition To Practice Before the USPTO

Patents, Trademarks, and Other Non-Patent Law

§ 11.4 [Reserved]

§ 11.5 Register of attorneys and agents in patent matters.

A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants having prospective or immediate business before the Office in the preparation and prosecution of patent applications. Registration in the Office under the provisions of this part shall entitle the individuals so registered to practice before the Office only in patent matters.

§ 11.6 Registration of attorneys and agents.

(a) *Attorneys.* Any citizen of the United States who is an attorney and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office. When appropriate, any alien who is an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office, provided that such registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States and further provided that the alien may remain registered only:

(1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States, or

(2) If the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. *See also* § 11.9(b).

(b) *Agents.* Any citizen of the United States who is not an attorney, and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office. When appropriate, any alien who is not an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office, provided that such registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States, and further provided that the alien may remain registered only:

(1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States or

(2) If the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. *See also* § 11.9(b).

(c) *Foreigners.* Any foreigner not a resident of the United States who shall file proof to the satisfaction of the OED Director that he or she is registered and in good standing before the patent office of the country in which he or she resides and practices, and who is possessed of the qualifications stated in § 11.7, may be registered as a patent agent to practice before the Office for the limited purpose of presenting and prosecuting patent applications of applicants located in such country, provided that the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the Office. Registration as a patent agent under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain. Upon notice by the patent office of such country that a patent agent registered under this section is no longer registered or no longer in good standing before the patent office of such country, and absent a showing of cause why his or her name should not be removed from the register, the OED Director shall promptly remove the name of the patent agent from the register and publish the fact of removal. Upon ceasing to reside in such country, the patent agent registered under this section is no longer qualified to be registered under this section, and the OED Director shall promptly remove the name of the patent agent from the register and publish the fact of removal.

(d) *Interference matters.* The Chief Administrative Patent Judge or Vice Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences shall determine whether and the circumstances under which an attorney who is not registered may take testimony for an interference under 35 U.S.C. 24, or under § 1.672 of this subchapter.

§ 11.7 Requirements for registration.

(a) No individual will be registered to practice before the Office unless he or she has:

(1) Applied to the USPTO Director in writing by completing an application for registration form supplied by the OED Director and furnishing all requested information and material; and

(2) Established to the satisfaction of the OED Director that he or she:

(i) Possesses good moral character and reputation;

(ii) Possesses the legal, scientific, and technical qualifications necessary for him or her to render applicants valuable service; and

(iii) Is competent to advise and assist patent applicants in the presentation and prosecution of their applications before the Office.

(b)(1) To enable the OED Director to determine whether an individual has the qualifications specified in paragraph (a)(2) of this section, the individual shall:

(i) File a complete application for registration each time admission to the registration examination is requested. A complete application for registration includes:

(A) An application for registration form supplied by the OED Director wherein all requested information and supporting documents are furnished,

(B) Payment of the fees required by § 1.21(a)(1) of this subchapter,

(C) Satisfactory proof of scientific and technical qualifications, and

(D) For aliens, provide proof that recognition is not inconsistent with the terms of their visa or entry into the United States;

(ii) Pass the registration examination, unless the taking and passing of the examination is waived as provided in paragraph (d) of this section. Unless examination is waived pursuant to paragraph (d) of this section, each individual seeking registration must take and pass the registration examination to enable the OED Director to determine whether the individual possesses the legal and competence qualifications specified in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section. An individual failing the examination may, upon receipt of notice of failure from OED, reapply for admission to the examination. An individual failing the examination must wait thirty days after the date the individual last took the examination before retaking the examination. An individual reapplying shall:

(A) File a completed application for registration form wherein all requested information and supporting documents are furnished,

(B) Pay the fees required by § 1.21(a)(1) of this subchapter, and

(C) For aliens, provide proof that recognition is not inconsistent with the terms of their visa or entry into the United States; and

(iii) Provide satisfactory proof of possession of good moral character and reputation.

(2) An individual failing to file a complete application for registration will not be admitted to the examination and will be notified of the incompleteness. Applications for registration that are incomplete as originally submitted will be considered only when they have been completed and received by OED, provided that this occurs within sixty days of the mailing date of the notice of incompleteness. Thereafter, a new and complete application for registration must be filed. Only an individual approved as satisfying the requirements of paragraphs (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C) and (b)(1)(i)(D) of this section may be admitted to the examination.

(3) If an individual does not reapply until more than one year after the mailing date of a notice of failure, that individual must again comply with paragraph (b)(1)(i) of this section.

(c) Each individual seeking registration is responsible for updating all information and answers submitted in or with the application for registration based upon anything occurring between the date the application for registration is signed by the individual, and the date he or she is registered or recognized to practice before the Office in patent matters. The update shall be filed within thirty days after the date of the occasion that necessitates the update.

(d) *Waiver of the Registration Examination for Former Office Employees. (1) Former patent examiners who by July 26, 2004, had not actively served four years in the patent examining corps, and were serving in the corps at the time of their separation.* The OED Director may waive the taking of a registration examination in the case of any individual meeting the requirements of paragraph (b)(1)(i)(C) of this section who is a former patent examiner but by July 26, 2004, had not served four years in the patent examining corps, if the individual demonstrates that he or she:

(i) Actively served in the patent examining corps of the Office and was serving in the corps at the time of separation from the Office;

(ii) Received a certificate of legal competency and negotiation authority;

(iii) After receiving the certificate of legal competency and negotiation authority, was rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner; and

(iv) Was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

(2) *Former patent examiners who on July 26, 2004, had actively served four years in the patent examining corps, and were serving in the corps at the time of their separation.* The OED Director may waive the taking of a registration examination in the case of any individual meeting the requirements of paragraph (b)(1)(i)(C) of this section who is a former patent examiner and by July 26, 2004, had served four years in the patent examining corps, if the individual demonstrates that he or she:

(i) Actively served for at least four years in the patent examining corps of the Office by July 26, 2004, and was serving in the corps at the time of separation from the Office;

(ii) Was rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years as a patent examiner in the Office; and

(iii) Was not under an oral or written warning regarding the quality performance elements at the time of separation from the patent examining corps.

(3) *Certain former Office employees who were not serving in the patent examining corps upon their separation from the Office.* The OED Director may waive the taking of a registration examination in the case of a former Office employee meeting the requirements of paragraph (b)(1)(i)(C) of this section who by petition demonstrates possession of the necessary legal qualifications to render to patent applicants and others valuable service and assistance in the preparation and prosecution of their applications or other business before the Office by showing that he or she has:

(i) Exhibited comprehensive knowledge of patent law equivalent to that shown by passing the registration examination as a result of having been in a position of responsibility in the Office in which he or she:

(A) Provided substantial guidance on patent examination policy, including the development of rule or procedure changes, patent examination guidelines, changes to the Manual of Patent Examining Procedure, development of training or testing materials for the patent examining corps, or development of materials for the registration examination or continuing legal education; or

(B) Represented the Office in patent cases before Federal courts; and

(ii) Was rated at least fully successful in each quality performance element of his or her performance plan for said position for the last two complete rating periods in the Office, and was not under an oral or written warning regarding such performance elements at the time of separation from the Office.

(4) To be eligible for consideration for waiver, an individual formerly employed by the Office within the scope of one of paragraphs (d)(1), (d)(2) or (d)(3) of this section must file a complete application for registration and pay the fee required by § 1.21(a)(1)(i) of this subchapter within two years of the individual's date of separation from the Office. All other individuals formerly employed by the Office, including former examiners, filing an application for registration or fee more than two years after separation from the Office, are required to take and pass the registration examination. The individual or former examiner must pay the examination fee required by § 1.21(a)(1)(ii) of this subchapter within thirty days after notice of non-waiver.

(e) *Examination results.* Notification of the examination results is final. Within sixty days of the mailing date of a notice of failure, the individual is entitled to inspect, but not copy, the questions and answers he or she incorrectly answered. Review will be under supervision. No notes may be taken during such review. Substantive review of the answers or questions may not be pursued by petition for regrade. An individual who failed the examination has the right to retake the examination an unlimited number of times upon payment of the fees required by § 1.21(a)(1)(i) and (ii) of this subchapter, and a fee charged by a commercial entity administering the examination.

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under § 11.6(c), in addition to satisfying the provisions of paragraphs (a) and (b) of this section, and the provisions of § 11.8(c), shall pay the application fee required by § 1.21(a)(1)(i) of this subchapter upon filing an application for registration.

(g) *Investigation of good moral character and reputation.* (1) Every individual seeking recognition shall answer all questions in the application for registration and request(s) for comments issued by OED; disclose all relevant facts, dates and information; and provide verified copies of documents relevant to his or her good moral character and reputation. An individual who is an attorney shall submit a certified copy of each of his or her State bar applications and moral character determinations, if available.

(2)(i) If the OED Director receives information from any source that reflects adversely on the good moral

character or reputation of an individual seeking registration or recognition, the OED Director shall conduct an investigation into the good moral character and reputation of that individual. The investigation will be conducted after the individual has passed the registration examination, or after the registration examination has been waived for the individual, as applicable. An individual failing to timely answer questions or respond to an inquiry by OED shall be deemed to have withdrawn his or her application, and shall be required to reapply, pass the examination, and otherwise satisfy all the requirements of this section. No individual shall be certified for registration or recognition by the OED Director until, to the satisfaction of the OED Director, the individual demonstrates his or her possession of good moral character and reputation.

(ii) The OED Director, in considering an application for registration by an attorney, may accept a State bar's character determination as meeting the requirements set forth in paragraph (g) of this section if, after review, the Office finds no substantial discrepancy between the information provided with his or her application for registration and the State bar application and moral character determination, provided that acceptance is not inconsistent with other rules and the requirements of 35 U.S.C. 2(b)(2)(D).

(h) *Good moral character and reputation.* Evidence showing lack of good moral character and reputation may include, but is not limited to, conviction of a felony or a misdemeanor identified in paragraph (h)(1) of this section, drug or alcohol abuse; lack of candor; suspension or disbarment on ethical grounds from a State bar; and resignation from a State bar while under investigation.

(1) *Conviction of felony or misdemeanor.* An individual who has been convicted of a felony or a misdemeanor involving moral turpitude, breach of trust, interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or conspiracy to commit any felony or misdemeanor, is presumed not to be of good moral character and reputation in the absence of a pardon or a satisfactory showing of reform and rehabilitation, and shall file with his or her application for registration the fees required by § 1.21(a)(1)(ii) and (a)(10) of this subchapter. The OED Director shall determine whether individuals convicted of said felony or misdemeanor provided satisfactory proof of reform and rehabilitation.

(i) An individual who has been convicted of a felony or a misdemeanor identified in paragraph (h)(1) of this section shall not be eligible to apply for registration during the time of any sentence (including confinement or commitment to imprisonment), deferred adjudication, and period of probation or parole as a result of the conviction, and for a period of two years after the date of completion of the sentence, deferred adjudication, and period of probation or parole, whichever is later.

(ii) The following presumptions apply to the determination of good moral character and reputation of an individual convicted of said felony or misdemeanor:

(A) The court record or docket entry of conviction is conclusive evidence of guilt in the absence of a pardon or a satisfactory showing of reform or rehabilitation; and

(B) An individual convicted of a felony or any misdemeanor identified in paragraph (h)(1) of this section is conclusively deemed not to have good moral character and reputation, and shall not be eligible to apply for registration for a period of two years after completion of the sentence, deferred adjudication, and period of probation or parole, whichever is later.

(iii) The individual, upon applying for registration, shall provide satisfactory evidence that he or she is of good moral character and reputation.

(iv) Upon proof that a conviction has been set aside or reversed, the individual shall be eligible to file a complete application for registration and the fee required by § 1.21(a)(1)(ii) of this subchapter and, upon passing the registration examination, have the OED Director determine, in accordance with paragraph (h)(1) of this section, whether, absent the conviction, the individual possesses good moral character and reputation.

(2) *Good moral character and reputation involving drug or alcohol abuse.* An individual's record is reviewed as a whole to see if there is a drug or alcohol abuse issue. An individual appearing to abuse drugs or alcohol may be asked to undergo an evaluation, at the individual's expense, by a qualified professional approved by the OED Director. In instances where, before an investigation commences, there is evidence of a present abuse or an individual has not established a record of recovery, the OED Director may request the individual to withdraw his or her application, and require the individual to satisfactorily demonstrate that he or she is complying with treatment and undergoing recovery.

(3) *Moral character and reputation involving lack of candor.* An individual's lack of candor in disclosing facts bearing on or relevant to issues concerning good moral character and reputation when completing the application or any time thereafter may be found to be cause to deny registration on moral character and reputation grounds.

(4) *Moral character and reputation involving suspension, disbarment, or resignation from a profession.* (i) An individual who has been disbarred or suspended from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding (excluded or disbarred on consent) shall be ineligible to apply for registration as follows:

(A) An individual who has been disbarred from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding (excluded or disbarred on consent) shall be ineligible to apply for registration for a period of five years from the date of disbarment or resignation.

(B) An individual who has been suspended on ethical grounds from the practice of law or other profession shall be ineligible to apply for registration until expiration of the period of suspension.

(C) An individual who was not only disbarred, suspended or resigned in lieu of a disciplinary proceeding, but also convicted in a court of a felony, or of a crime involving moral turpitude or breach of trust, shall be ineligible to apply for registration until the conditions in paragraphs (h)(1) and (h)(4) of this section are fully satisfied.

(ii) An individual who has been disbarred or suspended, or who resigned in lieu of a disciplinary proceeding shall file an application for registration and the fees required by § 1.21(a)(1)(ii) and (a)(10) of this subchapter; provide a full and complete copy of the proceedings that led to the disbarment, suspension, or resignation; and provide satisfactory proof that he or she possesses good moral character and reputation. The following presumptions shall govern the determination of good moral character and reputation of an individual who has been licensed to practice law or other profession in any jurisdiction and has been disbarred, suspended on ethical grounds, or allowed to resign in lieu of discipline, in that jurisdiction:

(A) A copy of the record resulting in disbarment, suspension or resignation is *prima facie* evidence of the matters contained in the record, and the imposition of disbarment or suspension,

or the acceptance of the resignation of the individual shall be deemed conclusive that the individual has committed professional misconduct.

(B) The individual is ineligible for registration and is deemed not to have good moral character and reputation during the period of the imposed discipline.

(iii) The only defenses available with regard to an underlying disciplinary matter resulting in disbarment, suspension on ethical grounds, or resignation in lieu of a disciplinary proceeding are set out below, and must be shown to the satisfaction of the OED Director:

(A) The procedure in the disciplinary court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(C) The finding of lack of good moral character and reputation by the Office would result in grave injustice.

(i) *Factors that may be taken into consideration when evaluating rehabilitation of an individual seeking a moral character and reputation determination.* The factors enumerated below are guidelines to assist the OED Director in determining whether an individual has demonstrated rehabilitation from an act of misconduct or moral turpitude. The factors include:

(1) The nature of the act of misconduct, including whether it involved moral turpitude, whether there were aggravating or mitigating circumstances, and whether the activity was an isolated event or part of a pattern;

(2) The age and education of the individual at the time of the misconduct and the age and education of the individual at the present time;

(3) The length of time that has passed between the misconduct and the present, absent any involvement in any further acts of moral turpitude, the amount of time and the extent of rehabilitation being dependent upon the nature and seriousness of the act of misconduct under consideration;

(4) Restitution by the individual to any person who suffered monetary losses through acts or omissions of the individual;

(5) Expungement of a conviction;

(6) Successful completion or early discharge from probation or parole;

(7) Abstinence from the use of controlled substances or alcohol for not less than two years if the specific misconduct was attributable in part to the use of a controlled substance or alcohol, where abstinence may be demonstrated by, but is not necessarily limited to, enrolling in and complying with a self-help or professional treatment program;

(8) If the specific misconduct was attributable in part to a medically recognized mental disease, disorder or illness, proof that the individual sought professional assistance, and complied with the treatment program prescribed by the professional, and submitted letters from the treating psychiatrist/psychologist verifying that the medically recognized mental disease, disorder or illness will not impede the individual's ability to competently practice before the Office;

(9) Payment of the fine imposed in connection with any criminal conviction;

(10) Correction of behavior responsible in some degree for the misconduct;

(11) Significant and conscientious involvement in programs designed to provide social benefits or to ameliorate social problems; and

(12) Change in attitude from that which existed at the time of the act of misconduct in question as evidenced by any or all of the following:

(i) Statements of the individual;

(ii) Statements from persons familiar with the individual's previous misconduct and with subsequent attitudes and behavioral patterns;

(iii) Statements from probation or parole officers or law enforcement officials as to the individual's social adjustments; and

(iv) Statements from persons competent to testify with regard to neuropsychiatry or emotional disturbances.

(j) *Notice to Show Cause.* The OED Director shall inquire into the good moral character and reputation of an individual seeking registration, providing the individual with the opportunity to create a record on which a decision is made. If, following inquiry and consideration of the record, the OED Director is of the opinion that the individual seeking registration has not satisfactorily established that he or she possesses good moral character and reputation, the OED Director shall issue to the individual a notice to show cause why the individual's application for registration should not be denied.

(1) The individual shall be given no less than ten days from the date of the notice to reply. The notice shall be given by certified mail at the address appearing on the application if the address is in the United States, and by any other reasonable means if the address is outside the United States.

(2) Following receipt of the individual's response, or in the absence of a response, the OED Director shall consider the individual's response, if any, and the record, and determine whether, in the OED Director's opinion, the individual has sustained his or her burden of satisfactorily demonstrating that he or she possesses good moral character and reputation.

(k) *Reapplication for registration.* An individual who has been refused registration for lack of good moral character or reputation may reapply for registration two years after the date of the decision, unless a shorter period is otherwise ordered by the USPTO Director. An individual, who has been notified that he or she is under investigation for good moral character and reputation may elect to withdraw his or her application for registration, and may reapply for registration two years after the date of withdrawal. Upon reapplication for registration, the individual shall pay the fees required by § 1.21(a)(1)(ii) and (a)(10) of this subchapter, and has the burden of showing to the satisfaction of the OED Director his or her possession of good moral character and reputation as prescribed in paragraph (b) of this section. Upon reapplication for registration, the individual also shall complete successfully the examination prescribed in paragraph (b) of this section, even though the individual has previously passed a registration examination.

§ 11.8 Oath and registration fee.

(a) After an individual passes the examination, or the examination is waived, the OED Director shall promptly publish a solicitation for information concerning the individual's good moral character and reputation. The solicitation shall include the individual's name, and business or communication postal address.

(b) An individual shall not be registered as an attorney under § 11.6(a), registered as an agent under § 11.6(b) or (c), or granted limited recognition under § 11.9(b) unless within two years of the mailing date of a notice of passing registration examination or of waiver of the examination the individual files with the OED Director a completed Data Sheet, an oath or declaration prescribed by the USPTO Director, and the registration fee set forth in § 1.21(a)(2) of this subchapter. An individual seeking registration as an attorney under § 11.6(a) must provide a certificate of good standing of the bar of the highest

court of a State that is no more than six months old.

(c) An individual who does not comply with the requirements of paragraph (b) of this section within the two-year period will be required to retake the registration examination.

§ 11.9 Limited recognition in patent matters.

(a) Any individual not registered under § 11.6 may, upon a showing of circumstances which render it necessary or justifiable, and that the individual is of good moral character and reputation, be given limited recognition by the OED Director to prosecute as attorney or agent a specified patent application or specified patent applications. Limited recognition under this paragraph shall not extend further than the application or applications specified. Limited recognition shall not be granted while individuals who have passed the examination or for whom the examination has been waived are awaiting registration to practice before the Office in patent matters.

(b) A nonimmigrant alien residing in the United States and fulfilling the provisions of § 11.7(a) and (b) may be granted limited recognition if the nonimmigrant alien is authorized by the Bureau of Citizenship and Immigration Services to be employed or trained in the United States in the capacity of representing a patent applicant by presenting or prosecuting a patent application. Limited recognition shall be granted for a period consistent with the terms of authorized employment or training. Limited recognition shall not be granted or extended to a non-United States citizen residing abroad. If granted, limited recognition shall automatically expire upon the nonimmigrant alien's departure from the United States.

(c) An individual not registered under § 11.6 may, if appointed by an applicant, prosecute an international patent application only before the United States International Searching Authority and the United States International Preliminary Examining Authority, provided that the individual has the right to practice before the national office with which the international application is filed as provided in PCT Art. 49, Rule 90 and § 1.455 of this subchapter, or before the International Bureau when the USPTO is acting as Receiving Office pursuant to PCT Rules 83.1 bis and 90.1.

§ 11.10 Restrictions on practice in patent matters.

(a) Only practitioners who are registered under § 11.6 or individuals given limited recognition under § 11.9(a) or (b) are permitted to prosecute patent applications of others before the Office; or represent others in any proceedings before the Office.

(b) *Post employment agreement of former Office employee.* No individual who has served in the patent examining corps or elsewhere in the Office may practice before the Office after termination of his or her service, unless he or she signs a written undertaking agreeing:

(1) To not knowingly act as agent or attorney for, or otherwise represent, or assist in any manner the representation of, any other person:

(i) Before the Office,

(ii) In connection with any particular patent or patent application,

(iii) In which said employee participated personally and substantially as an employee of the Office; and

(2) To not knowingly act within two years after terminating employment by the Office as agent or attorney for, or otherwise represent, or assist in any manner the representation of any other person:

(i) Before the Office,

(ii) In connection with any particular patent or patent application,

(iii) If such patent or patent application was pending under the employee's official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(3) The words and phrases in paragraphs (b)(1) and (b)(2) of this section are construed as follows:

(i) *Represent* and *representation* mean acting as patent attorney or patent agent or other representative in any appearance before the Office, or communicating with an employee of the Office with intent to influence.

(ii) *Assist in any manner* means aid or help another person on a particular patent or patent application involving representation.

(iii) *Particular patent or patent application* means any patent or patent application, including, but not limited to, a provisional, substitute, international, continuation, divisional, continuation-in-part, or reissue patent application, as well as any protest, reexamination, petition, appeal, or interference based on the patent or patent application.

(iv) *Participate personally and substantially.* (A) Basic requirements. The restrictions of § 11.10(a)(1) apply only to those patents and patent applications in which a former Office employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To *participate personally* means directly, and includes the participation of a subordinate when actually directed by the former Office employee in the patent or patent application. *Substantially* means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a patent or patent application, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular patent or patent application." (*See* paragraph (b)(3)(iii) of this section.)

(B) Participation on ancillary matters. An Office employee's participation on subjects not directly involving the substantive merits of a patent or patent application may not be "substantial," even if it is time-consuming. An employee whose official responsibility is the review of a patent or patent application solely for compliance with administrative control or budgetary considerations and who reviews a particular patent or patent application for such a purpose should not be regarded as having participated substantially in the patent or patent application, except when such considerations also are the subject of the employee's proposed representation.

(C) Role of official responsibility in determining substantial participation. *Official responsibility* is defined in paragraph (b)(3)(v) of this section. "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an Office employee's participation.

(v) *Official responsibility* means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government actions.

(A) Determining official responsibility. Ordinarily, those areas assigned by statute, regulation, Executive Order, job description, or delegation of authority determine the scope of an employee's "official responsibility". All particular matters

under consideration in the Office are under the "official responsibility" of the Director of the Office, and each is under that of any intermediate supervisor having responsibility for an employee who actually participates in the patent or patent application within the scope of his or her duties. A patent examiner would have "official responsibility" for the patent applications assigned to him or her.

(B) Ancillary matters and official responsibility. *Administrative* authority as used in paragraph (v) of this section means authority for planning, organizing and controlling a patent or patent application rather than authority to review or make decisions on ancillary aspects of a patent or patent application such as the regularity of budgeting procedures, public or community relations aspects, or equal employment opportunity considerations. Responsibility for such an ancillary consideration does not constitute official responsibility for the particular patent or patent application, except when such a consideration is also the subject of the employee's proposed representation.

(C) Duty to inquire. In order for a former employee, *e.g.*, former patent examiner, to be barred from representing or assisting in representing another as to a particular patent or patent application, he or she need not have known, while employed by the Office, that the patent or patent application was pending under his or her official responsibility. The former employee has a reasonable duty of inquiry to learn whether the patent or patent application had been under his or her official responsibility. Ordinarily, a former employee who is asked to represent another on a patent or patent application will become aware of facts sufficient to suggest the relationship of the prior matter to his or her former office, *e.g.*, technology center, group or art unit. If so, he or she is under a duty to make further inquiry. It would be prudent for an employee to maintain a record of only patent application numbers of the applications actually acted upon by decision or recommendation, as well as those applications under the employee's official responsibility which he or she has not acted upon.

(D) Self-disqualification. A former employee, *e.g.*, former patent examiner, cannot avoid the restrictions of this section through self-disqualification with respect to a patent or patent application for which he or she otherwise had official responsibility. However, an employee who through self-disqualification does not participate personally and substantially in a particular patent or patent application is not subject to the lifetime restriction of paragraph (b)(1) of this section.

(vi) *Pending* means that the matter was in fact referred to or under consideration by persons within the employee's area of official responsibility.

(4) Measurement of the two-year restriction period. The two-year period under paragraph (b)(2) of this section is measured from the date when the employee's official responsibility in a particular area ends, not from the termination of service in the Office, unless the two occur simultaneously. The prohibition applies to all particular patents or patent applications subject to such official responsibility in the one-year period before termination of such responsibility.

(c) *Former employees of the Office.* This section imposes restrictions generally parallel to those imposed in 18 U.S.C. 207(a) and (b)(1). This section, however, does not interpret these statutory provisions or any other post-employment restrictions that may apply to former Office employees, and such former employees should not assume that conduct not prohibited by this section is otherwise permissible. Former employees of the Office, whether or not they are practitioners, are encouraged to contact the Department of Commerce for information concerning applicable post-employment restrictions.

(d) An employee of the Office may not prosecute or aid in any manner in the prosecution of any patent application before the Office.

(e) Practice before the Office by Government employees is subject to any applicable conflict of interest laws, regulations or codes of professional responsibility.

§ 11.11 Notification.

A registered attorney or agent must notify the OED Director of his or her postal address for his or her office, up to three e-mail addresses where he or she receives e-mail, and business telephone number, as well as every change to any of said addresses, or telephone numbers within thirty days of the date of the change. A registered attorney or agent shall, in addition to any notice of change of address and telephone number filed in individual patent applications, separately file written notice of the change of address or telephone number to the OED Director. A registered practitioner who is an attorney in good standing with the bar of the highest court of one or more States shall provide the OED Director with the State bar identification number associated with each membership. The OED Director shall publish from the roster a list containing the name, postal business addresses, business telephone number, registration number, and registration status as an attorney or agent of each registered practitioner recognized to practice before the Office in patent cases.

Dated: June 14, 2004.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 04–13766 Filed 6–23–04; 8:45 am]

BILLING CODE 3510–16–P

Federal Register

Thursday,
June 24, 2004

Part III

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1820–AB55

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing programs administered under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). These proposed regulations would implement statutory provisions regarding State, local educational agency (LEA), and school accountability for the academic achievement of limited English proficient (LEP) students and are needed to implement changes to Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act).

DATES: We must receive your comments on or before August 9, 2004.

ADDRESSES: Address all comments about these proposed regulations to Jacquelyn C. Jackson, Ed.D., Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments is (202) 260–7764.

If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: *www.regulations.gov.*
or you may send your Internet comments to us at the following address: *TitleIrulemaking@ed.gov.*

You must include the term "proposed rule" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Jackson, Ed.D. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

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

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

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W202, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

These proposed regulations are designed to provide State educational agencies (SEAs) with expanded flexibility in assessing LEP students against State content standards and in counting the performance of LEP students as a group in measuring whether a school and LEA are meeting adequate yearly progress (AYP) goals. Specifically, the proposed regulations would allow a State to exempt "recently arrived" LEP students from one administration of the State's reading/language arts assessment. Recently arrived students are students with limited English proficiency who have attended schools in the United States (not including Puerto Rico) for less than 10 months before the test is administered. In addition, the proposed regulations would allow a State not to count in AYP determinations the scores of the recently arrived students who do take the reading/language arts and the mathematics assessments during that period.

These proposed regulations are needed to implement statutory provisions regarding State, LEA, and school accountability for the academic achievement of recently arrived students with limited English language proficiency. As a diverse Nation, we educate students from many different countries. There are approximately 5.5 million students in U.S. schools who do not have English as their first language. Some States report that as many as 120 languages are represented in their schools. Often, the recently arrived students have difficulty demonstrating their knowledge through State content assessments in English due to language barriers or schooling experiences in their native country. Students need time to become acclimated to their new community and to schooling in the United States. Several researchers have reported the isolation and confusion newcomer students feel in their schools upon arrival and sometimes well into the first year.[1] This creates a challenge for the many States that do not offer native language assessments for all students, and available accommodations generally would not provide a real opportunity for newly arrived LEP students to demonstrate their mastery of a content area in English. The proposed regulations would allow approximately one year for schools and LEAs to provide intensified language instruction programs well aligned with the State's English language proficiency (ELP) standards and linked with State academic content and student academic achievement standards.

These proposed regulations also would allow a State to include "former LEP" students within the LEP category in making AYP determinations for up to two years after they no longer meet the

[1] *See* L. Cheng, *Challenges for Asian/Pacific American Children and their Teachers*, ERIC Digest (ERIC Clearinghouse on Urban Education) (1999); J. Dufresne & S. Hall, *LEAP English Academy: An alternative high school for newcomers to the United States*, MINNE–WI TESOL Journal 14 (1997); R. Gonzalez, *Title VII Newcomer Program: Final report 1993–1994*, (Austin Independent School District, Texas, Office of Research and Evaluation) (1994); C. Moran, J. Stobbe, J. Villamil Tinajero & I. Tinajero, *Developing Literacy: Strategies for working with overage students*, reprinted with permission for distribution at the Symposium on the Education of Over-age LEP Students with Interrupted Formal Schooling (1997); L. Olsen, *Learning English and learning America: Immigrants in the center of a storm*, Theory into Practice 39, 196–202 (Autumn 2000); L. Olsen, A. Jaramillo, Z. McCall-Perez, & J. White, *Igniting change for immigrant students: Portraits of three high schools*, Oakland, CA: California Tomorrow (1999).

State's definition for limited English proficiency. The LEP subgroup is a subgroup whose membership can change from year to year, as students who have acquired English language proficiency exit and recently arrived students enter the subgroup. Because LEP students exit the LEP category once they attain English language proficiency, school assessment scores may not reflect gains that the LEP student subgroup has made in academic achievement.

In order to ensure that no child is left behind, Title I requires schools, LEAs, and States to be accountable for the achievement of LEP students and other subgroups of students, including students with disabilities, economically disadvantaged students and students from major racial and ethnic groups. The purpose of subgroup accountability is to ensure that districts and schools address the needs of all of their students and are held accountable for the achievement of all students, and that achievement for the school or LEA as a whole does not mask a school's or LEA's inability to ensure the progress of all significant subgroups of students. There are significant aspects of the law that provide a measure of flexibility in how schools and LEAs demonstrate whether their LEP students are making AYP. Several of these areas were addressed in a letter the Secretary sent to the Chief State School Officers dated February 20, 2004. Notwithstanding this existing flexibility, the Secretary has determined that additional flexibility with regard to recently arrived LEP students and former LEP students is needed. Accordingly, his February 20 letter authorized, on a transitional basis pending the issuance of final regulations, the elements of flexibility contained in these proposed regulations.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.6 Inclusion of All Students

Statute: Under Section 1111(b)(3) of Title I, each State is required to assess the reading/language arts and mathematics proficiency of LEP students in a valid and reliable manner, using reasonable accommodations or, when practicable, native language assessments. States must assess, in English, a LEP student's achievement in reading/language arts if the student has been in schools in the United States (except Puerto Rico) for three or more consecutive years, although students may be assessed in reading/language arts in their native language beyond this point for two additional years if the LEA determines, on a case-by-case basis, that assessment in the native language would likely yield more accurate and reliable information on what the student knows and can do. States must also annually assess a LEP student's English language proficiency (that is, a student's reading, writing, speaking, and listening skills in English) in grades K–12.

Current Regulations: The current regulations essentially repeat the statutory requirements.

Proposed Regulations: The proposed regulations would provide a new assessment option for a subset of LEP students—recently arrived LEP students who have attended schools in the United States (not including Puerto Rico) for less than 10 months. Under proposed § 200.6(b)(4), a State would be able to exempt recently arrived LEP students from one administration of the State's reading/language arts assessment. Recently arrived students would still be required to participate in the State's mathematics assessment and the ELP assessment.

The proposed regulations also make clear that, in determining the amount of time before a LEP student must take the State's reading/language arts assessment in English, this "transitional year" must be counted as the first of the three years in which a LEP student may take the reading/language arts assessment in his or her native language, even though the student does not, in fact, take the reading/language arts assessment at all.

Reasons: In proposing these amendments to § 200.6, we recognize that taking a State's reading/language arts assessment, even with accommodations, requires a certain level of English language expertise. This expertise is essential for LEP students to participate meaningfully in the reading/language arts assessment and to receive a valid and reliable assessment score. Absent native language assessments (which in many cases are not practicable to create) and without this flexibility, recently arrived LEP students would be required to take a reading/language arts test that does not produce useful information. This is a different situation than a mathematics assessment, for which accommodations are available, to enable recently arrived LEP students to demonstrate content mastery in mathematics. With this new flexibility regarding participation in a State's reading/language arts assessment, recently arrived LEP students will be able to participate in the State's assessment system in a manner that makes sense given their educational experiences and English language skills.

In developing the proposed regulation, the Department considered several options, including the possibility of linking eligibility for the one-time exemption to a State's determination that a student is non-English proficient (NEP) based on the State's definition. However, we concluded that linking the exemption to the period a LEP student has attended U.S. schools was more appropriate. The intent of the proposed regulation is to ensure that recently arrived LEP students receive instruction in U.S. schools for a period roughly equivalent to a school year prior to including their assessment results in AYP calculations. Linking the exemption to a determination that a student is NEP would potentially include a much wider range of students for an indefinite period of time.

Section 200.20 Making Adequate Yearly Progress

Statute: Under Section 1111(b)(2) of Title I, each State must define AYP in a manner that measures the achievement of each of various student groups, including LEP students. When determining which subgroups to consider in a school, LEA, or State accountability decision, the State must identify the minimum number of students in a category that is sufficient for making statistically valid and reliable decisions. In addition to ensuring that each subgroup meets or exceeds State objectives in reading/language arts and mathematics achievement, each school and LEA must demonstrate that not less than 95 percent of each student subgroup takes the reading/language arts and mathematics assessment in order to make AYP.

Current Regulations: The current regulations clarify how a school or LEA makes AYP by specifying how to determine whether the school or LEA met its goals for reading/language arts and mathematics achievement and how to calculate participation rates. The current regulations explain that a State must determine the number of students in a group that is required in order for the assessment scores of the group to yield statistically reliable information.

Proposed Regulations: The proposed regulations in § 200.20(f) would change the requirements for how SEAs are to include the following students in AYP determinations: (1) Recently arrived LEP students, and (2) students who were LEP but who have attained English proficiency and exited the LEP category

as the State defines that category (*i.e.*, former LEP students).

For recently arrived LEP students, a State would not be required to include their results from the mathematics or (if taken) reading/language arts assessments in AYP decisions, even if the student has been enrolled for a full academic year as defined by the State. If recently arrived LEP students take either the ELP assessment or the State's reading/language arts assessment, § 200.20(f)(1)(i) of the proposed regulations would allow the State to count these students as participants toward meeting the 95 percent participation requirement for AYP determinations in reading/language arts. Similarly, § 200.20(f)(1)(i) of the proposed regulations would allow recently arrived LEP students to be counted as participants for AYP determinations in mathematics when they take the mathematics assessment.

Under proposed § 200.20(f)(2), in determining AYP for the LEP subgroup, a State also may include the assessment scores from the reading/language arts and mathematics assessments for students who were LEP but who have exited the LEP category during the last two years. The proposed regulations would not, however, require a State to include these former LEP students in counts to determine whether a school or LEA has a sufficient number of LEP students to yield statistically reliable information under § 200.7(a), nor do they count for Title III funding. When reporting the achievement results on State and LEA report cards, as required under section 1111(h)(1)(C), § 200.20(f)(2)(iii) of the proposed regulations would not allow results of former LEP students to be included as part of the LEP subgroup because there is a difference between data used for system accountability and data used for providing information to parents.

Reasons: In proposing amendments to § 200.20, we are addressing concerns about the instructional needs of students in the LEP subgroup. If recently arrived LEP students take the reading/language arts assessment, a State would not be required to include results from that assessment in AYP calculations. The purpose of this proposal is to provide maximum flexibility in a State's assessment and accountability policies. A State that wants recently arrived LEP students to participate in the reading/language arts assessment may have them do so without having their results affect a school's or LEA's AYP rating. Similarly, when recently arrived LEP students take the mathematics assessment, the State is not required to include those results in AYP calculations. This approach ensures that States and LEAs may make individual assessment decisions for the benefit of these recently arrived LEP students (*e.g.*, whether a student takes the reading/language arts assessment or not) without affecting a school's or LEA's AYP rating.

The LEP subgroup is one whose membership can change from year to year as English proficient students exit and new students enter the LEP subgroup. Because LEP students exit the LEP subgroup once they attain English language proficiency, school assessment results may not reflect the gains that LEP students have made in academic achievement. Therefore, these regulations address such concerns by allowing States additional flexibility when making AYP decisions, particularly with respect to LEP students.

Executive Order 12866

1. Potential Costs and Benefits

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

The potential costs associated with the proposed regulations are those resulting from existing statutory and regulatory requirements. Both the statute and existing regulations require States to include LEP students in assessments and AYP calculations. There are no additional costs associated with the proposed regulations. There are benefits because the proposed regulations provide additional flexibility for assessing recently arrived LEP students and for including in AYP calculations both recently arrived LEP students and LEP students who have become English proficient and have exited the LEP category. The costs and benefits of the underlying provisions were discussed in the Title I final regulations published in the **Federal Register** on December 2, 2002 (67 FR 71717).

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

2. Clarity of the Regulations

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

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

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interfere with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.13 Adequate yearly progress in general.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These provisions require States and LEAs to take certain actions to improve student academic achievement. The Department believes that these activities will be financed through the appropriations for Title I and other Federal programs and that the responsibilities encompassed in the law and regulations will not impose a financial burden that States and LEAs will have to meet from non-Federal resources.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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(Catalog of Federal Domestic Assistance Number: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Education of children with disabilities, Education of disadvantaged children, Elementary and secondary education, Eligibility, Family-centered education, Grant programs—education, Indians—education, Infants and children, Institutions of higher education, Juvenile delinquency, Local educational agencies, Migrant labor, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies.

Dated: June 21, 2004.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Amend § 200.6 as follows:

A. Revise the introductory text in both § 200.6 and paragraph (b)(1)(i); and

B. Add a new paragraph (b)(4).

The revisions and addition read as follows:

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed in accordance with this section.

* * * * *

(b) * * *

(1) * * *

(i) Consistent with paragraphs (b)(2) and (b)(4) of this section, the State must assess limited English proficient students in a valid and reliable manner that includes—

* * * * *

(4) *Recently arrived students with limited English proficiency.* (i) A recently arrived student is a student with limited English proficiency who has attended school in the United States (not including Puerto Rico) for less than ten months.

(ii)(A) A State may exempt a recently arrived student from one administration of the State's reading/language arts assessment under § 200.2.

(B) If the State does not assess a recently arrived student on the State's reading/language arts assessment, the State must count this year as the first of the three years in which the student may take the State's reading/language arts assessment in a native language under section 1111(b)(3)(C)(x) of the Act.

(iii) A State must assess a recently arrived student using—

(A) An assessment of English language proficiency under paragraph (b)(3) of this section; and

(B) The State's mathematics assessment under § 200.2.

* * * * *

3. Amend § 200.20 as follows:

A. Revise the introductory text of paragraphs (a)(1), (b), and (c)(1); and

B. Add a new paragraph (f).

The revisions and addition read as follows:

§ 200.20 Making adequate yearly progress.

* * * * *

(a)(1) A school or LEA makes AYP if, consistent with paragraph (e) of this section—

* * * * *

(b) If students in any group under § 200.13(b)(7) in a school or LEA do not meet the State's annual measurable objectives under § 200.18, the school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(c)(1) A school or LEA makes AYP if, consistent with paragraph (f) of this section—

* * * * *

(f)(1) In including recently arrived students, as defined under § 200.6(b)(4), in determining AYP, a State may—

(i) Count recently arrived students as participants under paragraph (c)(1)(i) of this section if they take—

(A) Either an assessment of English language proficiency under § 200.6(b)(3) or the State's reading/language arts assessment under § 200.2; and

(B) The State's mathematics assessment under § 200.2; and

(ii) Choose not to include recently arrived students' scores on either or both the mathematics or reading/language arts assessment in determining AYP under paragraph (a) or (b) of this section, even if these students have been enrolled in the same school or LEA for a full academic year as defined by the State.

(2)(i) In determining AYP for the subgroup of limited English proficient students, a State may include, for up to two years, students who were limited English proficient but who no longer meet the State's definition.

(ii) If the State counts students under paragraph (f)(2)(i) of this section, the State is not required to—

(A) Count those students in the limited English proficient subgroup to determine if the number of students is sufficient to yield statistically reliable information under § 200.7(a);

(B) Assess those students' English language proficiency under § 200.6(b)(3); or

(C) Provide English language services to those students.

(iii) If the State counts students under paragraph (f)(2)(i) of this section, the State may not report those students in the limited English proficient subgroup under section 1111(h)(1)(C)(i) and (h)(2)(B) (reporting achievement data by subgroup on State and LEA report cards) of the Act.

[FR Doc. 04–14358 Filed 6–23–04; 8:45 am]

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Federal Register

Thursday,
June 24, 2004

Part IV

Federal Trade Commission

16 CFR Parts 610 and 698
Free Annual File Disclosures; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 610 and 698

RIN 3084–AA94

Free Annual File Disclosures

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final Rule.

SUMMARY: The Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the FTC to adopt regulations to require the establishment of a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; a standardized form for such requests; and a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. This final rule implements these requirements.

EFFECTIVE DATE: This rule is effective on December 1, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Goff Foster or Sandra Farrington, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: The final rule retains all of the requirements of the proposed rule, without major substantive changes, and adds a requirement relating to the use and disclosure of personally identifiable information collected through the centralized source.

Statement of Basis and Purpose

I. Background

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (FACT Act or the Act) was signed into law on December 4, 2003. In part, the Act amends the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq., by imposing new requirements on consumer reporting agencies that compile and maintain files on consumers on a nationwide basis (nationwide consumer reporting agencies), and nationwide specialty consumer reporting agencies, as defined by §§ 603(p) and 603(w) of the FCRA, 15 U.S.C. 1681a(p) and (w), respectively. These additional requirements include the obligation to provide, upon request, one free file disclosure—commonly called a credit report—to the consumer once in a 12-month period.[1]

The FACT Act directs the Commission to consider the concerns of both consumers and industry in prescribing these rules. Specifically, the Act directs the Commission to consider "the significant demand that may be placed on consumer reporting agencies in providing such [annual file disclosures]; appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such [file disclosures]; and the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such [annual file disclosures]." FACT Act § 211(d)(2). In addition to these considerations, the FACT Act also requires the Commission to provide for an orderly transition for the centralized source in a manner that does not temporarily overwhelm the nationwide consumer reporting agencies with requests for annual file disclosures and does not deny creditors and other users access to consumer reports. FACT Act § 211(d)(2). Finally, the FACT Act directs the Commission to consider, when setting the effective date for rule provisions applicable to the nationwide specialty consumer reporting agencies, the ability of each nationwide specialty consumer reporting agency to comply with the annual file disclosure requirements. FACT Act § 211 (a), codified at FCRA § 612 (a), 15 U.S.C. §1681j (a).

The Commission has carefully weighed all of these considerations as required by the FACT Act. On March 16, 2004, the Commission issued, and sought comment on, a proposed rule implementing the requirements of the FACT Act (the proposed rule).[2] The Commission has reviewed the detailed comments received, which represented all points of view. In crafting both the proposed rule and the final rule, the Commission has strived to strike the balance that the FACT Act seeks between the availability of free annual file disclosures to consumers and the legitimate concerns of the consumer reporting agencies that are required to provide them. In issuing this final rule (the rule or the final rule), the Commission adopts the proposed rule with some modifications.

Like the proposed rule, the final rule requires nationwide consumer reporting agencies to establish a centralized source to enable consumers, with a single request, to obtain annual file disclosures from all nationwide consumer reporting agencies, in accordance with the FACT Act, § 211(d)(1)(A). The centralized source required by the final rule will provide consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet website, toll-free telephone number, and postal address. The rule also includes a standardized form for such requests, as specified in the FACT Act, § 211(d)(1)(B). Further, the rule requires nationwide specialty consumer reporting agencies to establish a streamlined process for consumer requests for annual file disclosures, as provided in the FACT Act, § 211(a)(2).

The final rule limits the obligations of nationwide consumer reporting agencies when the volume of consumer requests for annual file disclosures is excessive. It permits nationwide consumer reporting agencies to queue requests for annual file disclosures during times of "high request volume"–i.e., volume that exceeds 125% of the rolling daily average volume. It also allows nationwide consumer reporting agencies to decline to accept requests during times of "extraordinary request volume"–i.e., volume that exceeds 175% of the rolling daily average volume.

The final rule maintains the gradual roll-out of the centralized source contained in the proposed rule. In order to ensure a smooth transition, and in response to concerns regarding the volume of consumers who may request annual file disclosures when the rule first becomes effective, the centralized source will become available to consumers in four cumulative stages that roll out from west to east. See discussion under § 610.2(i) of this notice, infra. This transition will start on December 1, 2004, and will be completed within nine months, by September 1, 2005. Final rule § 610.2 (i)(1). The final rule also provides for a lower threshold for "high request volume" during this transition period.

In addition, the final rule retains, with some modifications, the proposed rule#x2019;s requirements relating to nationwide specialty consumer reporting agencies. These agencies are required to establish a streamlined process for consumers to request annual file disclosures, final rule § 610.3 (a),

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[1] Section 609 of the FCRA requires disclosure of "[a]ll information in the consumer's file at the time of the request." 15 U.S.C. 1681g(a)(1). The FACT Act refers to the requirement to make "all disclosures pursuant to [FCRA] section 609 once during any 12-month period" without charge as providing free "consumer reports." FACT Act 211(d). To avoid confusion, the rule refers to disclosures made pursuant to FCRA § 609 as "file disclosures" and to the free annual disclosures required under the FACT Act as "annual file disclosures."

[2] The notice of proposed rulemaking (hereinafter, the NPR) and proposed rule were published in the Federal Register on March 19, 2004. 69 FR 13192.

including a toll-free telephone number for consumers to make such requests. The rule also requires nationwide specialty consumer reporting agencies to make their toll-free telephone numbers available to consumers in specific ways. Final rule § 610.3 (a)(1). See discussion under §610.3 (a) of this notice, infra.

II. Overview of Comments Received.

The Commission received more than 2,300 comments on the proposed rule.[3] The vast majority of these comments were from consumers. Consumer advocacy groups,[4] members of Congress, industry trade organizations, [5] and various representatives of the consumer reporting industry — including the three nationwide consumer reporting agencies,[6] other consumer reporting agencies,[7] and a variety of other interested organizations [8]—also submitted comments on the proposed rule.

The Commission received comments relating to nearly every provision contained in the proposed rule. Most commenters — consumer and industry representatives alike — express general support for the concept of free annual file disclosures. Many consumers and consumer advocates note that free annual file disclosures will enhance consumer report accuracy, save consumers money, foster greater financial literacy, and prevent or mitigate the effects of identity theft. Some consumers urge the Commission to adopt provisions that extend beyond what the FACT Act provides: for example, requiring free file disclosures more often, requiring disclosure of free credit scores, or requiring free file disclosures from all consumer reporting agencies, regardless of nationwide or nationwide specialty consumer reporting agency status under the FCRA.

The overwhelming majority of comments focus on one or more aspects of the proposed requirement for nationwide consumer reporting agencies to provide annual file disclosures through a "centralized source." Proposed rule § 610.2. Consumer commenters express concern about a variety of issues related to the centralized source. Many consumers and consumer advocates suggest that the final rule should include a limitation on the use and disclosure of information collected by nationwide consumer reporting agencies through the centralized source. Consumers also suggest that the regional roll-out of the centralized source, proposed rule § 610.2 (i), was too long, and that it placed unfair burden on consumers residing in eastern states. Consumer advocates, on the other hand, express doubt as to the need for any type of gradual transition, but generally support a regional approach if such a transition were to be retained in the final rule. Many consumer advocacy groups also express concern that the proposed rule contained no requirement to provide file disclosures and centralized source information and instructions in Spanish.

In addition, many consumers and consumer advocates urge the Commission to consider further restricting, or banning, advertising and marketing of other products through the centralized source. Many competitors of the nationwide consumer reporting agencies—including both other consumer reporting agencies[9] as well as non-consumer reporting agencies[10]—similarly advocate a final rule that would ban advertising and marketing through the centralized source.

The Commission also received comments relating to the centralized source from both federal and state elected officials. One U.S. Senator[11] and a group of members of the U.S. House of Representatives Committee on Financial Services[12] express concern that the structured roll-out of the centralized source required by the proposed rule was too slow, and discriminated against consumers who reside in eastern states. A group of United States Senators[13] and a different group of members of the U.S. House of Representatives Committee on Financial Services[14] comment that the proposed rule did not provide the nationwide consumer reporting agencies with sufficient guidance, and that the safe harbor contained in the proposed rule was inadequate to protect these agencies from overwhelming consumer demand for annual file disclosures. A New York State Senator also expresses concern that the proposed rule did not specify how annual file disclosures should be delivered, contained inadequate provisions to protect consumers from unwanted solicitations and other uses of their personally identifiable information, and did not contain requirements that file disclosures and other information be provided to

[3] The public comments relating to this rulemaking may be viewed at www.ftc.gov/os/comments/factafcr. The Commission considered all comments timely filed, i.e.–those received on or before the close of the comment period on April 16, 2004. As a matter of discretion, the Commission also considered comments that were filed after the close of the comment period. The total number of comments stated here includes more than 2,000 consumer comments collected through U.S. Public Interest Research Group, which are posted, in batch form, at U.S. Public Interest Research Group #EREG000604. Citations to comments filed in this proceeding are made to the name of the organization (if any) or the last name of the commenter, and the comment number of record. Comment number may appear as all numeric characters–e.g., #000031 (indicating a comment received by paper or electronic mail), or as numeric characters preceded by "EREG"–e.g., "EREG000031" (indicating a comment received through www.regulations.gov).

[4] These include AARP, Asociacíon Campesino Lazaro Cardenas Inc., CEIBA, Consumer Federation of America, Consumers Union, Del Norte Neighborhood Development Corporation, Electronic Privacy Information Center, Housing and Economic Development Asociacíon De Puertorriquenos, Latino Leadership, Inc., Midland Community Development Corporation, National Association of Consumer Advocates, National Consumer Law Center, National Consumers League, National Council of La Raza, NEWSED C.D.C., Privacy Rights Clearinghouse, Privacy Times, Self-Help Enterprises, Spanish Action League, Spanish Coalition for Housing, Tejano Center for Community Concerns, U.S. Public Interest Research Group (US–PIRG), and Watts/Century Latino Organization.

[5] In addition to Consumer Data Industry Association (CDIA)–the trade association that represents the nationwide consumer reporting agencies and a variety of other consumer reporting agencies–the Commission received comment on the proposed rule on behalf of a number of trade organizations representing a variety of industries and concerns. These include ACA International (representing debt collection agencies and other accounts receivable professionals), America's Community Bankers, National Association of Realtors, Credit Union National Association (CUNA), Consumer Credit Counselors of Los Angeles, National Association of Mortgage Brokers, Mortgage Bankers Association, and Coalition to Implement the FACT Act (representing trade associations and companies that furnish, use, collect, and disclose consumer information).

[6] The Commission is aware of three entities that meet the FCRA § 603(p) definition of nationwide consumer reporting agency. These entities are Equifax Information Services LLC, Experian Information Solutions, Inc., and Trans Union LLC.

[7] These include ChoicePoint, Inc., Computer Sciences Corporation (CSC), Evergreen Credit Reporting Inc., and MIB Group, Inc. (MIB).

[8] These include Aegon Direct Marketing Services, Inc., Cendant Corporation, Chartered Marketing Services, Deluxe Corporation, Fair Isaac and Company, Inc., Intersections Inc., ReferencePro, and Schwartz & Ballen LLP.

[9] For example, Evergreen Credit Reporting Inc. See Comment, Evergreen Credit Reporting Inc. # 000031.

[10] For example, Fair, Isaac and Company, Inc. See Comment, Fair, Isaac and Company, Inc. #000011.

[11] Senator Charles E. Schumer (D–NY). See Comment, U.S. Senate #000022.

[12] These Representatives included Julia Carson, Joseph Crowley, Harold E. Ford, Jr., Barney Frank, Luis V. Gutierrez, Barbara Lee, Stephen Lynch, Brad Sherman, and Maxine Waters. See Comment, U.S. House of Representatives #000134.

[13] These Senators included Robert F. Bennett, Elizabeth Dole, Tim Johnson, and Thomas R. Carper. Comment, United States Senate #000137.

[14] These Representatives included Spencer Bachus, Judy Biggert, Rahm Emanuel, Jeb Hensarling, Ruben Hinojosa, Darlene Hooley, Steve Israel, Sue W. Kelly, Steven LaTourette, Dennis Moore, Robert W. Ney, Michael G. Oxley, Edward R. Royce, and David Scott. See Comment, U.S. House of Representatives #000136.

consumers in languages other than English.

CDIA and the nationwide consumer reporting agencies also comment at length on a variety of issues relating to the centralized source. They uniformly express concern that both the proposed rule transition and the provisions relating to the "extraordinary request volume" safe harbor were inadequate and, if adopted, would have subjected the industry to dangerous uncertainties, increased liability from private actions, and wasted resources. They urge the Commission to lengthen the transition period; convert the cumulative regional roll-out approach of the proposed rule to a permanent staggering of availability of free reports by birth month or quarter; and provide additional and lower safe harbor thresholds. In addition, the nationwide consumer reporting agencies and CDIA object to the proposed rule's requirement that nationwide consumer reporting agencies provide free annual file disclosures for consumers whose files are owned by, or maintained on the nationwide consumer reporting agency's system by, an associated consumer reporting agency.

The Commission also received a number of comments relating to the proposed rule's requirement that nationwide specialty consumer reporting agencies implement a "streamlined process" for accepting and processing consumer requests for free annual file disclosures. Proposed rule § 610.3. Consumer and consumer advocate comments on the "streamlined process" focus mainly on the visibility of nationwide specialty consumer reporting agencies and the convenience with which consumers should be able to contact them. A number of consumers comment that nationwide specialty consumer reporting agencies should be required to participate in the centralized source for nationwide consumer reporting agencies required under proposed rule § 610.2, or that nationwide specialty consumer reporting agencies should also develop a joint centralized source.

Representatives of nationwide specialty consumer reporting agencies[15] express concern over the definition of that term found in the FACT Act. In addition, they object to the fact that the proposed rule did not provide nationwide speciality consumer reporting agencies with a structured roll-out for the required streamlined process. Finally, these entities urge the Commission to provide additional, and lower threshold safe harbors from both private and regulatory liability arising from unforeseen circumstances and overwhelming request volume.

[15] The Commission notes that some commenters identify themselves as "nationwide specialty consumer reporting agencies." Others, however, decline to use this term, although their services focus on one or more of the five categories of nationwide specialty consumer reporting agencies. By referring to both types of commenters as "nationwide specialty consumer reporting agencies" here, the Commission is not making a legal determination or factual finding that such entities meet the statutory definition of that term.

III. Section-By-Section Analysis

Section 610.1—Definitions and rule of construction

Section 610.1 (a) of the final rule explains that the definitions and the rule of construction provided in § 610.1 (b) and (c) of the rule apply throughout Part 610. Terms not otherwise defined in § 610.1 of the rule have the meaning provided under the Fair Credit Reporting Act, 15 U.S.C. 1681a. See also 69 FR 29061.

Definitions.

Section 610.1 (b) of the final rule sets forth definitions for a number of terms used throughout the rule.

Annual file disclosure. The proposed rule defined "annual file disclosure" as a file disclosure that is provided to a consumer upon consumer request and without charge, once in any 12-month period, in compliance with § 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a). Proposed rule § 610.1(b)(1). A consumer advocacy group suggests that this definition be revised to provide for free file disclosures "once in a calendar year."[16] Such a definition, however, conflicts with the language of the FACT Act, which states free file disclosures should be provided "once during any 12-month period." FACT Act § 211 (a)(2), codified at FCRA § 612 (a)(1), 15 U.S.C. 1691j (a)(1) (emphasis supplied). The Commission therefore has adopted the proposed rule definition of annual file disclosure in the final rule.

Associated consumer reporting agency. Section 610.1(b)(2) of the proposed rule defined an "associated consumer reporting agency" as a consumer reporting agency that maintains consumer reports within systems operated by a nationwide consumer reporting agency. In the NPR, the Commission noted that nationwide consumer reporting agencies have contractual relationships with a number of regional or local consumer reporting agencies. 69 FR at 13197. These regional or local consumer reporting agencies, traditionally called "service bureaus" or "affiliates," generally are independently owned and operated entities—they are not corporate affiliates of a nationwide consumer reporting agency.[17] Rather, typically, they have a right to house some or all of the consumer data that they own on the systems of one or more nationwide consumer reporting agencies. The nationwide consumer reporting agency with whom such an entity is associated, in turn, has the right to sell that consumer data to its customers.[18] The final rule, like the proposed rule, addresses these consumer reporting agencies as "associated consumer reporting agencies."

[16] Comment, Electronic Privacy Information Center #EREG000594.

One associated consumer reporting agency comments that this description of associated consumer reporting agencies appropriately describes the relationship between these agencies and nationwide consumer reporting agencies. Both the associated consumer reporting agency commenter and a nationwide consumer reporting agency, however, suggest that the proposed rule definition of "associated consumer reporting agency" should be altered slightly. These commenters both note that many, if not all, associated consumer reporting agencies own — rather than merely maintain — the files that they house in nationwide consumer reporting agency systems. Accordingly, the final rule definition of associated consumer reporting agency is "a consumer reporting agency that owns or maintains consumer files housed within systems operated by one or more nationwide consumer reporting agencies." Final rule § 610.1(b)(2) (emphasis supplied).

Consumer. The proposed rule adopted the definition of "consumer" that is found in § 603 (c) of the FCRA, 15 U.S.C. 1681a (c). The Commission received no comments suggesting changes to this definition, and it is adopted as proposed. Final rule § 610.1(b)(3).

Consumer report. The proposed rule adopted the definition of "consumer report" that is found in § 603(d) of the FCRA, 15 U.S.C. 1681a(d). The Commission received no comments suggesting changes to this definition, and it is adopted as proposed. Final rule § 610.1(b)(4).

Consumer reporting agency. The proposed rule adopted the definition of "consumer reporting agency" that is found in § 603 (f) of the FCRA, 15 U.S.C.

[17] That is to say, associated consumer reporting agencies generally are not under common ownership or control with a nationwide consumer reporting agency. See FACT Act § 2 (4).

[18] The associated consumer reporting agency may also have the right to sell consumer information owned by the nationwide consumer reporting agency.

1681a (f). The Commission received no comments suggesting changes to this definition, and it is adopted as proposed. Final rule § 610.1(b)(5).

Extraordinary request volume. Under the proposed rule, "extraordinary request volume" occurred (except as provided in § 610.2 (i)(2)) "when the number of consumers requesting file disclosures during any 24-hour period is more than twice the daily rolling 90-day average of consumers requesting file disclosures." For reasons discussed under § 610.2 (e) of this notice, infra, the Commission modifies the proposed rule definition of extraordinary request volume to volume that "is more than 175% of the rolling 90-day daily average of consumers requesting or attempting to request file disclosures." Final rule § 610.1(b)(6).

File disclosure. The proposed rule, § 610.1(b)(7), defined a "file disclosure" as any disclosure made pursuant to § 609 of the FCRA.[19] Section 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended by the FACT Act, provides that nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies must provide "all disclosures pursuant to [FCRA] section 609 once during any 12-month period upon request of the consumer and without charge to the consumer." Accordingly, under proposed rule § 610.1(b)(1), the term "annual file disclosure" was a file disclosure made upon request, free of charge, in compliance with § 612(a) of the FCRA, 15 U.S.C. 1681j(a), as amended. Although FCRA §§ 612(b)–(e) provide for other types of free file disclosures, the term "annual file disclosure," as defined in the proposed rule, referred only to free file disclosures made pursuant to FCRA § 612(a).[20]

One nationwide specialty consumer reporting agency requests that the Commission consider limiting the definition of file disclosure, as it applies to nationwide specialty consumer reporting agencies, to require only the disclosure of specific types of information. This commenter notes that the FACT Act specifically limits the types of nationwide specialty consumer reporting agencies that must provide annual file disclosures to only those that compile or maintain information on medical records or payments; residential or tenant history; check writing history; employment history; or insurance claims. See FCRA § 603(w), 15 U.S.C. 1681a(w). Thus, the commenter posits, Congress must also have intended to circumscribe the content of such file disclosures to only the types of information listed in the definition of nationwide specialty consumer reporting agency.

While the FACT Act limits "nationwide specialty consumer reporting agencies" to specific types of entities — i.e., those that compile and maintain medical records or payments, residential or tenant history, check writing history, employment history, or insurance claims — the plain language of the Act is broader in describing what information those entities must provide to consumers. The FACT Act specifically requires nationwide consumer reporting agencies to make all disclosures required by § 609 of the FCRA, which, by the terms of that section, must include "all information in the consumer's file at the time of the request."[21] The Commission therefore declines to limit the scope of the required disclosures as the commenter suggests. The final rule adopts the proposed rule definition of file disclosure without modification. Final rule § 610.1(b)(7).

High request volume. A definition of "high request volume" was used in the transition section—§ 610.2(i)(3)— of the proposed rule. Under that section, during the transition period, "high request volume" occurred when the number of consumers who contact or attempt to contact the centralized source, a particular request method, or a nationwide consumer reporting agency, in a 24-hour period, is more than 115% of the rolling 7-day average number of consumers who contacted or attempted to contact the centralized source, a particular request method, or a nationwide consumer reporting agency, to request file disclosures. Proposed rule § 610.2(i)(3). For reasons discussed under §§ 610.2(e) and 610.3(c) of this notice, infra, the final rule broadens the concept of high request volume to apply both during and after the defined transition periods. The final rule defines high request volume as occurring when the number of consumers requesting or attempting to request file disclosures during any 24-hour period is more than 125% of the daily rolling 90-day average of consumers requesting or attempting to request file disclosures. As with extraordinary request volume, high request volume is defined differently during the transition period. See discussion under §§ 610.2(i) and 610.3(g) of this notice, infra.

Nationwide consumer reporting agency. Under proposed rule § 610.1(b)(8), the term "nationwide consumer reporting agency" meant a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in FCRA § 603(p), 15 U.S.C. 1681a(p). The Commission received no comments suggesting changes to this definition, and it is adopted as proposed. Final rule § 610.1(b)(9).

Nationwide specialty consumer reporting agency. The term "nationwide specialty consumer reporting agency" was defined under § 610.1(b)(9) of the proposed rule, in accordance with FCRA § 603(w), 15 U.S.C. 1681a(w), as a consumer reporting agency that compiles and maintains files on consumers relating to medical records or payments, residential or tenant history, check writing history, employment history, or insurance claims, on a nationwide basis. One nationwide specialty consumer reporting agency urges the Commission to expand on the statutory definition of this term. The commenter argues that because the FACT Act added this definition to the FCRA, and because there is little or no legislative history to guide companies in the interpretation of this new definition, the Commission should further delineate the meaning of the term. Specifically, the commenter urges the Commission to adopt specific, limited meanings for the categories of information described in the definition of nationwide specialty consumer reporting agency. This same commenter similarly urges the Commission to define two other terms found within the definition of nationwide specialty consumer reporting agency: "compiles and maintains" and "nationwide."[22]

The Commission notes that the definition of the term nationwide specialty consumer reporting agency is set out in the FACT Act with some specificity. By the terms of the Act, its application is limited to a consumer reporting agency. Further, such consumer reporting agency must

[19] Section 609 of the FCRA, 15 U.S.C. 1681g, requires every consumer reporting agency, upon request of the consumer, to disclose to the consumer, among other things, "all information in the consumer's file at the time of the request."

[20] It should be noted that the FCRA, as amended by the FACT Act, requires consumer reporting agencies to provide a free file disclosure to consumers under a number of different circumstances. In addition, under FCRA § 612(f), 15 U.S.C. 1681j(f), a consumer reporting agency must provide file disclosures to consumers for a fee, upon request. The requirement for nationwide consumer reporting agencies to provide annual file disclosures supplements, but does not replace, these other provisions. In other words, a consumer is entitled to obtain a free annual file disclosure through the centralized source, once in any 12-month period, even if that consumer has obtained other free or paid file disclosures in that time period. See FCRA § 612, 15 U.S.C. 1681j.

[21] FCRA § 609(a), 15 U.S.C. 1681g(a).

[22] Comment, Choicepoint #000039.

compile and maintain files on consumers, on a nationwide basis, relating to at least one of five specific categories of information. The record as developed through this rulemaking provides insufficient information to justify altering the definition used by Congress in the FACT Act. Accordingly, the Commission declines to do so. Nor does the Commission find it appropriate, in this rulemaking, to define terms — such as "nationwide" and "compiles and maintains"— that appeared in the FCRA prior to the FACT Act. The definition of nationwide specialty consumer reporting agency is adopted in the final rule as proposed. Final rule § 610.1(b)(10).

Request method. Proposed rule § 610.1(b)(10) defined "request method" as the method by which a consumer chooses to communicate a request for an annual file disclosure. The FACT Act requires nationwide consumer reporting agencies, subject to regulations to be promulgated by the Commission, to establish a centralized source that will permit consumers to make such requests by three specific request methods: Internet website, toll-free telephone number, and mail. The Commission received no comments suggesting changes to this definition, and it is adopted as proposed. Final rule § 610.1(b)(11).

Rule of construction.

Section 610.1(c) of the proposed rule sets out a rule of construction to clarify the effect of the examples used in the proposed rule. Given the complexity of the rule and its potential impact on a variety of entities, the Commission has elected, in some instances, to provide examples of conduct that would, and would not, comply with the proposed rule. This section of the proposed rule provided that these examples are not intended to be exhaustive; they are intended to illustrate how the proposed rule would apply in specific circumstances. Representatives of the nationwide consumer reporting agencies comment that the examples in the proposed rule, coupled with this rule of construction, provide useful guidance for complying with the rule. The Commission received no comments suggesting changes to this provision, and it is adopted as proposed. Final rule § 610.1(c).

Section 610.2(a)—Centralized source for requesting annual file disclosures – purpose

Under § 610.2(a) of the proposed rule, the purpose of the centralized source, consistent with § 211(d) of the FACT Act, was to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under § 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a). Some commenters suggest that the rule should be crafted to fulfill other purposes as well. For example, several consumer comments suggest that the rule require that credit scores be made available to consumers without charge, free file disclosures be made available more than once a year, and all consumer reporting agencies, not just nationwide consumer reporting agencies, be required to participate in the centralized source. These proposals are all inconsistent with the plain language of the FACT Act. Under § 212 of the FACT Act, codified at FCRA § 609(a)(6) and (f), 15 U.S.C. 1681g(a)(6) and (f), information about credit scores must be provided to consumers requesting file disclosures, and the scores themselves, together with additional information about them, must be provided, upon request, for a "fair and reasonable fee." The statute also specifically limits the free annual file disclosure requirement to nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies. Furthermore, it limits the operation of the centralized source to the nationwide consumer reporting agencies. FACT Act § 211(a)(2), codified at FCRA § 612(a)(1), 15 U.S.C. 1681j(a)(1). Accordingly, § 610.2(a) has been adopted as proposed.

Section 610.2(b)—Establishment and operation

Under § 610.2(b) of the proposed rule, the nationwide consumer reporting agencies were required to jointly design, fund, implement, maintain, and operate the centralized source for the purpose stated in § 610.2(a). In addition, the centralized source was required to be designed, funded, implemented, maintained, and operated to meet specific requirements.

Joint establishment and operations.

Representatives of nationwide consumer reporting agencies object to the proposed rule requirement that the centralized source be "jointly" designed, funded, implemented, maintained, and operated. They argue that the FACT Act does not require such joint establishment and operation. The FACT Act, however, does require the Commission to "prescribe regulations applicable to consumer reporting agencies described in section 603(p) [of FCRA], to require the establishment of a centralized source through which consumers may obtain [annual file disclosures]." FACT Act § 211(d)(1). Such a "centralized source" — if it is to function as the Act contemplates — must be a joint effort of the nationwide consumer reporting agencies. Thus, the Commission believes it is appropriate to require that the centralized source be jointly designed, funded, implemented, maintained, and operated by nationwide consumer reporting agencies, and the final rule adopts this provision without modification. Final rule § 610.2(b).

Potential competitive concerns among existing nationwide consumer reporting agencies. CDIA comments that it is unaware of any anticompetitive concerns that are raised by the proposed rule's implementation of the statutory requirement that the nationwide consumer reporting agencies jointly design, fund, implement, maintain, and operate the centralized source through which consumers may request their free file disclosures. The commenter points out that the nationwide consumer reporting agencies have operated the automated dispute resolution system required by FCRA § 611(a)(5)(D) without any competitive problems.

Further, although the final rule, like the proposed rule, requires nationwide consumer reporting agencies, which presumably are competitors, to jointly design, fund, implement, maintain, and operate the centralized source required under the FACT Act, nothing in the rule would permit any activity that is otherwise prohibited by applicable United States antitrust laws. One nationwide consumer reporting agency comments that this analysis interjects uncertainty into the ability of nationwide consumer reporting agencies to comply with existing antitrust law and the FACT Act simultaneously. As a result, the nationwide consumer reporting agencies urge the Commission to make clear that the coordination required by the statute and the rule is not subject to antitrust enforcement as it relates to the operation of the centralized source. As stated above, participation in the centralized source as required by the FACT Act and the final rule is not a violation of U.S. antitrust laws, which allow collaboration as long as it is not anticompetitive. The converse, however, is also true: Neither the FACT Act nor the final rule would permit nationwide consumer reporting agencies to engage in anticompetitive activities that would otherwise violate applicable antitrust laws.

New entrants and barriers to entry. The Commission is aware of three entities that meet the FCRA § 603(p) definition of nationwide consumer

reporting agency.[23] It is possible, however, that additional nationwide consumer reporting agencies may exist, or be created, in the future. Any entity that meets the definition of nationwide consumer reporting agency in FCRA § 603(p), 15 U.S.C. 1681a(p), cannot be excluded by the currently identified nationwide consumer reporting agencies from participating jointly in the centralized source.

One nationwide consumer reporting agency expresses concern that the "joint" establishment requirements might be interpreted to mean that the centralized source should be redesigned and reimplemented each time a new entrant is presented. The Commission agrees that to cause the entire centralized source to be reinvented for a new entrant would be inappropriate. Rather, § 610.2(b) of the rule contemplates that the centralized source would be modified only as necessary to allow consumers to request file disclosures from new entrants with the same ease as they can request file disclosures from existing participants.

Further, representatives of the nationwide consumer reporting agencies comment that the existing nationwide consumer reporting agencies, who will bear the costs of initial development and implementation of the centralized source, should be permitted to require any new entrants to reimburse them for the initial development and implementation costs associated with the centralized source. In contrast, some marketers of credit-related products and services express concern that the existing nationwide consumer reporting agencies will seek to impose unreasonable costs on potential new entrants to the centralized source in order to create an unreasonable barrier to entry. While the rule requires that the centralized source be jointly funded, it does not state how costs are to be shared among the nationwide consumer reporting agencies. In the Commission's view, final rule § 610.2(b), which specifically requires joint funding, would permit both the sharing of ongoing operating costs as well as the reimbursement of design and development costs in an equitable manner. Section 610.2 of the final rule should not be used unreasonably to prevent new entrants from participating in the centralized source.

One nationwide consumer reporting agency urges the Commission to "assume responsibility" for identifying new entrants — i.e., those consumer reporting agencies that meet the definition of nationwide consumer reporting agency, and thus, must participate in the centralized source. This commenter argues that the determination of whether a particular consumer reporting agency is a nationwide consumer reporting agency should not be made by competitors of that agency. The Commission agrees that such a determination should not be made by an entity's competitors. It does not follow, however, that the determination must then be made by the Commission. The determination of whether an entity meets the statutory definition of a nationwide consumer reporting agency–like the determination of whether an entity meets the definition of a consumer reporting agency–is fact specific. Thus, as is true with the determination of whether an entity is a consumer reporting agency, the entity itself must analyze its practices in light of the statute and existing law, and make its own determination.[24]

Joint and several liability. The final rule requirement for joint design, funding, implementation, maintenance, and operation of the centralized source suggests that all nationwide consumer reporting agency participants in the centralized source could be jointly liable for violations of final rule § 610.2. The nationwide consumer reporting agencies and CDIA object to the idea that a nationwide consumer reporting agency could be held jointly and severally liable for violations committed by one or more of the others, over which that entity had no control. The Commission recognizes that any question of individual or joint and several liability would be fact specific. The Commission does not intend to alter existing applicable standards of liability.

Required Request Methods.

As specified under the FACT Act, § 211(d)(3), final rule § 610.2(b)(1), like the proposed rule, requires the centralized source to include a toll-free telephone number, an Internet website, and a mail process for consumers to make requests for annual file disclosures. Comments received relating to this provision of the proposed rule generally note that it is consistent with the mandate of the FACT Act. The Act requires the nationwide consumer reporting agencies to establish a centralized source through which, by means of a single request, consumers may obtain annual file disclosures. As noted in the NPR, the FACT Act requires that consumers be able to request their annual file disclosures through specific request methods, but does not mandate the method by which the nationwide consumer reporting agencies may deliver those file disclosures. 69 FR at 13194.

Some commenters express concern regarding particular aspects of how the request methods might be presented. One nationwide consumer reporting agency commenter urges the Commission to clarify that the FACT Act and the final rule do not require any "live" telephone assistance to consumers requesting file disclosures. The final rule, like the proposed rule, requires nationwide consumer reporting agencies to provide the request methods mandated by the Act, but does not provide detailed specifications on how each request method should be presented. The Commission notes that there is nothing in the FACT Act that would either require or prohibit a completely automated telephone system for accepting file disclosure requests.

Several commenters urge the Commission to specify in the final rule how annual file disclosures may be provided to consumers who request them. One consumer advocacy group supports requiring that all three reports be generated simultaneously, in order to facilitate comparison. Some consumers, on the other hand, urge the Commission to specify that the reports do not have to be provided at the same time, arguing that a consumer may wish to monitor their file disclosures over the course of a year. Because the consumer is entitled to a free file disclosure from each nationwide consumer reporting agency, that consumer may, for example, choose to order only one file disclosure every four months. The Commission believes that the divergence of opinion on this point illustrates the need for flexibility. Because neither the FACT Act, nor the final rule, specifies that all annual file disclosures must be delivered simultaneously, consumers benefit from having a choice of when they would prefer to request any, or all, of the available annual file disclosures.

One state official argues that the final rule must specify by what means annual file disclosures may be provided. The commenter argues that, without specificity in the final rule, nationwide consumer reporting agencies might limit the available methods of delivery in such a way as to effectively thwart certain consumers from obtaining annual file disclosures. Representatives

[23] These entities are Equifax Information Services LLC, Experian Information Solutions, Inc., and Trans Union LLC.

[24] Some commenters offer a similar argument in relation to the determination of what entities are nationwide specialty consumer reporting agencies. These commenters suggest that the Commission publish a list of such entities. For the reasons explained here, the Commission does not believe such a list would be appropriate.

of the nationwide consumer reporting agencies, on the other hand, argue that the proposed rule improperly allows consumers alone to select the delivery channel for annual file disclosures.

FCRA § 610(b), 15 U.S.C. 1681h(b), specifies that disclosures may be made in such form as may be specified by the consumer and available from the agency. Thus, the proposed rule allowed nationwide consumer reporting agencies flexibility in determining what methods of annual file disclosure delivery to make available generally to consumers. Similarly the final rule neither prohibits nor requires any particular method of delivery for annual file disclosures. The Commission notes that the FCRA, notwithstanding the FACT Act amendments, already specifies, in some detail, how file disclosures may be delivered to consumers.[25] See FCRA § 610(a)–(b), 15 U.S.C. 1681h(a)–(b). Because the delivery of file disclosures to consumers is already delineated in the FCRA, the final rule neither adds to nor subtracts from those pre-existing provisions of law.[26]

Adequate capacity.

Under § 610.2(b)(2)(i) of the proposed rule, the centralized source was required to have adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method. The reasonably anticipated volume was required to be determined in compliance with § 610.2(c), discussed infra. Under the FACT Act, nationwide consumer reporting agencies must fulfill consumers' requests for free annual disclosures "only if the request from the consumer is made using the centralized source established for such purpose." FACT Act § 211(a)(2), codified at FCRA § 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B). In recognition of the importance of a centralized source with adequate capacity to ensure the ability of consumers to obtain annual file disclosures, the final rule adopts § 610.2(b)(2)(i) as proposed, and thus requires that the centralized source be designed, funded, implemented, maintained, and operated in a manner that has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source. Final rule § 610.2(b)(2)(i).

It is important to note that, under the final rule, nationwide consumer reporting agencies are required to anticipate the number of consumers who will contact the centralized source. Because nationwide consumer reporting agencies must meet this requirement during the transition periods defined by the final rule under § 610.2(i), this language is intended to include consumers who contact the centralized source at a time when it is not yet available in their state. In the Commission's view, the nationwide consumer reporting agencies may employ technological or other means (such as blocking non-eligible area codes during the transition) to prevent consumers from mistakenly contacting the centralized source during the transition at a time when they are not eligible to receive an annual file disclosure.

The Commission received few comments on this provision itself.[27] CDIA comments that "it is entirely appropriate to require that the nationwide consumer reporting agencies build and maintain each individual request method of the centralized source to anticipate consumer's request volume when there is data upon which to estimate demand."[28] The Commission agrees, and § 610.2(b)(2)(i) is adopted as proposed.

Collection of information and identification of consumers.

The proposed rule, in § 610.2(b)(2)(ii), required that the nationwide consumer reporting agencies collect only as much information from a consumer through the centralized source as is reasonably necessary in order to properly identify the consumer and to process the transaction(s) requested by the consumer. The final rule retains this requirement, with some modification. See final rule § 610.2(b)(2)(ii).

Personally identifiable information. One nationwide consumer reporting agency comments that the proposed rule limitation on the collection of "information" may prohibit the nationwide consumer reporting agencies from collecting useful anonymous data through the centralized source. This commenter explains that such anonymous data would be useful for system maintenance and in detecting activities that would harm the centralized source, such as fraud.

The purpose of this provision of the rule is to ensure that the centralized source will be easy for consumers to use, while allowing the nationwide consumer reporting agencies to properly identify consumers who request their file disclosures through the centralized source, in compliance with FCRA § 610(a)(1), 15 U.S.C. 1681h(a)(1). The Commission is concerned that a centralized source that collects too much personal information may discourage some consumers from requesting their annual file disclosures. The Commission also recognizes, however, the need for collection of anonymous data for purposes such as system maintenance, service improvement, or fraud prevention.[29] Accordingly, the Commission has modified the § 610.2(b)(2)(ii) requirement to limit the collection of personally identifiable information — rather than all information — to that which is reasonably necessary to properly identify the consumer and process the transaction(s) requested by that consumer. Accordingly, final rule § 610.2(b)(2)(ii) would not prevent nationwide consumer reporting agencies from collecting anonymous information.

Social Security number. Some consumers suggest that the final rule should specify that consumers are not required to provide their Social Security numbers when requesting their free file disclosures through the centralized source. These commenters contend that, in order to prevent identity theft, consumers have been repeatedly instructed by consumer advocates and government not to provide their Social Security numbers to anyone, and that some consumers do not have Social Security numbers. Therefore, they assert, the availability of annual file

[25] FCRA § 610(a)(2), 15 U.S.C. 1681h(a)(2), requires that file disclosures be made in writing, except as provided in subsection (b). Section 610(b), 15 U.S.C. 1681h(b), in turn, provides that disclosures may be made in forms other than in writing if such disclosures are (1) available from the consumer reporting agency and (2) specified by the consumer. Under § 610(b)(2), 15 U.S.C. 1681h(b)(2), consumers may specify that file disclosures may be made in person (under specified conditions), by telephone (upon written request), by electronic means (if available from the consumer reporting agency) or any other reasonable means that is available from the agency. Thus, under FCRA § 610(b), it is clear that consumers may specify any means of delivery for their file disclosures that are available from the consumer reporting agency.

[26] Similarly, some consumers suggest that the final rule should require that annual file disclosures be delivered within a specified period of time. The Commission notes that the FACT Act itself sets forth the appropriate timing for delivery of annual file disclosures. Under FACT Act § 211(a)(2), codified at FCRA § 612(a)(2), 15 U.S.C. 1681j(a)(2), "a consumer reporting agency shall provide [an annual file disclosure] not later than 15 days after the date on which the request is received . . .." In light of this clear statutory mandate, the final rule does not further specify the timing for delivery of annual file disclosures.

[27] The Commission did, however, receive numerous comments on its companion provision, § 610.2(c), which requires reasonable procedures to anticipate and respond to the volume of consumer requests. See discussion under § 610.2(c) of this notice, infra.

[28] Comment, CDIA #000018

[29] For example, the nationwide consumer reporting agencies may want to collect information and statistics on the number of consumers that use the centralized source website and toll-free telephone number, so they can efficiently allocate resources.

disclosures should not be conditioned on providing a Social Security number.

The final rule does not specifically require or prohibit the collection of Social Security numbers through the centralized source. Section 610.2(b)(2)(ii) is intended to provide a standard for information collection that is sufficiently flexible to accommodate the proper identification of consumers requesting free annual file disclosures by all nationwide consumer reporting agencies. The collection of this information is limited to that which is "reasonably necessary" to achieve proper identification of the consumer. The Commission believes that a consumer's Social Security number may be "reasonably necessary" to properly identify the consumer, given the requirements of the nationwide consumer reporting agencies' current systems. Therefore, the rule does not prohibit the collection of that information. If, however, at some future time, due to changes in technology or in the consumer data industry, a Social Security number is not "reasonably necessary" for proper identification, then the collection of that information would be prohibited by final rule § 610.2(b)(2)(ii).

Separate authentication. Representatives of the nationwide consumer reporting agencies comment on the need for each agency to conduct separate authentication processes for each consumer requesting a free annual file disclosure through the centralized source. As noted in the NPR, proposed rule § 610.2(b)(2)(ii) was intended to afford each nationwide consumer reporting agency the flexibility to implement its own identification procedures for consumers who request file disclosures through the centralized source, in order to allow proper identification of consumers and to protect against fraud. File disclosures contain a great deal of very sensitive information. If misdirected to, or fraudulently obtained by, someone other than the consumer to whom it relates, a file disclosure would provide the ideal means for identity theft and other fraudulent activity. In addition, the nationwide consumer reporting agencies each maintain slightly different information in their consumer files, making it difficult to devise a common identification scheme. Moreover, a flexible approach allows the nationwide consumer reporting agencies to adjust to changing threats and patterns of fraudulent activity over time. Accordingly, like the proposed rule, the final rule does not prohibit the use of separate authentication processes by each nationwide consumer reporting agency for consumers requesting free annual file disclosures through the centralized source.

Reasonably necessary. One nationwide consumer reporting agency suggests that the final rule alter the limitation on information collection. This commenter expresses concern that the "reasonably necessary" standard creates uncertainty and would, therefore, increase the risk of litigation.[30] The commenter also states that this risk of liability would create incentive for a nationwide consumer reporting agency to collect only the minimum necessary amount of information in order to identify consumers, thus creating increased risk of identity theft or fraud.

As noted above, the Commission intends for the final rule to strike a balance between ease of use of the centralized source and maintaining adequate identification and authentication procedures to protect against fraud and identity theft. In part, the purpose of the "reasonably necessary" standard is to allow for advances in technology or other developments that improve proper identification and authentication. The Commission believes that creating a flexible standard that can adapt over time is the most effective way of ensuring that proper procedures are implemented. Accordingly, nationwide consumer reporting agencies are required to limit the collection of personally identifiable information through the centralized source to that which is "reasonably necessary."

Potential for fraud. In promulgating the proposed rule, the Commission posed a question as to whether and how the rule should address the potential for fraudulent websites, telephone numbers, or other ploys that might mimic the centralized source in order to gain access to personally identifiable consumer information for illegal purposes. In addition, the Commission asked whether the rule should require the nationwide consumer reporting agencies to employ measures to reassure consumers that they are contacting the legitimate centralized source.

Two of the nationwide consumer reporting agencies and CDIA responded to these questions by stating that the primary mechanism for preventing such fraudulent ploys is FTC enforcement action. These comments further assert that no specific preventive measures should be required of the nationwide consumer reporting agencies. One nationwide consumer reporting agency suggests that the nationwide consumer reporting agencies and the Commission engage in future discussions regarding effective measures to reassure consumers that they are contacting the centralized source.

At this time, the Commission has not identified any specific appropriate measures that, if incorporated into the centralized source, would sufficiently address fraudulent spoofing or mimicking of the centralized source. It welcomes further dialogue with the nationwide consumer reporting agencies regarding this important topic of fraud prevention. The Commission may also address these issues through consumer education, and, if appropriate, enforcement actions pursuant to the FTC Act, 15 U.S.C. 45(a). As a further aid to wary consumers, the Commission urges the nationwide consumer reporting agencies to make it easy for consumers to navigate from the nationwide consumer reporting agencies' individual homepages to the centralized source website. In addition, to assist consumers in identifying the centralized source, the final rule requires the nationwide consumer reporting agencies to include a statement indicating that the consumer has reached the website or telephone number "operated by the national credit reporting agencies for ordering free annual credit reports, as required by

[30] Throughout their comments, CDIA and the nationwide consumer reporting agencies repeatedly object to the use of "reasonable" standards in the proposed rule–such as may be found in proposed rule §§ 610.2(b)(2)(i) ("reasonably anticipated volume"); 610.2(b)(2(ii) (collect only as much information as is "reasonably necessary"); 610.2(b)(2)(iv)(B) (provide information that consumers might "reasonably need"); 610.2(c) (implement "reasonable procedures"); 610.2(c)(2)(i)(B) (time when centralized source may be "reasonably anticipated" to be able to accept requests); and 610.2(c)(2)(i)(C) (take all "reasonable steps" and defer requests until a "reasonable later time"). In general, the stated objection to such provisions is that the use of a "reasonable" standard is inappropriately vague, creates uncertainty and increases the risk of private litigation. The Commission notes, however, that, since its inception more than 30 years ago, the provisions of the FCRA itself have been based upon the concept of "reasonableness." Indeed, Congress declared that the very purpose of the FCRA is "to require that consumer reporting agencies adopt reasonable procedures." FCRA § 602(b), 15 U.S.C. 1681(b). Further, FCRA § 607(b) requires all consumer reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" in consumer reports. 15 U.S.C. 1681e(b). Far from abandoning this approach, the FCRA, as amended by the FACT Act, uses the words "reasonable" or "reasonably" more than 70 times. Further, the "reasonable" standard is particularly appropriate when technology and the industry are continually changing. A more prescriptive standard might provide certainty today, but it would likely be overtaken and rendered anachronistic by advances in technology within a very short time. Accordingly, the Commission believes use of a "reasonable" standard in the final rule is appropriate and consistent with the regulatory scheme long established by the FCRA.

federal law." Final rule §610.2 (b)(2)(iv)(D).

Information on alternate request methods.

To ensure that consumers can access the centralized source request method of their choice, proposed rule § 610.2(b)(2)(iii) required the centralized source toll-free number and Internet website to provide information regarding how to make a request for annual file disclosures through all available request methods. The Commission received no comments relating to this provision and adopts the provision as set forth in the proposed rule. Final rule § 610.2(b)(2)(iii).

Clear and easily understandable instructions.

Under proposed rule § 610.2(b)(2)(iv), the centralized source was required to provide clear and easily understandable information and instructions to consumers. This provision required the nationwide consumer reporting agencies to communicate to consumers, through the centralized source, information and instructions that may be needed by a consumer to request a free annual file disclosure. Under the proposed rule, such communications include informing consumers of the progress of their request for a file disclosure while they are in the process of making the request. Proposed rule § 610.2(b)(2)(iv)(A). For a website request method, the proposed rule also required the centralized source to provide access to a "help" or "frequently asked questions" screen. Proposed rule § 610.2(b)(2)(iv)(B). Finally, in the event that a consumer cannot be properly identified through the centralized source, the proposed rule required the nationwide consumer reporting agencies to notify the consumer of that fact, and to provide instructions on how to complete the request. Proposed rule § 610.2(b)(2)(iv)(C).

As stated in the NPR, the intent of these rule provisions was to ensure that centralized source materials are provided to consumers in plain language and that the centralized source is easy for consumers to use. A nationwide consumer reporting agency argues that the phrase "clear and easily understandable" is overly broad and subject to troubling interpretation. This commenter suggests that the Commission provide model language that could be used to give consumers the instructions and information required by the rule. Similarly, some consumer commenters suggest that the final rule should require that centralized source instructions be written at a 12-year old reading level. Since the instructions and information to be provided will be determined in substantial part by the format and structure of the yet-to-be-created centralized source, the Commission has decided not to include such model "information and instructions" in the final rule. The Commission also declines to require that centralized source materials be written to a specific reading level, but notes that evaluation of centralized source communications by consumer communication experts, and consumer testing, may be instructive in determining whether centralized source materials are "clear and easily understandable."

Many consumer advocacy groups and a state official suggest that the centralized source be required to provide instructions in languages, other than English, that are spoken by a substantial number of consumers in the United States. These commenters point to the fact that a significant portion of the United States population communicates primarily in languages other than English. Having carefully considered these comments, the Commission has determined not to require instructions in other languages. The Commission believes that requiring multi-language translations of centralized source materials, including the centralized source website itself, would impose significant additional burden on the nationwide consumer reporting agencies at a time when they will already be responding to the multiple and varied new obligations that the FACT Act imposes upon them. Accordingly, the Commission declines, at this time, to require multi-language centralized source information and instructions. The Commission, however, intends to provide education and outreach to consumers concerning the final rule in Spanish[31] — the language most commonly mentioned by commenters on this issue — and encourages other stakeholders in the centralized source, including the nationwide consumer reporting agencies, to do the same.

Consumer advocacy groups recommend that the centralized source be required to provide additional information, including a statement of the consumer's right to obtain a credit score, a disclosure of the other circumstances under which a consumer is entitled to a free report (e.g., when a consumer is a victim of identity theft, unemployed, or a welfare recipient), and information about nationwide speciality consumer reporting agencies. The Commission does not adopt these recommendations, primarily because requirements to provide such additional information appear elsewhere in the FCRA.[32] Similarly, requirements relating to nationwide speciality consumer reporting agencies are contained in final rule § 610.3. The Commission believes the dissemination of information required under these statutory and rule provisions is sufficient to inform consumers.

A nationwide consumer reporting agency recommends that the requirement of proposed rule § 610.2(b)(2)(iv)(A) that the centralized source provide "information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure" be limited to requests made using the Internet website. This commenter argues that this requirement will cause confusion in the telephone request context. The Commission has decided not to adopt this recommendation because it finds such information to be useful in the context of a telephone request. The purpose of having the centralized source provide such information is to ensure that consumers do not mistakenly discontinue the order process without finishing their request. The centralized source could comply with this requirement in the telephone context, for example, by instructing consumers to "please hold while we find your record."

A nationwide consumer reporting agency recommends that the requirement of proposed rule § 610.2(b)(2)(iv)(A) be modified to state that it is not intended to allow a consumer to return to the centralized source to check the "status" of a request for an annual file disclosure already made, but rather is intended to keep the consumer informed as the request is

[31] The Commission has been active in both consumer outreach and enforcement initiatives relevant to Spanish-speaking consumers. See, e.g., www.ftc.gov/opa/2004/04/hispanicsweep2.htm. To date, the Commission has translated nearly 70 consumer publications into Spanish and posted them to the FTC's En Espanol Web site at www.ftc.gov/spanish.

[32] Section 609(d) of the FCRA as amended by the FACT Act, 15 U.S.C. 1681g(d), requires the Commission in consultation with other agencies to prepare and make available a summary of the rights of identity theft victims. Section 609(c) of the FCRA as amended by the FACT Act, 15 U.S.C. 1681g(c), requires the Commission to prepare and make available a Summary of Rights to Obtain and Dispute Information in Consumer Reports and to Obtain Credit Scores, which summary is required to be included with each written disclosure provided to the consumer by a consumer reporting agency, including free annual file disclosures. Pursuant to § 609(a)(6) of the FCRA, 15 U.S.C. 1681g(a)(6), as amended by § 212 of the FACT Act, consumers who request a file disclosure but not the credit score must be informed of the right to request and obtain a credit score.

being made. The language of the rule provision itself is clear on this point: it requires information on the progress of the request "while the consumer is engaged in the process of requesting a file disclosure." This provision is intended only to require the centralized source to communicate with the consumer while the consumer is in the process of providing information to make the request. Once all the requisite information is provided, there is no further obligation for the centralized source to "update" consumers on the status of the processing of their request. The Commission has determined that the rule provision is clear as stated, and accordingly, adopts it as proposed. Final rule § 610.2(b)(2)(iv)(A).

The Commission received no comments regarding the language of proposed rule §§ 610.2(b)(2)(iv)(B) and (C). The Commission adopts § 610.2(b)(2)(iv)(A)–(C) as set forth in the proposed rule.

Make standardized form available. Proposed rule § 610.2(b)(3) required that the centralized source make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies. The Commission has adopted a model form which may be used to comply with this section. See final rule § 698, App. D. and the discussion of that section in this notice, infra. The Commission did not receive comment on § 610.2(b)(3), and it is adopted as proposed.[33]

Section 610.2(c)—Requirement to anticipate

Proposed rule § 610.2(c) required nationwide consumer reporting agencies to implement reasonable procedures to anticipate and respond to the volume of consumers who will contact the centralized source through each request method. This requirement included developing and implementing contingency plans to address circumstances that may materially and adversely impact the centralized source. These contingency plans were to include measures to minimize the impact of such circumstances.

Implement reasonable procedures to anticipate and respond to volume.

General requirement. CDIA and the nationwide consumer reporting agencies object to the proposed rule requirement that nationwide consumer reporting agencies "implement reasonable procedures to anticipate, and respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure." Proposed rule § 610.2(c). These commenters argue that this requirement will put them in the untenable position of defending their "guesses" regarding the required capacity, against the perfect hindsight of consumer litigants and the Commission.

This is not the case. Proposed rule §610.2(c) required only that the nationwide consumer reporting agencies develop and implement reasonable procedures to anticipate volume. It did not require the nationwide consumer reporting agencies to anticipate volume perfectly. The nationwide consumer reporting agencies have considerable experience in anticipating the likely volume of consumer contacts. For example, in the last five years, they have developed and implemented procedures to anticipate the volume of consumer calls to their toll-free dispute telephone numbers to facilitate their compliance with FCRA requirements.[34] Also, the nationwide consumer reporting agencies have had to anticipate consumer request volume for free disclosures in those states where, under state law, consumers have previously been granted the right to obtain them. The Commission believes it is critical to meeting the objectives of the centralized source that the nationwide consumer reporting agencies implement reasonable procedures to anticipate and respond to consumer contact volume. The Commission believes this standard is both feasible and appropriate.

Set point for initial capacity. Proposed rule § 610.2(c) required the nationwide consumer reporting agencies to implement reasonable procedures to anticipate and respond to the volume of consumer contacts, both during and after the transition period for the centralized source. CDIA and the nationwide consumer reporting agencies argue that the absence of any actual volume data for centralized source operations makes this requirement impossible to meet during the first two years of implementation of the centralized source. These commenters claim that the Commission itself has declared initial request volume impossible to estimate,[35] and, in the absence of any reliable historical data, the nationwide consumer reporting agencies should not be required to anticipate and respond to the "unknowable" volume of consumer contacts.[36]

CDIA and the nationwide consumer reporting agencies suggest that the Commission should designate the starting capacity for the centralized source in the rule itself. Further, they argue that the starting capacity set point should constitute a safe harbor from all liability under the rule for the first two years of operations of the centralized source. In other words, they contend that the Commission should designate the starting capacity, and the nationwide consumer reporting agencies should not be required to exceed that capacity until December 2006.

For a number of reasons, the Commission does not believe such a rule provision would be appropriate, and thus has declined to adopt this suggestion. As noted above, the Commission believes that the § 610.2(c) requirement to implement reasonable procedures to anticipate and respond to capacity is both feasible and appropriate. In the NPR, the Commission explained how such reasonable procedures might be implemented, for example, by conducting a sample analysis of the only probative data available at that time. Thus, the Commission noted that,

"Although the precise demand for consumer free annual file disclosures on a nationwide basis is largely unknown, there is some available information that appears to be instructive in anticipating request volume when the rule becomes effective. For example, according to a Congressional Research Service Report to Congress, the consumer request rate for file disclosures in states where free annual disclosures are not currently available is 0.5% to 2%. In those states where consumers are, by state law, already guaranteed the right to a free annual disclosure, the request rate ranges from 3.5% to 10%. This represents an average disclosure rate that is 231% [of] the request rate in

[33] The Commission did, however, receive comments on the content of the model standardized form contained in the proposed rule. These comments, and the final rule modifications to the model form, are discussed under the section of this notice entitled "Part 698 Appendix D," infra.

[34] See, U.S. v. Equifax Credit Information Services, Inc., 1:00–CV–0087 (N.D. GA 2000), http://www.ftc.gov/os/2000/01/equifaxconsent.htm, U.S. v. Experian Information Solutions, Inc., 3–00CV0056–L (N.D. TX 2000), http://www.ftc.gov/os/2000/01/experianconsent.htm, U.S. v. Trans Union LLC, Civil Action No. 00C0235 (N.D. IL 2000), http://www.ftc.gov/os/2000/01/transunionconsent.htm.

[35] Comment, CDIA #000018. While the Commission acknowledged in the NPR that accurately anticipating the initial volume for the centralized source would be difficult, it did not state, and does not believe, that it is "impossible." See 69 FR at 13198. This is especially true because the proposed and final rules require only reasonable procedures to anticipate volume.

[36] See, e.g., Comment, Experian Information Solutions, Inc. #000040.

other states.[37] Based upon these statistics alone, and taking into account also the publicity likely to be generated by the promulgation of the final rule, it would be reasonable to anticipate that the number of requests for annual file disclosures will be 300% of the current disclosure rate, absent any unanticipated intervening factors." 69 FR at 13198. Based upon the comments and the information available to date, the Commission continues to believe that 300% of the current rate of file disclosures is a reasonable estimation of needed initial capacity for the centralized source.

Further, the Commission believes that the comments of CDIA and the nationwide consumer reporting agencies themselves demonstrate that it is possible to implement reasonable procedures to anticipate and respond to the volume of consumers who will contact, or attempt to contact, the centralized source.[38] The nationwide consumer reporting agencies, not the Commission, are in the best position to anticipate likely demand for annual file disclosures, particularly as the initial implementation of the centralized source begins to provide additional data on the likely level of demand. The rule is designed and intended to require only that the nationwide consumer reporting agencies develop a reasonable initial estimate of adequate capacity, and then reasonably expand capacity if those estimates prove too low. Further, the nationwide consumer reporting agencies have decades of experience in dealing with consumer requests and disputes relating to consumer reports. In the Commission's view, it would not be appropriate to substitute its estimation of consumer demand for free annual file disclosures for that of the seasoned business judgment of organizations that have superior access to existing relevant information and experience in the industry.

Similarly, as discussed further under § 610.2(i) of this notice, infra, the Commission does not believe that reasonable estimations can be made only after a full two years of centralized source operations. The final rule does, however, provide the nationwide consumer reporting agencies with a reliable safe harbor structure, based upon request volume, that applies both during and after the centralized source transition period. See discussion under §§ 610.2(e) and 610.2(i)(2)–(3), infra.

Developing and implementing contingency plans.

As part of its requirement for reasonable procedures to anticipate and respond to consumer request volume, proposed rule § 610.2(c) required the nationwide consumer reporting agencies to develop and implement contingency plans to address circumstances that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source. Examples of the types of circumstances for which the nationwide consumer reporting agencies were required to develop contingency plans included natural disasters, telecommunications interruptions, equipment malfunctions, labor shortages, computer viruses, coordinated hacker attacks, and seasonal or other fluctuations in consumer request volume.

CDIA, the nationwide consumer reporting agencies, and some members of Congress comment that these provisions of the proposed rule "essentially require[d] the nationwide consumer reporting agencies to anticipate the unpredictable"[39] and "perform despite those disasters."[40] These commenters suggest that the proposed rule imposed liability upon the nationwide consumer reporting agencies even if they were unable to accept or respond to consumer requests due to some unpredictable and materially adverse event. These commenters go on to posit that it would be more appropriate for the final rule to relieve the nationwide consumer reporting agencies of liability in the event of such circumstances than to impose a requirement to reasonably anticipate and respond to events that may be completely outside their control.

The proposed rule was not intended to suggest that nationwide consumer reporting agencies should be required to process requests for annual file disclosures despite any and all unpredictable and uncontrollable events that may hamper their performance. Rather, proposed rule § 610.2(c) was intended to require only that the nationwide consumer reporting agencies consider the types of material and adverse events that are reasonably likely to occur, and develop reasonable plans to address such events in ways that will minimize impact on the centralized source. Further, the Commission did not intend that this provision should be interpreted to require nationwide consumer reporting agencies to develop precise and unique plans for every particular event listed in the proposed rule or otherwise anticipated. Rather, the intent of this provision was to require that generally appropriate plans be developed and implemented, based upon the types of interruption such events may bring. Accordingly, final rule § 610.2(c) has been modified to clarify this intent, and references to specific types of events have been removed.

As clarified, the Commission believes the requirement for nationwide consumer reporting agencies to develop and implement contingency plans for material and adverse circumstances that are reasonably likely to occur is appropriate. The Commission notes that it is common practice in many industries to develop contingency and recovery plans for events that are not completely predictable but likely enough that contingency plans are appropriate. For example, it is not possible to predict exactly where and when a hurricane may strike. The final rule would not require nationwide consumer reporting agencies to have hurricane contingency plans regardless of where centralized source operations are located. If, however, centralized source operation centers are located in Miami, Florida, it would be reasonably likely—based upon historical weather patterns for that region— that a hurricane may occur that would materially and adversely impact those operations. In such a case, the final rule

[37] Loretta Nott and Angie Welborn, "A Consumer's Access to Free Credit Report: A Legal and Economic Analysis," Congressional Research Service, Library of Congress, July 21, 2003, p. 11.

[38] Trans Union declares that "we believe that there is sufficient data regarding experience with state free file disclosure requirements that would enable the Commission to develop a clear and reasonable standard for central source capacity at its inception." Comment, Trans Union #000035. CDIA states that it "believes the initial capacity should be based on experiential data." Comment, CDIA #000018. CDIA goes on to explain:"CDIA believes that the consumer request volume will be the highest in the first year that the centralized source is in operation. . . . As discussed above, . . . data indicates that consumer requests for all their file disclosures will be based on 231% of the current total number of requests for file disclosures received by the nationwide consumer reporting agencies in states that do not currently require free file disclosures. Thus, the approximate percentage-attributable to the new federal free file disclosure right should be 131% of the current file disclosure request rate in those states. The total volume based upon those percentages should be adjusted to reflect the fact that 43 of the 51 jurisdictions do not currently require free file disclosures. The initial capacity of the centralized source and of each nationwide consumer reporting agency should be determined by applying the appropriate formula (i.e., based upon 231% or 131%) to the daily average of all consumer requests for file disclosures received by the nationwide consumer reporting agencies . . . ." These comments demonstrate that it is possible to examine existing data, draw conclusions based upon that examination, and develop reasonable procedures based upon those conclusions.

[39] Comment, CDIA #000018.

[40] Comment, Equifax Information Services, LLC #000028. See also, Comment, Experian Information Solutions, Inc. #000040; Comment, U.S. House of Representatives Committee on Financial Services #000136; and Comment, U.S. Senate #000137.

would require the nationwide consumer reporting agencies to develop and implement contingency plans to minimize the impact of such events, to the extent reasonably practicable under the circumstances.

The Commission also recognizes that some events may be predictable, but are so devastating that there are no reasonable measures that can be implemented to minimize impact. Thus, the Commission intends that the required contingency plans be tempered by two factors: the likelihood of a material and adverse event occurring, and the extent to which particular measures to minimize impact are reasonable under the circumstances. For example, even though a hurricane that will materially and adversely impact the centralized source operations in Miami, Florida may be reasonably likely to occur, the contingency plan for such an event need not include measures to minimize the impact of the complete destruction of the centralized source operations by a hurricane. Even if hurricanes of such destructive magnitude may have occurred in the region previously, there are no reasonable measures that could be undertaken to minimize the impact of such a devastating event.

As revised, § 610.2(c) is intended to reflect what would be sound business planning in nearly any industry. Indeed, in the Commission's view, the nationwide consumer reporting agencies may comply with the requirement to develop and implement contingency plans under final rule § 610.2(c) by implementing the same contingency procedures for centralized source operations that they maintain and implement for their for-profit enterprises.

Specific measures to minimize impact.

Under the proposed rule the contingency plans required by paragraph (c) were to include specific reasonable measures to minimize the impact of material and adverse circumstances on the operation of the centralized source. These measures included, but were not necessarily limited to: (1) providing information to consumers on how to use another available request method; (2) communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and (3) taking all reasonable steps to restore the centralized source to normal operating status as quickly as possible. Measures to minimize impact also included, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the nationwide consumer reporting agency clearly and prominently informs the consumer when it will accept the request for processing. Proposed rule § 610.2(c)(2).

Industry commenters on this provision generally believe the list of measures to minimize impact to be sufficiently inclusive and the measures appropriate. CDIA and one nationwide consumer reporting agency comment, however, that, as proposed, this section required some measures to be performed "to the extent possible." These commenters argue that a standard of what is "possible" is too broad and subjective to be truly meaningful. To address these concerns, the final rule provides that these measures should be undertaken "to the extent reasonably practicable under the circumstances." Final rule § 610.2(c)(1).

Centralized source maintenance.

One nationwide consumer reporting agency comments that temporary outages may result from the need to perform maintenance on the centralized source Internet website or telephone lines. The commenter requests that the final rule clarify that such outages are not violations of the rule. The Commission acknowledges that particular request methods may be unavailable for reasonable periods of time due to the need for maintenance. Accordingly, final rule § 610.2(c)(2) provides that nationwide consumer reporting agencies shall not be in violation of the final rule's adequate capacity requirement if a centralized source request method is unavailable for a reasonable period of time for purposes of maintenance. This provision requires, however, that only one request method be unavailable for such maintenance at any given time.

In light of the foregoing discussion, the Commission adopts proposed rule § 610.2(c) with some modifications. As explained above, the final rule requires nationwide consumer reporting agencies to develop and implement contingency plans for material and adverse events that are reasonably likely to occur. These contingency plans must contain measures to minimize impact "to the extent reasonably practicable under the circumstances." Further, the final rule includes a new subparagraph (3) to clarify that the nationwide consumer reporting agencies are not in violation of the rule if a centralized source request method is temporarily unavailable for maintenance. Final rule §§ 610.2(c)(1) and (2). The Commission believes that final rule § 610.2 (c) appropriately balances the considerations of minimizing potential disruptions of the centralized source, and providing nationwide consumer reporting agencies with both flexibility and sufficient guidance in their compliance obligations.

Section 610.2(d)—Disclosure of all files

The proposed rule, in § 610.2(d), required a nationwide consumer reporting agency to provide an annual file disclosure to any consumer who requests one if the consumer reporting agency has the ability to provide a consumer report to a third party relating to that consumer. As noted in the NPR, this provision was intended to ensure that every consumer can obtain annual file disclosures through the centralized source from each of the nationwide consumer reporting agency systems, regardless of whether the information in that consumer's file is owned by the nationwide consumer reporting agency or an associated consumer reporting agency. See 69 FR at 13197.

Files Owned by Associated Consumer Reporting Agencies.

As noted in the discussion of the definition of associated consumer reporting agency, supra, some nationwide consumer reporting agencies house within their systems data owned by one or more associated consumer reporting agencies. By virtue of such relationships with associated consumer reporting agencies, a nationwide consumer reporting agency, which does not itself own consumer files in a localized area or region of the country, is able to provide consumer reports on consumers residing in that area or region to its customers. On that basis, the proposed rule required nationwide consumer reporting agencies to provide free annual file disclosures to any consumer for whom they could sell a consumer report, even if they did not "own" that particular consumer's file.

Representatives of the nationwide consumer reporting agencies raise many objections to this requirement. They comment that requiring them to disclose files owned by another consumer reporting agency is contrary to the intent of Congress, and outside the scope of the FACT Act. These commenters assert that although, absent such a requirement, not all consumers would be able to obtain annual file disclosures from each of the three identified nationwide consumer reporting agencies through the centralized source, this is a "problem,"

in their view, based in the FACT Act itself, and the Commission should not attempt to fix it.

As stated in the NPR, the Commission believes that the legislative history indicates Congressional intent that all consumers be able to obtain free annual file disclosures from each of the three known nationwide consumer reporting agencies.[41] The Commission does not believe that it was the intent of Congress to create pockets of the country in which consumers could obtain only one or two annual file disclosures through the centralized source. Further, the language of the FACT Act places the responsibility for providing annual file disclosures solely on the nationwide consumer reporting agencies. The Commission believes, therefore, that the intent of Congress and the mandate of the FACT Act are best realized by requiring the nationwide consumer reporting agencies to disclose to consumers all files in their possession that they can provide to third parties, including those residing on their systems but owned or maintained by an associated consumer reporting agency. Moreover, the Commission believes it is appropriate that if a nationwide consumer reporting agency has the ability to provide a consumer report on a consumer to a third party, and thereby profit from the sale of that report, that nationwide consumer reporting agency should disclose the file to the consumer.

As an alternative means of providing free annual file disclosures to all consumers, the nationwide consumer reporting agencies suggest that an associated consumer reporting agency should be considered a "consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis," as referred to in § 211(d)(6)(A) of the FACT Act, and that such agencies should be obligated to provide consumers with annual file disclosures through the centralized source. These commenters assert that all associated consumer reporting agencies are substantially nationwide, based upon their relationships with nationwide consumer reporting agencies. The Commission notes that associated consumer reporting agencies are a diverse group of entities, including many that own consumer credit files for only a small geographic area. The Commission believes it is not appropriate to classify all associated consumer reporting agencies, regardless of their size, the scope of their operations, or the number of files they own, as compiling and maintaining files on consumers "on substantially a nationwide basis" based solely on their contractual relationships with nationwide consumer reporting agencies.[42]

The nationwide consumer reporting agencies also assert that this provision is unfair. They argue that the requirement to provide annual file disclosures for files owned by associated consumer reporting agencies gives the associated consumer reporting agencies an overwhelming advantage in any negotiations between the two entities for supplying and paying for the file disclosures. These commenters suggest that the Commission should include in the final rule provisions that would govern the bargaining between these entities–for example, by prohibiting the charging of certain fees by the associated consumer reporting agencies. The nationwide consumer reporting agencies assert that otherwise they will have unequal bargaining power when negotiating contracts with the associated consumer reporting agencies.

The Commission does not believe it is appropriate or necessary to intervene in the contractual relationships between the nationwide consumer reporting agencies and the associated consumer reporting agencies. These relationships have existed for many years, during which the parties have managed to successfully negotiate various kinds of terms and adjust to a wide variety of economic and regulatory changes affecting the industry. The nationwide consumer reporting agencies' assertion that they will have little leverage in these negotiations seems improbable given the reciprocal and symbiotic nature of the relationships between these entities. The parties involved rely on each other to provide products or services of value to their customers. The associated consumer reporting agencies rely on the nationwide consumer reporting agencies to obtain updates for, and to some extent, to sell their consumer reports on a national basis. In return, the nationwide consumer reporting agencies rely on the associated consumer reporting agencies for access to files in parts of the country where the nationwide agency does not own files. It is clearly in the interests of both parties to maintain these relationships, and the Commission does not believe that the final rule will disrupt those interests or be substantially unfair to any of the parties.

In addition, one nationwide consumer reporting agency comments that the proposed rule does not specify that this provision applies only to its own files and those of associated consumer reporting agencies. Therefore, this commenter asserts, the rule provision could also be read to require a nationwide consumer reporting agency to disclose files owned by any other consumer reporting agency, regardless of whether the files were housed in the system of the nationwide consumer reporting agency. In order to clarify that this obligation applies only to files that are either owned by the nationwide consumer reporting agency itself, or housed on that agency's system but owned by an associated consumer reporting agency, the final rule includes modified § 610.2(d) that clarifies the intended limited application of this provision.

Proper Identification of Consumers. One nationwide consumer reporting agency comments that the obligation to provide an annual file disclosure should apply only when the nationwide consumer reporting agency can confirm the requester's identity. The Commission notes that FCRA § 610(a)(1), 15 U.S.C. 1681h(a)(1), requires consumer reporting agencies to obtain proper identification from consumers before providing file disclosures. This statutory provision applies to those disclosures requested through the centralized source. Accordingly, § 610.2(d) of the rule has been modified to clarify that the nationwide consumer reporting agencies are obligated to provide annual file disclosures only upon proper identification in compliance with § 610(a)(1) of the FCRA, and § 610.2(b)(2)(ii) of the final rule.

Section 610.2(e)—High request volume and extraordinary request volume

The Commission recognizes that there may be times when the volume of consumer requests for file disclosures may be higher than anticipated, such as may overwhelm the systems of a nationwide consumer reporting agency or a nationwide specialty consumer reporting agency. As noted in the NPR, the Commission recognizes that, even with careful planning and preparation, it may be difficult for the nationwide consumer reporting agencies to anticipate and respond to consumer request volume under all circumstances. In light of these uncertainties, and in consideration of the possible impact of unexpected and extraordinary demand for annual file disclosures on the ability of the nationwide consumer reporting agencies to produce other file

[41] "The centralized system shall allow consumers to obtain free reports from all three [nationwide consumer reporting] agencies using a single request." S. Rep. No.108–166, at 17 (2003) (emphasis supplied).

[42] See discussion under section IV of this notice, infra.

disclosures and consumer reports, the proposed rule provided some limits on the liability of nationwide consumer reporting agencies during times when request volume significantly exceeds what could reasonably have been anticipated. Proposed rule § 610.2(e).

Members of Congress, industry commenters–including CDIA, nationwide and associated consumer reporting agencies, and several trade organizations–strongly support the concept of liability relief (sometimes called "surge protection") during times of heavy consumer request volume. These comments provide a number of compelling arguments that reasonable surge protection must be a feature of the final rule. They posit that, without such protections, the nationwide consumer reporting agencies could be overwhelmed with unexpected volume and be unable to respond to consumer requests–a situation that would frustrate consumers and thwart the purposes of the FACT Act and the rule. They also contend that maintaining vast amounts of excess capacity for the sole purpose of responding to sporadic surges is wasteful and prohibitively expensive.

In addition, a number of commenters who represent organizations that furnish consumer report information to nationwide consumer reporting agencies comment that large surges in annual file disclosure request volume may have a ripple effect for the whole financial services industry. Even if nationwide consumer reporting agencies could accept and process all of the requests for annual file disclosures during a surge, the corresponding surge in consumers contacting the nationwide and associated consumer reporting agencies and furnishers to dispute information contained in those reports would constitute a significant strain on the financial services industry. These commenters assert that surge protection must be provided to manage the number of requests for annual file disclosures that are accepted by nationwide consumer reporting agencies in the first instance, in part to allow the nationwide and associated consumer reporting agencies and furnishers to manage these "back end" effects.

In response to these comments, the final rule provides two tiers of relief for times when the consumer request volume is higher than the normal fluctuations in demand. In times of "high request volume"— i.e., when volume exceeds 125% of average — nationwide consumer reporting agencies may delay accepting requests for processing until a reasonable later time.[43] Final rule § 610.2(e)(1). In addition, the rule provides a more complete limitation on liability in times of "extraordinary request volume"—i.e. exceeding 175% of the daily average volume– by allowing nationwide consumer reporting agencies to decline requests at such times. The Commission believes the combined structure of high request volume relief and extraordinary request volume relief provides the industry with adequate protection from unexpected, overwhelming request volume.

High and extraordinary request volume thresholds.

Under the proposed rule, extraordinary request volume occurred when the volume of requests exceeded twice the daily average volume. The Commission received comment from consumer advocacy groups expressing concern that the proposed rule definition of "extraordinary request volume" set the bar too low for the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to obtain relief from the rule's requirements. In particular, these commenters are concerned that because extraordinary request volume was defined as only twice the daily average of consumer requests, a single security breach or national media event could produce request volume at the "extraordinary" level, thus allowing nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to stop fulfilling file disclosure requests too frequently. In contrast, representatives of the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies, as well as some members of Congress, express concern that relief that is triggered at twice the daily rolling average is, in fact, no relief at all. These commenters argue that such a standard would require the nationwide consumer reporting agencies to maintain an unrealistic amount of costly, daily excess capacity.[44]

In addition, industry commenters noted that under the proposed rule, nationwide consumer reporting agencies, during the transition period, were permitted to queue requests for file disclosures and delay accepting such requests until a reasonable later time, when "high request volume" occurs. No such relief was provided under the proposed rule for nationwide specialty consumer reporting agencies or for nationwide consumer reporting agencies after the transition period. Compare proposed rule §§ 610.2(i)(3) and 610.3(g). Accordingly, industry commenters urge the Commission to revise the final rule to (1) lower the extraordinary request volume threshold from 200% to 125%, and (2) allow nationwide consumer reporting agencies to delay accepting requests for file disclosures by queuing them at an intermediate threshold of 115%, and to continue to have this option beyond the transition period. Some commenters also ask the Commission to adopt "high request volume" provisions that would apply to nationwide specialty consumer reporting agencies, both during and after the transition period. As noted above, the Commission agrees that the addition of high request volume relief during and after the transition for both nationwide and nationwide specialty consumer reporting agencies is appropriate.

In support of their argument that "high request volume" should be defined as any volume that exceeds 115% of the rolling daily average volume, the nationwide consumer reporting agencies posit that demand for file disclosures is so volatile and difficult to predict that even modest fluctuations beyond the average volume are likely to cause significant difficulty for their operations. The Commission notes that, according to CDIA, "volatility in contact rates usually ranges no higher (or lower) than 20% of the average baseline of contact."[45] The Commission believes that the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies should be prepared to respond to such day-to-day volatility. High request volume and extraordinary request volume provisions, on the other hand, should be available to address volatility that significantly exceeds the norm.

In light of these comments, the final rule provides for "high request volume" relief when the number of consumers requesting or attempting to request file disclosures exceeds 125% of the rolling daily 90-day average volume. The Commission believes requiring the

[43] Except as provided in §§ 610.2(i) and 610.3(g), high request volume occurs when the number of consumers requesting or attempting to request file disclosures during any 24-hour period is more than 125% of the daily rolling 90-day average. Final rule § 610.1(b)(8).

[44] The Commission notes that while the nationwide consumer reporting agency and nationwide specialty consumer reporting agency commenters agree that the extraordinary request volume threshold contained in the proposed rule is too high, they are not similarly uniform in their opinion as to what the appropriate threshold should be. The nationwide consumer reporting agencies, as well as an associated consumer reporting agency, suggest the proper threshold is 125% of average volume. One nationwide specialty consumer reporting agency commenter suggests 110% of average volume.

[45] Comment, CDIA #000018.

nationwide consumer reporting agencies to be prepared to accept 125% of the daily rolling 90-day average of consumer requests is reasonable. As one nationwide consumer reporting agency asserted: "We believe that maintaining a 25% buffer in excess capacity should be reasonably achievable and should be sufficient based on our historical experience with surges in demand for file disclosures."[46]

Further, the Commission notes that the threshold for extraordinary request volume is meant to be truly extraordinary because, at that level, the rule provides complete relief from liability. For as long as that level is maintained, the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies are protected from liability under the rule even if they decline to accept additional consumer requests for file disclosures. See final rule §§ 610.2(e)(2) and 610.3(c)(2). As noted above, the Commission believes the nationwide consumer reporting agencies should be prepared to respond to normal, day-to-day volatility of 25% over average volume. The Commission also believes, however, that a volume that is more than three times that normal variation in demand—i.e. 175% of rolling 90-day daily average—would be "extraordinary," and consequently the level at which extraordinary relief should be provided. Accordingly, the final rule provides that "extraordinary request volume" is volume that exceeds 175% of rolling 90-day daily average volume.

As noted above, some consumer advocacy groups assert that the high and extraordinary request volume threshold should not be set at a level that is likely to be triggered by a single event. The Commission notes, however, that the capacity of the centralized source likely cannot be expanded and contracted immediately in response to sudden, unpredictable events.[47] Accordingly, the final rule provides for high and extraordinary request volume relief at request levels that significantly exceed normal fluctuations in demand, regardless of the particular causes of such fluctuations.

To ensure that the high and extraordinary request volume threshold functions as intended, however, the final rule alters the definition of extraordinary request volume slightly. The Commission notes that, once extraordinary request volume is reached, attempts to make requests for file disclosures may be declined or queued for later processing. See final rule §§ 610.2(e) and 610.3(c). These attempted requests, to the extent that they can be tracked, should be considered part of the consumer request volume. Accordingly, the final rule modifies the proposed rule's definition of "extraordinary request volume" to make clear that the threshold is calculated based upon "the number of consumers requesting, or attempting to request, file disclosures during any 24-hour period." Final rule § 610.1(b)(6).

Under the final rule high and extraordinary request volume are measured on the basis of requests for all types of file disclosures, rather than only requests for annual file disclosures. Although the FACT Act requires the nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies to develop the centralized source and streamlined process described in the final rule for the purpose of receiving requests for annual file disclosures, Congress specifically directed the Commission to consider "the significant demands that may be placed on consumer reporting agencies in providing [annual file disclosures]," and "appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands." FACT Act § 211(d)(2). The significant demands of providing annual file disclosures include demands associated with simultaneously responding to requests for other types of file disclosures, such as free file disclosures resulting from adverse action under FCRA § 612(b), 15 U.S.C. 1681j(b), and free file disclosures provided in response to suspected fraud under FCRA § 612(c)(3), 15 U.S.C. 1681j(c)(3). Further, consumer reporting agencies may face additional significant demands in responding to inquiries, or requests for reinvestigation,[48] generated through each of these types of file disclosures.[49] Delays in this system caused by excess demand may adversely impact consumers with a specific, immediate need for access to their file disclosures and to reinvestigation procedures. Accordingly, it is appropriate to consider the volume of request for all types of file disclosures in determining "extraordinary request volume" for the purpose of limiting liability under the final rule. Final rule § 610.1(b)(6).[50]

In addition, the Commission recognizes that the volume of requests for annual file disclosures will be particularly difficult to predict and volatile during the transition period. Due to such special considerations during the transition period, high and extraordinary request volume is defined differently during that period.[51] See discussion of §§ 610.2(i) and 610.3(g) infra.

High and extraordinary request volume protections.

When high request volume occurs, nationwide consumer reporting agencies may collect consumer request information and delay accepting the request for processing until a reasonable later time. The nationwide consumer reporting agency must, however, clearly and prominently inform the consumer of when the request will be accepted for processing. This provision will provide nationwide consumer reporting agencies with some protection from unexpected surges, and, as one consumer advocacy group points out, it has the benefit of eliminating the need for consumers within the surge to reinitiate contact with the centralized source at a later time in order to obtain an annual file disclosure. In order to take advantage of this high request volume protection, however, the nationwide consumer reporting agency must implement reasonable procedures to anticipate consumer request volume developed in compliance with final rule § 610.2(c).

The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures within 15 days of

[46] Comment, Trans Union #000035.

[47] The commenters who argue that extraordinary request volume relief should not be available at a level likely to be triggered by a single event cite to the possibility of a large-scale security breach or incidence of identity theft. The Commission notes that while the consumers impacted by such events may choose at that point in time to seek their annual file disclosures through the centralized source, that is not the only means by which they might obtain a file disclosure under those circumstances. Under the FCRA, an individual who "has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud" is entitled to a free file disclosure during any 12-month period. FCRA § 612(c)(3), 15 U.S.C. 1681j(c)(3). In addition, a consumer who asserts a good faith suspicion that he or she is or is about to become a victim of fraud or identity theft is entitled to a free file disclosure. FACT Act § 112, codified at FCRA § 605A, 15 U.S.C. 1681c–1. The Commission notes that these free file disclosures are available to consumers in such circumstances, in addition to — not in place of — the annual free file disclosure to be provided through the centralized source. FACT Act § 211(a), codified at FCRA § 612(a), 15 U.S.C. 1681j(a).

[48] See FCRA § 611(a), 15 U.S.C. 1681i(a).

[49] The Commission notes that the FACT Act has expanded consumers' rights to obtain a free file disclosure in a number of ways. See, e.g., FACT Act § 112.

[50] For the same reasons, high request volume also is calculated based upon volume of all types of file disclosures.

[51] The final rule definition of extraordinary request volume found in § 610.1 (b)(6) also makes clear that this definition will prevail, except during the transition periods defined in §§ 610.2 (i) and 610.3 (g). As noted, the term is defined differently in those sections, for the duration of the transition periods described.

when the request is received. By permitting nationwide consumer reporting agencies to queue some requests for annual file disclosures during times of high request volume, the final rule allows the nationwide consumer reporting agencies to postpone receiving those requests — and thereby postpone the running of the 15-day delivery requirement — for a reasonable period of time.[52]

Under final rule § 610.2(e)(2), when extraordinary request volume occurs, nationwide consumer reporting agencies will not be deemed in violation of the rule's requirement for adequate capacity, provided that they implement reasonable procedures to anticipate consumer request volume in compliance with § 610.2(c). This provision is adopted as proposed, with only minor modifications.

In the event of high or extraordinary request volume affecting a particular request method, the final rule requires nationwide consumer reporting agencies to direct consumers to other available request methods to the extent reasonably practicable. Final rule § 610.2(c)(1)(i)(A). Thus, high or extraordinary request volume affecting just one request method would not necessarily lead to a limitation on liability in relation to the operation of the other request methods.

The Commission believes that—taken in combination with the provisions of the FACT Act itself— the high and extraordinary request volume protections will provide appropriate and sufficient relief to the nationwide consumer reporting agencies and other affected businesses during times of unexpected, heavy volume. The 15-day time line for providing reports prescribed under the FACT Act allows considerable flexibility for nationwide consumer reporting agencies to smooth normal fluctuations in demand for "back end" services by managing when the requested annual file disclosures are provided. In times of excess volume, final rule provisions for high and extraordinary request volume allow the nationwide consumer reporting agencies additional flexibility to manage both the acceptance of the requests and timing of the processing of the requests.

Liability limitations contingent upon reasonable procedures.

CDIA and the nationwide consumer reporting agencies also comment that, under the proposed rule, surge protection was contingent upon the nationwide consumer reporting agency having complied with the § 610.2(c) requirement to develop and implement reasonable procedures to anticipate and respond to request volume. These comments assert that the development of contingency plans for material adverse events and relief from the effects of excess consumer request volume must remain distinct. To support this argument, CDIA uses this example:

"[i]t would be possible for the nationwide consumer reporting agencies to adopt reasonable procedures to anticipate consumer request volume, but to have the actual demand exceed their reasonable expectations. Under the proposed rule, these agencies could avail themselves of the extraordinary request volume provisions or high request volume provisions only if the agencies had also developed and implemented contingency plans to address circumstances that would materially and adversely impact the operations, even if none of those circumstances affected the actual volume of requests."[53]

The Commission believes this argument misinterprets the intended application of the rule. The purpose of requiring the nationwide consumer reporting agencies to implement reasonable procedures at all times, including during times of high or extraordinary request volume, is to ensure that the agencies respond, to the extent reasonably practicable under the circumstances, to material and adverse circumstances that impact the centralized source. It would seem of little use to require nationwide consumer reporting agencies to develop and implement reasonable procedures to anticipate and respond to consumer demand if there was no corresponding requirement to implement those procedures when they are most needed. Final rule § 610.2(e) ensures that excessive volume does not excuse the nationwide consumer reporting agencies from their responsibility to implement reasonable procedures to minimize impact on the centralized source, as required under § 610.2(c). Conversely, final rule § 610.2(e) should not be interpreted to deny high and extraordinary request volume protections to a nationwide consumer reporting agency because the agency failed to develop and implement contingency plans for events that are unrelated to the ability of the agency to respond to request volume during the time period at issue.

Ongoing staggering of availability of file disclosures.

The FACT Act § 211(d)(2) directs the Commission to consider "appropriate means to ensure that consumer reporting agencies can satisfactorily meet [the demands of providing annual file disclosures], including the efficacy of a system of staggering the availability to consumers of such [annual file disclosures]." The proposed rule provided for a staggering of availability over a nine-month transition in which regions of the country would successively become eligible every three months. The NPR stated that "there is no basis for concluding ongoing staggering of the availability of annual file disclosures is necessary" and, accordingly, the proposed rule did not provide for such staggering beyond the transition period. 69 FR at 13196.

The nationwide consumer reporting agencies urge the Commission to change this process in two ways: (1) to permit consumers to request file disclosures only during discrete periods of time (e.g., birth month or birth quarter); and (2) to continue this segmentation in perpetuity. One nationwide consumer reporting agency expresses doubt that the Commission has properly considered ongoing, permanent staggering of annual file disclosure availability. This commenter maintains the Commission is "ignor[ing] the plain language of the statute [by] maximizing consumer ease of access at the expense of the staggered availability contemplated by the statute."[54]The commenter suggests that the FACT Act requires the Commission to adopt such staggering if it is found to be effective in ensuring that nationwide consumer reporting agencies can meet their responsibilities.

The Commission has considered the significant demands placed upon the nationwide and nationwide specialty consumer reporting agencies in the process of formulating both the proposed and the final rule. As noted in the NPR, these demands include not only the provision of annual file disclosures to consumers, but also

[52] What constitutes a "reasonable period of time" to postpone accepting requests will likely depend on a number of factors, including the length and magnitude of the surge. For example, if high request volume lasts only one day, it may not be reasonable to postpone accepting the request for annual file disclosures for three weeks. In addition, the rule does not specify how the nationwide consumer reporting agencies should process requests placed in a queue versus new requests after high request volume ceases. The nationwide consumer reporting agencies are in the best position to manage their resources to process these requests. However, because the nationwide consumer reporting agencies may only postpone accepting requests for a "reasonable period of time," they must efficiently process requests placed in a queue, and it would be logical to process requests in a chronological order from the time they were received.

[53] Comment, CDIA #000045.

[54] Comment, Equifax Information Services LLC #000028.

demands associated with simultaneously responding to requests for other types of file disclosures, such as free file disclosures resulting from adverse action under FCRA § 612(b), 15 U.S.C. 1681j(b), and free file disclosures provided in response to suspected fraud under FCRA § 612(c)(3), 15 U.S.C. 1681j(c)(3). Further, consumer reporting agencies may face additional significant demands in responding to inquiries, or requests for reinvestigation,[55] generated through each of these types of file disclosures. The Commission has also considered, and adopted, a number of appropriate means to ensure that nationwide consumer reporting agencies can meet those demands, including a staggered transition period and two levels of surge protection. The Commission does not agree that the FACT Act's direction to "consider . . . appropriate means to ensure that consumer reporting agencies can satisfactorily meet [the significant demands]" (emphasis supplied) equates to a mandate to adopt a particular scheme of staggering, especially when viewed in light of the FACT Act's direction also to consider the ease by which consumers should be able to request annual file disclosures. FACT Act § 211(d).

The nationwide consumer reporting agencies themselves state that consumer demand for annual file disclosures, after the transition period, can be reasonably anticipated based upon experiential data. The final rule provides for a gradual, staggered roll-out, final rule § 610.2(i), and for protection from unexpected surges in file disclosure demand, both during the rollout period and thereafter, § 610.2(e). Further, the FACT Act provides nationwide consumer reporting agencies with considerable flexibility in meeting the significant demands placed upon them. As noted above, the FACT Act allows nationwide consumer reporting agencies 15 days from the time a request for an annual file disclosure is received to provide that disclosure. FACT Act § 211(a), codified at FCRA § 612(a)(2), 15 U.S.C. 1681j(a)(2). The Act also allows nationwide consumer reporting agencies a significantly longer period of time to resolve requests for reinvestigation when they originate from an annual file disclosure. FACT Act § 211(a), codified at FCRA § 612(a)(3), 15 U.S.C. 1681(a)(3) (45 days, rather than 30 days). In addition, annual file disclosures must be provided only once in a 12-month period. The 12-month limitation should result in the continuation of the demand-smoothing effects of the transition roll-out scheme, for the requests that are first made during that period. This provides some ongoing limitation on unexpected volume after the transition period–i.e., a consumer who received an annual file disclosure when his or her state first became eligible under the transition provisions is not eligible to request another such disclosure for 12 months.

Accordingly, the Commission determines that ongoing staggering of the availability of the annual file disclosures is not an appropriate means to ensure that the nationwide consumer reporting agencies can meet the significant demands placed upon them by the FACT Act, particularly when balanced against the interests of consumers in having ready access to file disclosures. The high and extraordinary request volume protections incorporated into the final rule achieve the same objective, and strike a better balance between the competing interests. The Commission intends, however, to closely monitor the progress of the transition and the capability of the nationwide consumer reporting agencies to respond to actual request volume, and may adjust the rule, as necessary or appropriate, in the future.

Section 610.2(f)—Information use and disclosure

Under the proposed rule, § 610.2(f) addressed only information security. The proposed rule did not contain any limitations on use and disclosure of information collected by the centralized source.[56] In the NPR, the Commission posed several questions regarding what, if any, use and disclosure restrictions would be appropriate for the personally identifiable information collected through the centralized source. Based upon those comments, as described below, the Commission adopts a new § 610.2(f) in the final rule, addressing information use and disclosure. The provision of the proposed rule relating to information security has been deleted, as discussed below.

Information use and disclosure. The majority of consumer and consumer advocate commenters assert that the final rule should contain restrictions on "secondary" use and disclosure of information collected through the centralized source. These commenters argue that consumers must be reassured that providing their information to the centralized source will not subject them to unintended consequences, such as unwanted marketing. Further, these commenters note that because concern for information privacy is "a key motivating factor for consumers to request their [file disclosures]," a final rule that does not restrict use and disclosure of information "will seriously impair [consumers'] trust in the system."[57] For these reasons, the commenters advocate that use and disclosure of information collected through the centralized source be limited to verifying the identity of the consumer making the request.

Similarly, some marketers of credit-related products and services also recommend that secondary uses of the personally identifiable information collected through the centralized source be prohibited. One commenter asserts, for example, that without such restrictions, "consumers will be forced to choose between exercising their rights [to obtain an annual file disclosure] . . .and maintaining their privacy."[58] Further, these commenters argue that the ability to use and disclose this consumer information would provide the nationwide consumer reporting agencies with an unfair competitive advantage.[59] In contrast, CDIA comments that the final rule should not attempt to interfere with the use and disclosure requirements already applicable to such personal information.

The Commission notes that the information collected by the centralized source may include information that consumers view as particularly sensitive and vulnerable to misuse–such as Social Security numbers. Under FCRA §612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B), consumers can obtain annual file disclosures from the nationwide consumer reporting agencies only through the centralized source. In obtaining free annual file disclosures, then, consumers are compelled to use the centralized source. As a result, if consumers are reluctant to use the centralized source due to concerns relating to the use and disclosure of their personal information, the purpose of the FACT Act's requirement for free annual file disclosures would be thwarted.

Further, as some commenters point out, the Commission believes it is not

[55] See FCRA § 611(a), 15 U.S.C. 1681i(a).

[56] Proposed rule § 610.2(b)(2)(ii) did address collection of information by the centralized source, but not use or disclosure of the information collected. This provision has been altered slightly in the final rule. See discussion under § 610.2(b) of this notice, supra.

[57] Comment, Consumer Federation of America et al. #000019.

[58] Comment, Intersections Inc. #000034.

[59] These commenters assert the same arguments that some advanced to support banning the marketing and advertising of non-statutorily mandated products on the centralized source. The Commission's response to this argument is discussed under § 610.2(g) of this notice.

appropriate to make the availability of annual file disclosures — a right conferred by federal law — contingent on a consumer's willingness to subject personal identifying information to unrelated, secondary uses. In this sense, the final rule is analogous to the Commission's restriction on secondary uses of the Do Not Call Registry required by the Telemarketing Sales Rule, 16 CFR Part 310 (TSR). Under the TSR, use of the Commission's Do Not Call Registry for purposes other than to prevent telephone calls to the persons listed is prohibited. 16 CFR 310.2(b)(2). Similar reasoning applies here; consumers should not be subjected to unrelated uses of their information as a condition of availing themselves of protections and benefits afforded to them by law.

For these reasons, in the final rule § 610.2(f), the Commission limits the use and disclosure of "any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the [FCRA], made through the centralized source." This provision applies only to personally identifiable information that is collected as the result of providing a statutorily-mandated product–such as a file disclosure or credit score. As noted under § 610.2(g) of this notice, infra, the final rule does not prevent nationwide consumer reporting agencies from offering other products and services through the centralized source. The Commission notes that use and disclosure of information collected as a result of a consumer purchase of one of these non-statutorily-mandated products is not subject to the limitation of § 610.2(f).

Final rule § 610.2(f) permits use and disclosure of personally identifiable information in four ways: "[1] to provide the annual file disclosure or other disclosure requested by the consumer; [2] to process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure; [3] to comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this [rule]; and [4] to update personally identifiable information already maintained by the nationwide consumer reporting agencies for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply to the information updated."

The final rule makes it clear that personally identifiable information collected through the centralized source may be used and disclosed as necessary to process a transaction that the consumer requests at the same time as a statutorily-mandated disclosure. The purpose of this provision is to avoid requiring consumers to reenter the information in order to purchase a non-statutorily mandated product.

Some consumer advocacy organizations express concern regarding the use of information collected through the centralized source to enhance the nationwide consumer reporting agencies' consumer reporting files. The final rule permits nationwide consumer reporting agencies to use the information collected through the centralized source to update the information they already maintain for consumer reporting purposes, but would not permit them to add additional information that they do not already collect from other sources — such as an email address. This provision would also prevent nationwide consumer reporting agencies from using the protected information to develop new consumer files for non-consumer reporting agency purposes.

The Commission notes that the information maintained by nationwide consumer reporting agencies for consumer reporting purposes is subject to a variety of restrictions under existing law. The Commission does not believe it would be appropriate to permit the updating of such information to interfere with any use and disclosure limitations that may apply to the existing data prior to the update. For this reason, this provision makes clear that if a nationwide consumer reporting agency uses personally identifiable information obtained from consumers requesting disclosures through the centralized source to update information it maintains for consumer reporting purposes, the updated information is subject to the same restrictions that apply to the original, pre-updated data. One commenter from outside the consumer reporting industry suggests that use and disclosure of information collected through the centralized source is already limited to "permissible purposes" under the FCRA.[60] This commenter argues that any provision of the final rule that restricts the use and disclosure of such information would be an attempt to change the operation of the FCRA itself.[61] This is not the case. The FCRA limits the use and disclosure of "consumer reports." As noted above, most information collected through the centralized source is not a "consumer report" as that term is defined under the FCRA, and thus, the FCRA's restrictions on use and disclosure of consumer reports do not apply. To the extent that information collected through the centralized source is consumer report information, final rule § 610.2(f) would permit the nationwide consumer reporting agencies to use that information to update their consumer report files. Thus, contrary to the commenter's assertions, the final rule's restriction on use and disclosure of information collected through the centralized source does not impact the availability of consumer reports for permissible purposes under the FCRA.

Information security.

The proposed rule, in § 610.2(f), required nationwide consumer reporting agencies to comply with the requirements set forth in Standards for Safeguarding Customer Information, 16 CFR 314 (the Safeguards Rule),[62] regarding all personally identifiable information collected through or disclosed by the centralized source. Representatives of the nationwide consumer reporting agencies comment that this provision of the proposed rule is unnecessary because consumer reporting agencies are financial institutions subject to the Commission's jurisdiction under GLBA, and thus, already subject to the Safeguards Rule. See 67 FR 36484, 36485 (May 23, 2002). Representatives of the nationwide consumer reporting agencies also comment that by requiring compliance with the Safeguards Rule in this rule, the Commission has sought to alter the scheme of GLBA by applying the FCRA's private right of action to GLBA violations where no private right of action previously existed.

The Commission notes that the nationwide consumer reporting agencies are subject to a variety of existing laws relating to unauthorized access and/or security of information they collect and disclose, including, but not limited to the FCRA, the Safeguards Rule and the FTC Act. The record in this rulemaking provides no basis for concluding that these existing requirements are inadequate to address the information collected and disclosed through the centralized source, or that the centralized source creates any new or unique risks that are not addressed by such existing requirements. Thus, the Commission does not believe it is necessary to duplicate or augment those requirements in the final rule.

[60] See FCRA § 604, 15 U.S.C. 1681b.

[61] Comment, ACA International #000043.

[62] 16 C.F.R. Part 314 was promulgated by the Commission pursuant to the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 et seq.

Accordingly, § 610.2(f) of the proposed rule is not adopted in the final rule.

Section 610.2(g)—Communications provided by the centralized source

The Commission noted in the NPR that the centralized source would afford the nationwide consumer reporting agencies the opportunity to communicate information to consumers about other credit-related products and services they may sell. In addition, the Commission stated that the proposed rule would not prohibit these agencies from offering other file disclosures or products and services, in addition to the required annual file disclosures, through the centralized source. In order to ensure that such advertising or marketing does not undermine the purpose of the centralized source, or mislead consumers, § 610.2(g) of the proposed rule states that any communications provided through the centralized source "shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source." In addition, the proposed rule listed examples of representations that would be unacceptable: (1) pop-up advertisements that hinder the consumer's ability to complete an online request for annual file disclosures; (2) representations that a consumer must purchase a product in order to receive or understand the file disclosures; (3) representations that the annual file disclosures are not free or that requesting them will have a negative impact on the consumer's credit rating; and (4) representations that other products are free, if that is not the case, or failing to disclose clearly and prominently that a service advertised as initially free must be cancelled to avoid a charge.

The final rule retains this provision with only minor modifications. The example described in § 610.2(g)(2)(i) with respect to pop-up advertisements has been modified to make clear that any offers or promotions that hinder the consumer's ability to complete an online request for file disclosures would constitute undue interference with the purpose of the centralized source.

A number of commenters, including consumer organizations, individual consumers, and businesses that market credit-related products or services, address this issue, urging the Commission to prohibit advertising and marketing on the centralized source. Competitors of the nationwide consumer reporting agencies argue that advertising and marketing would give the nationwide consumer reporting agencies an unfair competitive advantage. Consumer advocacy organizations argue that the promotion of products or services – other than credit scores – would necessarily confuse consumers and undermine the purpose of the centralized source. Moreover, they did not believe that any regulation could address adequately the potential for confusion or deceptive advertising practices. In addition, some argue that any advertising or marketing of products on the centralized source would carry an implication of government endorsement or approval of the products offered.

Most of these commenters further argue that there is no congressional authority to allow the centralized source to be used for other purposes. In addition, some suggest that if there is to be advertising and marketing on the centralized source, the source should be made available to other sellers of credit products or services or to consumer groups that wish to provide their own information about credit issues.

Comments from the nationwide consumer reporting agencies and CDIA generally favor the Commission's approach on this matter, although some express concern that the language of this rule provision is not sufficiently specific to provide clear guidance.

Section 212(a) of the FACT Act requires that consumer reporting agencies inform consumers about the availability of credit scores when providing file disclosures to them. Further, a credit score that is based upon consumer reporting information can only be generated from that information. A consumer must be properly identified and the appropriate consumer file must be located in order for either a credit score or a file disclosure to be generated. It would be an anomalous result, for both consumers and the nationwide consumer reporting agencies, for the law to require the centralized source to inform consumers about the availability of credit scores, but not permit them to obtain credit scores at that juncture. Accordingly, it is consistent with the FACT Act to make both file disclosures and credit scores available through the centralized source. Allowing consumers who wish to purchase credit scores to do so at the same time that they obtain their annual file disclosures will result in efficiency for both consumers and nationwide consumer reporting agencies.

The statute, however, is silent with respect to other products or services that may be advertised or marketed on the centralized source. The Commission does not interpret this silence as an indication that the nationwide consumer reporting agencies are barred from the advertising or marketing of other products or services. An absolute prohibition of such communications would have to withstand scrutiny under U.S. Supreme Court decisions regarding the First Amendment and commercial speech. See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n., 447 U.S. 557, 564 (1980). The Commission believes that its substantial interest in preventing communications that are misleading, confusing to consumers, or undermine the purpose of the centralized source can be served by less restrictive means than an absolute ban, and it has crafted § 610.2(g) accordingly.

The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from the nationwide consumer reporting agencies. Advertising or marketing must be secondary to, and constrained by, that purpose. If a consumer is hindered in the effort to make an online request for file disclosures by the need to view and respond to, or close windows for, multiple offers of products and services, such communications would interfere with or undermine the purpose of the centralized source. Any representation that a consumer must purchase a product in order to receive or understand the annual file disclosure would contradict and detract from the right to obtain the free annual disclosure. Similarly, any representation that the file disclosure request itself will have a negative effect on the consumer's credit rating would undermine and detract from the right to the free annual disclosure. The same would be true of misrepresentations about the cost of other products or services, or the terms of any subscription service such as credit monitoring.

The Commission further notes that the specific provisions of the rule are not the only mechanisms available to it to address deceptive or unfair marketing practices in connection with the operation of the centralized source. The FTC Act's prohibition against such practices also would apply to the nationwide consumer reporting agencies in their joint operation of the centralized source, just as it does in their individual business operations. 15 U.S.C. 45(a). For example, any express or implied claim that any product or service offered via the centralized source bears government approval or endorsement would be deceptive, and therefore a violation of the FTC Act. The Commission believes that the enforcement tools available to the agency, under both the rule and the FTC Act, will enable it to ensure that the centralized source is operated in an appropriate manner – i.e., one that enables consumers to request their

annual file disclosures easily and without being subjected to deceptive or unfair practices.

The Commission believes that, in general, competition with regard to credit-related products and services may be enhanced as a result of the final rule, because easier consumer access to file disclosures may create greater consumer awareness of the entire industry. Further, any competitive advantage for the nationwide consumer reporting agencies is created by the FACT Act's requirement to establish the centralized source, an undertaking that imposes significant costs on the industry.

Section 610.2(h)—Effective date

The FACT Act, in § 211(d)(5), requires that the Commission issue centralized source regulations in final form no later than six months after the enactment date of the FACT Act, and that these rules take effect no later than six months after the date on which the regulations are issued in final form. The statute, therefore, requires that the effective date be no later than December 4, 2004.

The Commission proposed an effective date of December 1, 2004, at which time the phase-in of consumer eligibility for free annual file disclosures would begin. Some consumers suggest that this transition would begin too late, and that free annual file disclosures should begin to be available as soon as the final rule is issued. Some members of Congress assert that the transition should be completed, and all consumers should be eligible to request their free annual file disclosures, by December 4, 2004.

Representatives of the nationwide consumer reporting agencies comment that a six-month period is the minimum necessary time prior to the initial deployment of the centralized source to any portion of the country. These commenters explain that at least six months will be required to evaluate the final rule and design and build the necessary infrastructure for the centralized source.

The Commission has considerable recent experience in designing and implementing structures to respond to large volumes of consumer requests, e.g. the implementation of the Do-Not-Call Registry. After considering the FACT Act requirements under § 211(d), and the significant technological challenges presented by designing, building and implementing the centralized source required by this part, the Commission believes it is reasonable to require the nationwide consumer reporting agencies to begin to implement the centralized source about six months after the final rule is issued. Accordingly, the final rule becomes effective on December 1, 2004. Final rule § 610.2(h).

Section 610.2(i)—Transition

The final rule — like the proposed rule— requires a cumulative regional roll-out for the centralized source. Under § 610.2(i), the centralized source will become available to consumers by region, starting in the west and moving eastward across the country, at three-month intervals. Consumers residing in the western part of the United States (California and 12 other western states) will have access to the centralized source beginning on December 1, 2004.[63] On March 1, 2005, consumers in 12 midwestern states also will become eligible to request their annual file disclosures from the centralized source. On June 1, 2005, the centralized source will become available to consumers in 11 southern states. Finally, on September 1, 2005, the centralized source will become available to all remaining consumers, including those residing in eastern states, the District of Columbia, and all U.S. territories and possessions.

Some consumers and consumer groups comment that there is insufficient evidence to justify any gradual transition scheme. Accordingly, those commenters suggest that annual file disclosures should be available without a segmented approach to consumer eligibility. These commenters also suggest that if the final rule provides for any transition, it should allow for only a very short "test" period when the centralized source would be available to a portion of the country. If the consumer demand proved overwhelming during the "test," they argued, the Commission could then amend the rule to provide a more structured roll-out for the rest of the country. In contrast to these comments, all representatives of the consumer reporting industry emphasize the need for a substantial structured transition in order to manage initial consumer demand for annual file disclosures.

Section 211(d)(4) of the FACT Act requires that the Commission's regulations provide for an "orderly transition" for nationwide consumer reporting agencies to fully implement the centralized source. The FACT Act directs that this transition be conducted in a manner that does not temporarily overwhelm such consumer reporting agencies with requests for disclosures beyond their capacity to deliver; and does not deny creditors, other users, and consumers access to consumer reports on a time-sensitive basis for specific purposes, such as home purchases or suspicions of identity theft, during the transition period. This provision of the statute clearly indicates that Congress contemplated allowing the nationwide consumer reporting agencies some period of time in which to build and implement the centralized source.[64]

Given the significant development necessary to fully implement the centralized source, the Commission believes a gradual, segmented transition is appropriate. Further, the Commission notes that conditioning a structured transition on the results of a test period, as suggested by some commenters, would subject the availability of the centralized source to unreasonable uncertainty and delay. The Commission likely would not be able to examine test data and promulgate a revised rule without delaying the complete implementation of the centralized source. In the meantime, the nationwide consumer reporting agencies would be uncertain as to what this revised rule might require. Accordingly, the Commission believes that establishing, at the outset, a structured transition over a reasonable period of time will provide the best results for both industry and consumers.

Transition Length.

Consumers, consumer groups and members of Congress comment that the nine-month transition period set out in the proposed rule is unreasonably long, and that this delay in implementation is contrary to the intent of the FACT Act. These commenters point out that because the FACT Act was signed in December of 2003, and the transition does not begin until December of 2004, the nationwide consumer reporting agencies will already have had a year to work on meeting the requirements of the rule before the transition period begins. They assert that, without specific substantiation for such a delay, an additional nine months is an unreasonable amount of time for consumers — especially those at the end of the transition scheme — to wait to receive their annual file disclosures.

On the other hand, representatives of the nationwide consumer reporting

[63] According to the 2000 U.S. Census, these states account for 22.1% of total U.S. population.

[64] Some commenters suggested that even if the rule allows a transition period to phase in the availability of the centralized source, consumers who approach an individual nationwide consumer reporting agency directly should be entitled to receive their free annual file disclosures without waiting. The FACT Act amended FCRA § 612(a) to require the nationwide consumer reporting agencies to make free annual file disclosures upon request of the consumer. This right was limited, however, to requests that are made using the centralized source. FCRA § 612(a)(1)(B), 15 U.S.C. 1681j(a)(1)(B).

agencies assert that a transition period of nine months is too short to ensure a smooth implementation. They contend that even with this time frame, they are compelled to begin the process of building the centralized source prior to issuance of the final rule. They argue that a transition of two years is needed to fully implement the centralized source. During the first year of this suggested transition, consumers would become eligible for discrete periods of time (rather than on a cumulative basis). These commenters maintain that the centralized source's first year of operation will not provide reliable data to determine the appropriate baseline for operations of the centralized source, because demand will be uncharacteristically high due to consumer education efforts and media campaigns. The first six to nine months of the second year of operation, they argue, would provide better data to use in anticipating normal demand. After collecting that data, the nationwide consumer reporting agencies assert, they would adjust capacity accordingly.

The Commission concludes that the proposed nine-month transition period proposed is appropriate. It is important for consumers to become eligible to obtain their annual file disclosures as quickly as practicable. The large number of consumers who commented on the proposed rule and requested a shorter transition is evidence that many consumers place much value on receiving these file disclosures.

The Commission is mindful, however, that the transition provided by the final rule must enable the nationwide consumer reporting agencies to meet the significant demands of building and adjusting a system with adequate capacity to respond to requests from all eligible consumers at the end of the transition. The nationwide consumer reporting agencies comment that significant adjustments in the capacity of the centralized source will require 60 to 90 days. Accordingly, a nine-month transition provides the nationwide consumer reporting agencies with adequate opportunity to adjust capacity based upon the experience provided by the first two segments, prior to the implementation of the centralized source nationwide. Further, this transition length and roll-out assist in smoothing out demand after the transition. That is, each group to become eligible in a period will not be able to request another annual file disclosure for 12 months, which will cause some natural staggering by groups after the transition.

For these reasons, the Commission believes that nine months provides adequate time, in light of the number of consumer files maintained by the nationwide consumer reporting agencies and the significant development demands that the centralized source will require, to gradually build capacity to meet full demand. Accordingly, § 610.2(i)(1) is adopted as proposed.

Regional Rollout.

Consumers and consumer advocacy groups comment that, in the event the final rule provides for a rollout, a regional rollout is preferable to one based on birth date or other identifier. These commenters assert that a regional approach permits better consumer education through regional and local media, and it aids in household financial management in that it allows members of the same household to obtain their free annual file disclosures at the same time.

Representatives of the nationwide consumer reporting agencies suggest, however, that a preferable method of staggering eligibility would be by consumers' birth month, or first initial of last name, rather than by region of the country. Some commenters, including a member of Congress, advocate staggering eligibility based upon Social Security number. The nationwide consumer reporting agencies argue that a regional approach would exacerbate demand on the centralized source due to local media and advocacy group efforts.

The Commission believes that a regional approach is the most effective and appropriate method to roll out the centralized source. A regional rollout can be easily understood by consumers and will be complemented by local and regional press coverage, which will remind consumers when the centralized source becomes available to their state or media market.[65] Further, an approach that allows members of the same household to obtain their annual file disclosures at the same time is efficient and convenient for consumers.

Some commenters assert that the rollout of eligibility from the western part of the country eastward unreasonably discriminates against consumers residing in the east. The Commission acknowledges that consumers in the east will wait longer before becoming eligible to receive annual file disclosures than consumers elsewhere in the country. The Commission notes, however, that in any transition scheme, regardless of the method of segmentation, some segment will wait longer than others. Further, of the seven states where free file disclosures are currently available under state law,[66] five are in the eastern segment of the transition. As noted in the NPR, the transition allows implementation of the centralized source to begin with the smallest segment by population — the west — and gradually build to the capacity to handle the addition of the final, largest segment. The Commission believes this structure to be an appropriate means of facilitating a smooth transition.

Representatives of the nationwide consumer reporting agencies comment that one nationwide consumer reporting agency currently receives a disproportionate number of requests for file disclosures in the western region as compared to other regions. Accordingly, these commenters suggest beginning the transition with a region other than the west. The Commission notes that, although one nationwide consumer reporting agency may currently receive a disproportionate number of file disclosure requests from consumers in the west, there is a smaller total population in that region than in any other segment of the transition. The Commission believes that the higher request rate in that region may not repeat itself in the requests for annual file disclosures. Indeed, since the requests in that region are already higher, it may be that the incremental increase in demand for annual file disclosures will be smaller in the west than in the other regions. Accordingly, the Commission adopts a regional rollout, which will occur in four segments, moving from west to east.[67]

Surge Protection During the Transition

High request volume during transition. The proposed rule provided nationwide consumer reporting agencies with some relief, during the transition period, in times of high request volume that does not reach the extraordinary request volume benchmark. Under proposed rule 610.2(i)(3), when consumer request volume exceeded 115% of the rolling daily seven-day average, the nationwide consumer reporting agencies were permitted to place requests into a queue for processing at a reasonable later time.

[65] The regional divisions do not divide metropolitan statistical areas.

[66] Colorado, Maine, Maryland, Massachusetts, New Jersey, Georgia, and Vermont. The frequency of the availability of free file disclosures in these states is not preempted by the FACT Act. FACT Act § 212(e)(4).

[67] Some commenters raised questions regarding the timing of eligibility of consumers serving in military active duty. Consumers serving in military active duty will become eligible during the transition based on their addresses of record with creditors. The FACT Act provides additional rights to consumers on military active duty and their families. See, FACT Act § 112.

See discussion under § 610.2(e) of this notice, supra.

Representatives of the nationwide consumer reporting agencies comment in support of this intermediate threshold at which they could begin to queue consumer requests. These commenters suggest, however, that the level for high request volume, during the transition, should be set at any volume above the initial capacity[68] of the centralized source, request method or nationwide consumer reporting agency. Consumers and consumer groups also comment on this provision of the rule, asserting that the 115% threshold was set too low because fluctuations in request volume at that level were not excessive. They suggest instead using a trigger of 200% of the daily rolling seven-day average.

The Commission believes that setting the threshold for high request volume during the transition at 115% is appropriate. Request volume is likely to be particularly volatile during the transition period. Thus, a transition high request volume threshold that is slightly lower than the post-transition threshold is appropriate. The 115% level is sufficiently sensitive to provide some relief to the nationwide consumer reporting agencies during times of unexpected high demand. Accordingly, the final rule, § 610.2(i)(2), generally provides for high request volume relief during the transition when volume exceeds 115% of the daily rolling seven-day average.

Extraordinary request volume during the transition. Under the proposed rule, during the transition, extraordinary request volume was generally defined as twice the daily rolling seven-day average volume of requests. In general, comments on the threshold for extraordinary request volume during the transition track the comments made regarding extraordinary request volume outside the transition, and are discussed fully under § 610.2(e) of this notice, supra. Because the final rule provides complete relief from liability when extraordinary request volume is reached, the Commission believes the same extraordinary request volume threshold—175% —is appropriate both during the transition period and after. Thus, the Commission determines that 175% of the daily rolling 7-day average volume is appropriate to provide relief to the nationwide consumer reporting agencies during periods of truly extraordinary request volume during the transition. Final rule § 610.2(i)(3).

[68] See discussion of initial capacity, under § 610.2(c) supra.

First week of transition. As explained under § 610.2(e) of this notice, supra, the final rule generally provides high request volume and extraordinary request volume relief for the nationwide consumer reporting agencies when request volume reaches specific thresholds based upon rolling daily average of requests over the previous 90 days. During the transition period, when request volume may be most volatile, both high and extraordinary request volume levels are generally calculated based upon seven-day rolling averages, in order to accommodate the unique structure of the transition and the volatile demand for annual file disclosures that may prevail during that time.

During the first week of the transition, high and extraordinary request volume levels are determined in reference to the reasonably anticipated volume of consumer contacts to the centralized source. In other words, the nationwide consumer reporting agencies must use the reasonable procedures required under § 610.2(c) to develop an estimate of expected volume for each centralized source request method, the centralized source as a whole, and each nationwide consumer reporting agency. During the first week of operations, high request volume will be calculated at 115% of this reasonably anticipated baseline volume. Final rule § 610.2(i)(2)(i). Similarly, extraordinary request volume will be calculated based on 175% of that baseline. Final rule § 601.2(i)(3)(i). From the second week, until the end of the transition, high and extraordinary request volume will be calculated based upon the rolling average volume of the previous seven days. Final rule §§ 610.2(i)(2)(ii) and 610.2(i)(3)(ii).

The nationwide consumer reporting agencies object to this structure as requiring them to build a system that will have vast amounts of excess capacity, and to adjust that capacity within an unreasonably short period of time–i.e., a week. As noted in the NPR, because it is tied to a seven-day time frame, the standard for extraordinary request volume in fact may produce rapid expansion of the system. If extraordinary levels of demand persist, the system's capacity would have to increase significantly every week in order to take advantage of the extraordinary request volume protections. CDIA asserts that these provisions would require the nationwide consumer reporting agencies to double the capacity of the system within two weeks of the implementation, and that such rapid expansion is simply not possible.

The Commission believes that, viewed in light of the overall structure of the transition, these provisions are reasonable and appropriate. The development of the centralized source is a complex project, and the Commission assumes that, by necessity, the vast majority of the development will be completed before the transition period begins. It is reasonable to expect that although it will be required to service only about one quarter of the country during the initial weeks of implementation, the system will at that point be capable of handling substantially more than the anticipated volume associated with that segment of the country. Accordingly, the Commission believes it is reasonable to expect rapid expansion of the system within the first segment if, for example, request volumes prove to be even greater than could be anticipated in the first week of operations.

Representatives of the nationwide consumer reporting agencies also comment that it may be unclear how the trigger for extraordinary request volume would operate during the first seven days of the transition. These commenters express concern that the provision may be interpreted to mean that the reasonably anticipated volume would adjust daily during that week. The Commission intends that the reasonably anticipated volume for that first week of the transition would remain constant.

Accordingly, final rule § 610.2(i)(2) defines high request volume during the first week as more than 115% of the daily total number of consumers that were reasonably anticipated to contact the centralized source and, from December 8, 2004 through the end of the transition, as more than 115% of the daily rolling seven-day average number of consumers that contact the centralized source. Similarly, § 610.2(i)(3) of the final rule defines extraordinary request volume during the first week as more than 175% of the daily total number of consumers that were reasonably anticipated to contact the centralized source and, from December 8, 2004 through the end of the transition, as more than 175% of the daily rolling seven-day average number of consumers that contact the centralized source.

Section 610.3(a)—Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies–Streamlined process requirements.

Section 211 of the FACT Act requires nationwide specialty consumer

reporting agencies[69] to provide annual file disclosures to consumers, once during any 12-month period upon the request of the consumer and without charge to the consumer. The FACT Act directs the Commission to prescribe regulations[70] to require the establishment of "a streamlined process" for consumers to request their free annual file disclosures from these nationwide specialty consumer reporting agencies.[71] The FACT Act expressly requires that the streamlined process must, at a minimum, include the establishment by each nationwide specialty consumer reporting agency of a toll-free telephone number for such requests. FACT Act § 211(a), codified at FCRA § 612(a), 15 U.S.C. 1681j(a).

Streamlined process requirements. Under the proposed rule § 610.3(a)(1), each nationwide specialty consumer reporting agency was required to establish a streamlined process for accepting and processing consumer requests for annual file disclosures, which, at a minimum, shall include the establishment of a toll-free telephone number for accepting such requests. To enable consumers to request annual file disclosures by telephone, the proposed rule required that nationwide specialty consumer reporting agencies make their streamlined process toll-free number available to consumers in specific ways: by publication in any telephone directory in which the entity has its telephone number published, § 610.3(a)(1)(ii), and by posting the toll-free number, along with instructions for requesting disclosures via any additional request methods, on any website owned or maintained by the entity, § 610.3(a)(1)(iii).

In response to a comment by CDIA, writing on behalf of its nationwide specialty consumer reporting agency members, the Commission modifies the wording of § 610.3(a)(1)(i) and (iii) in the final rule to make clear that the only required request method is the toll-free number; provision of additional request methods, such as mail or the Internet, is optional.

Further, one nationwide specialty consumer reporting agency suggests that for companies that own and maintain many websites, the requirement to post the toll-free number and instructions for additional request methods on all websites is burdensome, may artificially increase consumer demand for annual file disclosures, and could potentially confuse consumers. The Commission has not deleted this provision, but has modified it to make it clear that a nationwide specialty consumer reporting agency need only post this information on websites that it owns and maintains and that are related to consumer reporting. The § 610.3(a)(1)(iii) requirement is designed to make it as easy as possible for consumers to locate the nationwide specialty consumer reporting agencies and to learn how to request annual file disclosures. Several consumer advocacy organizations, in a joint comment, state that many consumers may be unfamiliar with the nationwide specialty consumer reporting agencies and the types of consumer files they maintain. They stress the importance of raising the public visibility of these agencies and informing consumers about the availability of these file disclosures. As the Commission noted in the NPR, this provision was not intended to require nationwide specialty consumer reporting agencies to post the toll-free telephone number on every page of a website. Rather, it was intended to require them to provide a clear and prominent link to such information on any website that the nationwide specialty consumer reporting agency owns or maintains that is related to consumer reporting. Final rule § 610.3(a)(1)(iii) makes this clear.

Under proposed rule § 610.3(a)(1)(i), nationwide specialty consumer reporting agencies were permitted, but not required, to provide request methods in addition to the required toll-free number, provided that when consumers contact the agency via its toll-free telephone number, they were given access to clear and easily understandable instructions for requesting annual file disclosures by any other available request method. In the final rule § 610.3(a)(1)(i), the Commission modifies this provision slightly to make clear that when a nationwide specialty consumer reporting agency provides instructions to consumers for requesting disclosures by any additional available request method, these instructions must "not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process."

One nationwide specialty consumer reporting agency suggests that, because of its own unique and unusual business methods, taking a request by telephone would present difficulties for the company, such that it might not be able to service a request by telephone in as streamlined a manner as it could via alternative methods. The Commission notes, however, that the mandate of the FACT Act is unequivocal — at a minimum, each nationwide specialty consumer reporting agency must establish a toll-free telephone number for consumers to request their free annual file disclosures. The FACT Act and the final rule require nationwide specialty consumer reporting agencies to accept consumer requests for file disclosures over the telephone. A nationwide specialty consumer reporting agency that consistently directs consumers to another request method and does not permit requests to be made by telephone–by requiring consumers to go to a website or sign a specific form, for example–does not meet the mandate of the FACT Act or the final rule.

This commenter also suggests that requiring request methods other than telephone–for example mailing a signed document–is necessary to ensure proper identification of consumers. The Commission notes that FCRA § 610(a) requires consumer reporting agencies to obtain "proper identification" from consumers as a condition of providing a file disclosure. 15 U.S.C. 1681h(a). The final rule, however, permits nationwide and nationwide specialty consumer reporting agencies to collect only as much personally identifiable information from consumers as is reasonably necessary to properly identify the consumer. Final rule §§ 610.2(b)(2)(ii) and 610.3(a)(2)(ii). The Commission does not believe that FCRA § 610 is inconsistent with the requirement to accept requests by telephone. Given the unambiguous requirement of the FACT Act that nationwide specialty consumer reporting agencies accept telephone requests for annual file disclosures, it is incumbent upon nationwide specialty

[69] As explained under § 610.1(b)(10) of this notice, supra, a "nationwide specialty consumer reporting agency" means "a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to (1) medical records or payments; (2) residential or tenant history; (3) check writing history; (4) employment history; or (5) insurance claims." FCRA § 603 (w), 15 U.S.C. 1681a (w).

[70] In promulgating its regulations applicable to nationwide specialty consumer reporting agencies, the Commission considered: 1) the significant demands that may be placed on consumer reporting agencies in providing annual file disclosures; 2) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such file disclosures; and 3) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such file disclosures. FACT Act, § 211(a)(2).

[71] One nationwide specialty consumer reporting agency suggests that the FTC further define: the term "nationwide specialty consumer reporting agency;" the meaning of the enumerated types of information that trigger § 603(w) status; the phrase "compiled and maintained;" and the information required to be disclosed in the "annual file disclosure." See discussion under § 610.1(b) of this notice, supra.

consumer reporting agencies to develop methods to identify consumers by telephone, to the extent practicable.

Operation of the streamlined process. Under the proposed rule, the streamlined process was required to be "designed, funded, implemented, maintained and operated" in a manner that: has adequate capacity to accept reasonably anticipated volume, § 610.3(a)(2)(i); collects only as much personal information as is reasonably necessary to properly identify the consumer, §610.3(a)(2)(ii); and provides clear and easily understandable information and instructions, § 610.3(a)(2)(iii). These requirements are similar to the requirements for operation of the centralized source, discussed under § 610.2(b) of this notice, supra.

The proposed rule requirement to provide clear and easily understood information and instructions to consumers included a requirement to inform consumers of the progress of their request while they are in the process of making the request. Proposed rule § 610.3(a)(2)(iii)(A). For a Web site request method, if a nationwide specialty consumer reporting agency chooses to provide such a method, the proposed rule also required the nationwide speciality consumer reporting agencies to provide access to a "help" or "frequently asked questions" screen and instructions for filing complaints with the nationwide speciality consumer reporting agencies and the Federal Trade Commission. Proposed rule § 610.3(a)(2)(iii)(B). Finally, in the event that a consumer cannot be properly identified in accordance with the FCRA § 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, the proposed rule required the nationwide specialty consumer reporting agencies to notify the consumer of that fact, and to provide instructions on how to complete the request. Proposed rule § 610.3(a)(2)(iii)(C).

One nationwide speciality consumer reporting agency objects to the proposed rule requirement to inform consumers of the progress of their request while they are in the process of making the request, suggesting that it be eliminated because it is unclear, burdensome, and unworkable. For reasons similar to those discussed above in connection with the requirements of § 610.2(b)(2)(iv)(A) of the final rule, the Commission declines to adopt this recommendation. The language of this provision, which has been retained in the final rule, makes clear that the status information requirement operates "while the consumer is in the process of making a request;" thus, it would operate in the context of both telephone and on-line requests. For example, a status message that instructs telephone consumers to "please hold while we locate your file," would ensure that consumers do not mistakenly discontinue the telephone ordering process without finishing their request. The Commission recognizes, however, that for other possible request methods, such as mail, the requirement would be inappropriate and therefore not apply.

The Commission did not receive further significant comment relating to proposed rule § 610.3(a), and it is adopted with the modifications discussed above.

Section 610.3(b)—Requirement to anticipate

Similar to the requirements relating to the centralized source, discussed under § 610.2(c) of this notice, supra, proposed rule § 610.3(b) required that nationwide specialty consumer reporting agencies implement reasonable procedures to anticipate and respond to the volume of consumers who will contact them to request file disclosures through the streamlined process.

One nationwide specialty consumer reporting agency and CDIA suggest that the requirements for contingency planning be deleted and replaced by a provision to relieve entities of any obligation to deliver reports when conditions beyond the control of the nationwide specialty consumer reporting agency occur. The Commission declines to adopt this suggestion. Rather, the final rule retains, but modifies, the contingency planning provisions applicable to nationwide specialty consumer reporting agencies, for the same reasons discussed under § 610.2(c) of this notice, supra.

Section 610.3(c)—High request volume and Extraordinary request volume

Under proposed rule § 610.3(c), nationwide specialty consumer reporting agencies would not be deemed in violation of the adequate capacity requirement in times of extraordinary request volume, provided that they implemented reasonable procedures in compliance with § 610.3(b).[72] CDIA and a nationwide specialty consumer reporting agency suggest that the proposed definition of extraordinary request volume— i.e., volume that exceeds 200% of the rolling 90-day daily average—be revised.[73] In the NPR, the Commission sought data with regard to the issue of setting the extraordinary request volume threshold; however, it received very little specific information relating to nationwide specialty consumer reporting agencies in this regard. For reasons discussed under § 610.2(e) of this notice supra, however, the final rule modifies the extraordinary request volume threshold to 175% of average daily volume.

In response to comments received with regard to the centralized source, as well as comments from CDIA, writing on behalf of its nationwide specialty consumer reporting agency members, the Commission has also crafted a provision to allow nationwide specialty consumer reporting agencies to obtain relief during times of high request volume. Final rule § 610.3(c)(1) allows a nationwide specialty consumer reporting agency to collect the request information in a queue for processing at a reasonable later time, so long as the nationwide specialty consumer reporting agency informs the consumer as to when the request will be accepted for processing. The high request volume trigger for nationwide specialty consumer reporting agencies is the same as that which applies to the centralized source–more than 125% of the rolling 90-day daily average. Final rule § 610.1(b)(8).

As noted under § 610.2(c) above, one comment from a nationwide consumer reporting agency suggests the need for some protection to apply during system maintenance. The Commission notes that this need is equally applicable to the nationwide specialty consumer reporting agencies. Final rule § 610.3(b)(2) provides that a nationwide specialty consumer reporting agency will not be deemed in violation of the streamlined process requirements if the toll-free number is unavailable to take requests for a reasonable period of time for purposes of maintenance, provided that the agency makes other request methods available to consumers during such time.

Section 610.3(d)—Information use and disclosure

Final rule § 610.3(d) provides that, "[a]ny personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required

[72] One commenter mistakenly suggests that the proposed rule contains no definition of "extraordinary request volume" applicable to nationwide specialty consumer reporting agencies beyond the transition period described in proposed rule § 610.3(g). As final rule § 610.1(a) explains, the definitions contained in section 610.1(b) apply throughout this part, including in both § 610.2 and § 610.3 of the final rule.

[73] The consumer reporting agency recommends that "extraordinary request volume" be set at 110% of the rolling 90-day daily average, and CDIA suggests that "extraordinary request volume" should be more than 125% of the rolling 90-day daily average.

by the Fair Credit Reporting Act, made through the streamlined process required by this part, may be used or disclosed by the nationwide specialty consumer reporting agencies only "[1] to provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer; [2] to process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure; [3] to comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this part; and [4] to update personally identifiable information already maintained by the nationwide specialty consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated." This provision is nearly identical to the information use and disclosure provision applicable to nationwide consumer reporting agencies in § 610.2(f), and is adopted subject to the same analysis provided under § 610.2(f) of this notice, supra.

Under § 610.3(d) of the proposed rule, nationwide specialty consumer reporting agencies also were required to comply with the Safeguards Rule, 16 CFR part 314, for information collected and disclosed through the streamlined process. CDIA and America's Community Bankers, a trade association for the banking industry, suggest that this provision should not be applied to the nationwide specialty consumer reporting agencies. They argue that to the extent these entities are already subject to the Safeguards Rule under the GLBA, this rule would subject them to another layer of regulatory oversight. In addition, the commenters contend that under this rule, unlike under the GLBA Safeguards Rule, nationwide specialty consumer reporting agencies could be subject to private rights of action.

As noted under § 610.2(f), supra, of this notice, the information collected and disclosed by nationwide specialty consumer reporting agencies is subject to a variety of existing laws relating to unauthorized access and security of information, including, but not limited to, the FCRA, the Safeguards Rule, and the FTC Act. The Commission does not believe that it is necessary to duplicate or augment those requirements in the final rule. Accordingly, the final rule does not adopt proposed rule § 610.3(d).

Section 610.3(e)—Requirement to accept or redirect requests

The FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures upon request, but only if such requests are received through the centralized source. As noted in the NPR, there is no similar statutory limitation applicable to the streamlined process to be developed by the nationwide specialty consumer reporting agencies. Accordingly, recognizing that many consumers may request their free annual file disclosures through a method other than the streamlined process, the final rule — like the proposed rule — requires nationwide specialty consumer reporting agencies either to honor those requests or to redirect the consumer to the streamlined process. Final rule § 610.3(e).

CDIA suggests that this provision be revised to make it analogous to the statutory requirement for the centralized source, i.e., to limit consumers' ability to request free annual file disclosures from these agencies to the required streamlined process methods. The Commission declines to adopt this suggestion. Although it might easily have done so, Congress did not limit the availability of annual file disclosures from nationwide specialty consumer reporting agencies to only those consumers who make requests through the streamlined process. Moreover, the rule provision does not impose an onerous burden on the nationwide specialty consumer reporting agencies; they can choose either to honor the requests they may receive outside of the streamlined process request methods, or simply redirect consumers to those methods.[74] Accordingly, § 610.3(e) is adopted as proposed.

Section 610.3(f)—Effective date

The proposed rule provided that § 610.3 become effective on December 1, 2004, the same effective date as rule provisions for the centralized source. This provision is unchanged in the final rule. Final rule § 610.3(f).

[74] One nationwide specialty consumer reporting agency requests that the rule include a general limitation on liability for private causes of actions under proposed rule § 610.3(e), as well as other rule provisions, in order to limit the circumstances under which a nationwide specialty consumer reporting agency is at risk of private actions, including class actions. The FCRA, as amended by the FACT Act, however, provides a specific scheme of enforcement and liability for violations of the FCRA. Where Congress intended to limit private rights of action, it did so. See FCRA § 615(h)(8). Accordingly, the Commission declines to include additional limitations in the final rule.

The Commission notes that the FACT Act requires that the rules implementing the annual file disclosure requirements relating to nationwide specialty consumer reporting agencies take effect no later than six months after the date on which the regulations are issued in final form–unless the Commission determines that up to an additional three months is appropriate. Further, the FACT Act requires the Commission to consider the ability of each nationwide specialty consumer reporting agency to provide annual file disclosures in the manner required under the Act, in determining the effective date for these provisions.

The Commission has considered these, as well as the other factors required by § 211(a) of the FACT Act and has determined that December 1, 2004, is an appropriate effective date for these provisions. The Commission recognizes that while nationwide specialty consumer reporting agencies will need some time to develop and implement the streamlined process required under the proposed rule, it appears that nearly six months from the issuance of the final rule is adequate, given the limited requirements of the final rule for nationwide specialty consumer reporting agencies.

One nationwide specialty consumer reporting agency requests that the Commission delay the effective date of the streamlined process requirement for three additional months in order to allow the agency to study how it can integrate its own traditional business methods with the new annual file disclosure obligation. This commenter further suggests that if the streamlined process effective date were delayed for three months, the nationwide specialty consumer reporting agencies would be protected from surges in request volume likely to occur as a result of publicity and consumer education surrounding the December 1, 2004, launch of the centralized source. Similarly, CDIA proposes that the final rule provide for the nationwide specialty consumer reporting agencies to activate their systems on December 1, 2004, but that they be given a three-month grace period, such that they would not be required to actually comply with the rule until March 1, 2005.

The Commission declines to delay the effective date for § 610.3 of the final rule for several reasons. Under § 610.3(g) of the final rule, discussed infra, the nationwide specialty consumer reporting agencies already receive protections from surges in volume that exceed the reasonably anticipated volume for that time. Although the rule provisions relating to nationwide

specialty consumer reporting agencies may require the development of some new operations or systems, by December 1, 2004, they will have had nearly one year since the FACT Act became effective to study the issues, reasonably anticipate the volume, and implement appropriate procedures to accept requests via toll-free numbers. In addition, the Commission is adopting the same effective date for all parts of the rule in order to help consumers better understand the availability of annual file disclosures. The Commission believes that implementing a grace period would provide industry very little in the way of useful flexibility in complying with the rule, and would lead to greater confusion by the public. Accordingly, December 1, 2004, is the effective date for rule provisions relating to both nationwide consumer reporting agencies and nationwide specialty consumer reporting agencies. Final rule § 610.3(f).

Section 610.3(g)—High request volume and extraordinary request volume during initial transition

Nationwide specialty consumer reporting agencies must establish and operate a streamlined process with adequate capacity to meet consumer demand for annual file disclosures. Under the proposed rule, § 610.3(g), during the first three months after the rule becomes effective, liability under this provision would have been limited when the agencies experience extraordinary request volume of more than twice the anticipated request volume in a 24-hour period. After the three-month transition, extraordinary request volume would have been calculated as twice the daily rolling 90-day average.

Two nationwide specialty consumer reporting agencies and CDIA suggest that these entities need greater protection against high volume during a transition period, including a staggered rollout and lower request volume thresholds to trigger relief from liability. CDIA suggests that (in addition to delaying the effective date for three months) the rule should: 1) expand the transition period for the nationwide specialty consumer reporting agencies to encompass March 1, 2005 through November 30, 2005; 2) during the transition period, lower the trigger for extraordinary request volume to 125% of the daily total number of reasonably anticipated requests; and 3) add a high request volume trigger that would allow the nationwide specialty consumer reporting agencies to place requests into a queue for later processing when the volume in a 24-hour period exceeds the daily total number of reasonably anticipated requests.

The Commission recognizes that demand for consumer file disclosures from nationwide specialty consumer reporting agencies may increase significantly as a result of the new annual file disclosure availability. In order to assist these agencies in meeting this increase in demand, the Commission has modified § 610.3(g), by adding a high request volume benchmark to provide added protection from liability. High request volume during the transition is defined as, in any 24-hour period, more than 115% of the daily total number of requests that were reasonably anticipated. Final rule § 610.3(g)(1). Further, the extraordinary request volume provision has been lowered to 175%. Thus, the thresholds for extraordinary request volume and high request volume during the transition for the nationwide specialty consumer reporting agencies are comparable to those applicable to the nationwide consumer reporting agencies during the centralized source transition. See discussion under § 610.2(e) of this notice, supra.

Further, the final rule retains the proposed three-month transition period. Final rule § 610.3(g). For the same reasons discussed under § 610.3(f) of this notice, supra, the Commission has concluded that, given the limited requirements of the final rule as it applies to nationwide specialty consumer reporting agencies, neither a lengthy transition period nor a geographic rollout are appropriate.

Part 698 Appendix D—Standardized form for requesting annual file disclosures

Section 211 of the FACT Act directs the Commission to prescribe a regulation requiring that nationwide consumer reporting agencies employ a standardized form for consumers to request, either by mail or through an Internet website, annual file disclosures from the centralized source. Section 610.2(b)(3) of the rule requires that the nationwide consumer reporting agencies establish this form and make it available through the centralized source. In addition, the Commission proposed a model form, to be published in 16 CFR part 698, Appendix D (the "model standardized form"). The Commission stated in the proposed rule that nationwide consumer reporting agencies could use this form to comply with § 610.2(b)(3) of the rule.

A trade association representing real estate brokers expressed general support for the model standardized form, stating that it provided adequate information and was minimally intrusive. No commenters oppose the model standardized form, but several propose modifications.

The Commission received several comments from nationwide consumer reporting agencies and CDIA on the model standardized form. Some commenters object to the section of the model that would permit a consumer to designate the manner in which the consumer may be contacted by the nationwide consumer reporting agency if additional information is needed to process the consumer's request. These commenters assert that permitting the consumer to designate an alternative telephone or email address that the nationwide consumer reporting agency might not be able to verify could create a risk of consumer fraud or identity theft. In response to these comments, the Commission has modified the model standardized form by deleting that section.

The same commenters also object to the last sentence of the proposed model standardized form, which stated "[y]ou can expect to receive your report within 15 days after we receive your request." Nationwide consumer reporting agencies and CDIA point out that the statute requires the nationwide consumer reporting agency to provide the annual file disclosure "no later than" 15 days after receipt of the request and that reports sent by mail might involve additional time before the consumer actually receives the report. The Commission agrees that an annual file disclosure mailed on the fifteenth day would meet this requirement. Accordingly, the Commission has changed the last sentence of the model standardized form to the following: "[y]our report will be sent within 15 days after we receive your request."

Some commenters also suggest other changes to the form, which the Commission did not adopt. Nationwide consumer reporting agencies and CDIA object to the provision of the proposed model standardized form that would allow the consumer to indicate his or her preferred delivery method for the annual file disclosure. These commenters express concern that the consumer's preferred delivery method might not be available or appropriate under various circumstances. However, FCRA § 610(b), 15 U.S.C. 1681h(b) specifies that disclosures may be made in such forms as may be specified by the consumer and available from the agency. Further, the model standardized form clearly states that the nationwide consumer reporting agencies "may not be able to offer every delivery method to every consumer." The Commission

views the proposed change as inconsistent with the statute and has declined to alter this part of the model standardized form.

The nationwide consumer reporting agencies also propose various additions to the model standardized form. These commenters suggest that the form include additional information adapting it to Internet use, a certification by the consumer that the information provided by the consumer is accurate, a warning to the consumer of the consequences of making a fraudulent request, and a warning to the consumer that an altered form will constitute an invalid request. One nationwide consumer reporting agency proposes that the model standardized form add more specific directions as to how the consumer's name and address should be provided and request a former address for a consumer who has resided less than two years at the current address. The Commission declines to add such additional information to its model standardized form, but notes that, as this form is a "model," the nationwide consumer reporting agencies may add additional information, provided that such information or instructions are "clear and easily understandable," in compliance with final rule § 610.2(b)(2)(iv). Similarly, the nationwide consumer reporting agencies may require additional categories of information, provided such information is reasonably necessary to process the request, consistent with the standard set forth in § 610.2(b)(2)(ii) of the final rule. The form could also, as one commenter suggests, be modified to offer credit scores to consumers, provided that such additions did not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source, as required under § 610.2(g) of the rule.

IV. Substantially Nationwide Consumer Reporting Agencies.

Section 211(d)(6)(A) of the FACT Act directs the Commission to determine, by rulemaking, "whether to require a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act, to make [annual file disclosures] available upon consumer request, and if so, whether such consumer reporting agencies should make such [annual file disclosures] available through the centralized source described in paragraph (1)(A)."[75]

The term "a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis, other than one described in section 603(p) of the Fair Credit Reporting Act" (hereinafter "substantially nationwide consumer reporting agencies") is not defined under the FCRA or under the FACT Act. In its NPR, the Commission posed questions seeking detailed information about the existence of such entities in the U.S., including their identity and location, the population served by such agencies, the number of requests for file disclosures received and consumer reports generated by such entities, and the categories of information contained in such reports. In addition, the Commission sought information about the costs, benefits, and competitive effect of requiring any such agencies to provide free annual file disclosures and to do so through the centralized source.

The Commission received only minimal response to this question and very little specific information. Two nationwide consumer reporting agencies suggest that associated consumer reporting agencies, described above as agencies that own or maintain consumer files within systems operated by one or more nationwide consumer reporting agencies, should be deemed to be substantially nationwide consumer reporting agencies for purposes of this rule and required to participate in the centralized source. As explained in the discussion under § 610.2(d) of this notice, supra, however, the Commission is not convinced that associated consumer reporting agencies should be deemed substantially nationwide based solely on their contractual relationships with nationwide consumer reporting agencies.

Only one associated consumer reporting agency filed comments. It states that, apart from the nationwide consumer reporting agencies, it does not believe there are consumer reporting agencies in the U.S. that compile and maintain consumer files on substantially a nationwide basis.

In addition, a consumer advocacy organization suggests that nationwide specialty consumer reporting agencies should be considered to be substantially nationwide consumer reporting agencies. Pursuant to § 211(a) of the FACT Act, codified at FCRA § 612(a), 15 U.S.C. 1681j(a) and § 610.3 of the final rule, however, the nationwide specialty consumer reporting agencies will be obligated to provide consumers with free annual file disclosures. The FACT Act clearly contemplated that these nationwide specialty agencies would not be required to participate in the centralized source, but would be subject to a different regulatory scheme.

In light of the information available to it, the Commission determines that substantially nationwide consumer reporting agencies should not, at this time, be required to provide annual file disclosures. The Commission may, at a later time, determine that such entities should provide annual file disclosures, and that such disclosures should be made through the centralized source required by this rule.

V. Final Regulatory Flexibility Analysis.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a proposed rule and a Final Regulatory Flexibility Analysis ("FRFA"), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., those with less than $6,000,000 in average annual receipts). 5 U.S.C. 603–605.

The Commission hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule applies to two types of consumer reporting agencies: (1) nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies.[76] As noted above, the Commission is aware of three entities that meet the rule's definition, in § 610.1(b)(9), of a "nationwide

[75] In making this determination, the Commission is required by the Act to consider the number of consumer reports sold by such entities, the overall scope of operations of such entities, the costs to such entities of providing annual file disclosures to consumers, and the competitive viability of such entities if they are required to provide free annual file disclosures.

[76] In addition, the Commission's NPR solicited information about two other types of consumer reporting agencies. As discussed in section IV, supra, the FACT Act directed the Commission to determine whether to promulgate a rule covering "a consumer reporting agency that compiles and maintains files on consumers on substantially a nationwide basis." The Commission, at this time, is not adopting a rule provision relevant to such agencies, if in fact any such entities exist. In addition, the Commission sought information about associated consumer reporting agencies, i.e., those consumer reporting agencies that own or maintain consumer files within the systems of nationwide consumer reporting agencies. The final rule, however, does not directly cover such agencies. The rule obligates nationwide consumer reporting agencies that house within their systems consumer files owned by associated consumer reporting agencies to provide annual file disclosures to those affected consumers.

consumer reporting agency." The Commission has concluded that none of these is a small entity. In addition, the Commission estimates, based on its own experience and knowledge of industry practices and members, that there are fewer than 50 nationwide specialty consumer reporting agencies currently doing business in the U.S. The Commission has been unable to determine how many, if any, of these nationwide specialty consumer reporting agencies are small entities. In the March 19, 2004, NPR, the Commission asked several questions related to the existence, number and nature of small business entities covered by the proposed rule, as well as the economic impact of the proposed rule on such entities. The Commission received no comments responsive to these questions. Based on its own experience and knowledge of industry practices and members, however, the Commission believes that the number of such agencies that are small entities, if any, is likely to be insubstantial. While the economic impact of the final rule on a particular small entity could be significant, overall the final rule will not have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined to publish a Final Regulatory Flexibility Analysis with this final rule. Therefore, the Commission has prepared the following analysis:

A. Need for and objectives of the rule.

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (FACT Act or the Act), directs the Commission to adopt a rule, no later than June 4, 2004, to require the establishment of: (1) a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for consumer use in making such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies. In this action, the Commission promulgates a final rule to fulfill the statutory mandate. The rule is authorized by and based upon § 211(a) and (d) of the FACT Act.

B. Significant issues raised by public comment.

The Commission received no public comments on the specific impact, if any, of the rule on small entities. As explained above, the Commission has estimated that there are few or no small entities that will be affected by the final rule. In that regard, the rule generally applies only to entities that would not be considered "small entities" for purposes of the Regulatory Flexibility Act.[77]

The Commission has considered that § 610.3 of the rule, which establishes requirements for a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies, could apply to small entities, if any of them meets the definition of such a reporting agency. See final rule § 610.1(b)(10); FCRA § 603(w), 15 U.S.C. 1681a(w). Several commenters questioned certain aspects of the streamlined process provisions set forth in § 610.3, although none directly commented on the potential impact of those requirements on small entities, if any. In this Statement of Basis and Purpose, the Commission has explained its consideration of and response to those comments. The Commission has made certain changes in the final rule that should further minimize its impact on all nationwide specialty consumer reporting agencies, which would include those, if any, that may be small entities. These changes, which address limitations on liability during periods of high request volume, are explained above in the discussion of the revisions made to § 610.3 of the rule.

C. Small entities to which the rule will apply.

The rule will apply to two types of consumer reporting agencies: (1) nationwide consumer reporting agencies, and (2) nationwide specialty consumer reporting agencies. The Commission has concluded that none of the three identified nationwide consumer reporting agencies is a small entity. In the NPR, the Commission estimated that the number of nationwide specialty consumer reporting agencies that are small entities is either very small or none. In addition, the Commission invited comment and information on this issue. No comments addressed this issue, and no information with respect to small entities that might be affected by the rule was provided. Based on the lack of response to its request for comments, the Commission believes that its previous estimate is likely to be accurate.

D. Projected reporting, recordkeeping and other compliance requirements.

Under the rule, nationwide specialty consumer reporting agencies,[78] which would be the only class of entities that could include small entities, if any, will be required to do the following: (1) provide consumers with free annual file disclosures; (2) establish a streamlined process, including a toll-free telephone number, for accepting and processing such consumer requests; (3) provide consumers with clear instructions on how to obtain free annual file disclosures; and (4) make additional disclosures to consumers during situations when adverse circumstances or extraordinary request volume affect the ability of the agency to accept consumer requests. The types of professional skills that will be necessary to fulfill these compliance requirements were described in the Commission's Paperwork Reduction Act analysis, 69 FR at 13201–03.

E. Steps taken to minimize significant economic impact of the rule on small entities.

The Commission invited comment and information with regard to (1) the existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities.

The Commission received no information or suggestions in response to these questions. As explained above, however, the Commission has made certain changes to the final rule to minimize its impact on all entities that are subject to the rule, including small entities, if any, that may be subject to the rule.

VI. Paperwork Reduction Act.

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 et seq., the Commission submitted the proposed Rule to the Office of Management and Budget ("OMB") for review. The OMB has approved the Rule's information collection requirements through April 30, 2007, and has assigned OMB control number 3084–0128.

[77] For example, § 610.2 of the rule addresses the establishment and operation of the centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency, none of which is a small entity. Similarly, Appendix D to Part 698 sets forth a model standardized form for consumer use in making such requests from the centralized source. The impact, if any, of this form is on individuals, i.e., natural persons, who also are not small entities under the Regulatory Flexibility Act.

[78] Nationwide consumer reporting agencies will have similar, but more extensive, obligations under the rule. As stated above, however, the Commission has concluded that there are no nationwide consumer reporting agencies that are small entities.

VII. Final Rule.

List of Subjects

16 CFR Part 610

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

16 CFR Part 698

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Trade practices.

■ Accordingly, for the reasons set forth above, the FTC amends chapter I, title 16, Code of Federal Regulations, as follows:

■ 1. Revise the heading of subchapter F of this chapter to read as follows:

SUBCHAPTER F–FAIR CREDIT REPORTING ACT

■ 2. Add new part 610 to read as follows:

PART 610–FREE ANNUAL FILE DISCLOSURES

Sec.

610.1 Definitions and rule of construction.
610.2 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.
610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

Authority: Pub. L. 108–159, sections 211 (a) and (d).

§ 610.1 Definitions and rule of construction.

(a) The definitions and rule of construction set forth in this section apply throughout this part.

(b) *Definitions.*

(1) *Annual file disclosure* means a file disclosure that is provided to a consumer, upon consumer request and without charge, once in any 12-month period, in compliance with section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(2) *Associated consumer reporting agency* means a consumer reporting agency that owns or maintains consumer files housed within systems operated by one or more nationwide consumer reporting agencies.

(3) *Consumer* means an individual.

(4) *Consumer report* has the meaning provided in section 603(d) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

(5) *Consumer reporting agency* has the meaning provided in section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

(6) *Extraordinary request volume,* except as provided in sections 610.2(i) and 610.3(g) of this part, occurs when the number of consumers requesting or attempting to request file disclosures during any 24-hour period is more than 175% of the rolling 90-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous 90 days an average of 100 consumers per day requested or attempted to request file disclosures, then extraordinary request volume would be any volume greater than 175% of 100, i.e., 176 or more requests in a single 24-hour period.

(7) *File disclosure* means a disclosure by a consumer reporting agency pursuant to section 609 of the Fair Credit Reporting Act, 15 U.S.C. 1681g.

(8) *High request volume,* except as provided in sections 610.2(i) and 610.3(g) of this part, occurs when the number of consumers requesting or attempting to request file disclosures during any 24-hour period is more than 125% of the rolling 90-day daily average of consumers requesting or attempting to request file disclosures. For example, if over the previous 90 days an average of 100 consumers per day requested or attempted to request file disclosures, then high request volume would be any volume greater than 125% of 100, i.e., 126 or more requests in a single 24-hour period.

(9) *Nationwide consumer reporting agency* means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(10) *Nationwide specialty consumer reporting agency* has the meaning provided in section 603(w) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(w).

(11) *Request method* means the method by which a consumer chooses to communicate a request for an annual file disclosure.

(c) *Rule of construction.* The examples in this part are illustrative and not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 610.2 Centralized source for requesting annual file disclosures from nationwide consumer reporting agencies.

(a) *Purpose.* The purpose of the centralized source is to enable consumers to make a single request to obtain annual file disclosures from all nationwide consumer reporting agencies, as required under section 612(a) of the Fair Credit Reporting Act, 15 U.S.C. 1681j(a).

(b) *Establishment and operation.* All nationwide consumer reporting agencies shall jointly design, fund, implement, maintain, and operate a centralized source for the purpose described in paragraph (a) of this section. The centralized source required by this part shall:

(1) Enable consumers to request annual file disclosures by any of the following request methods, at the consumer's option:

(i) A single, dedicated Internet website;

(ii) A single, dedicated toll-free telephone number; and

(iii) Mail directed to a single address;

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the centralized source through each request method, as determined in accordance with paragraph (c) of this section;

(ii) Collects only as much personally identifiable information as is reasonably necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, and to process the transaction(s) requested by the consumer;

(iii) Provides information through the centralized source website and telephone number regarding how to make a request by all request methods required under section 610.2(b)(1) of this part; and

(iv) Provides clear and easily understandable information and instructions to consumers, including, but not necessarily limited to:

(A) Providing information on the progress of the consumer's request while the consumer is engaged in the process of requesting a file disclosure;

(B) For a website request method, providing access to a "help" or "frequently asked questions" screen, which includes specific information that consumers might reasonably need to request file disclosures, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the centralized source and with the Federal Trade Commission;

(C) In the event that a consumer requesting a file disclosure through the centralized source cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumer's identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information; and

(D) A statement indicating that the consumer has reached the website or telephone number operated by the national credit reporting agencies for ordering free annual credit reports, as required by federal law; and

(3) Make available to consumers a standardized form established jointly by the nationwide consumer reporting agencies, which consumers may use to make a request for an annual file disclosure, either by mail or on the Internet website required under section 610.2(b)(1) of this part, from the centralized source required by this part. The form provided at 16 CFR Part 698, Appendix D, may be used to comply with this section.

(c) *Requirement to anticipate.* The nationwide consumer reporting agencies shall implement reasonable procedures to anticipate, and to respond to, the volume of consumers who will contact the centralized source through each request method, to request, or attempt to request, a file disclosure, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide consumer reporting agency, a centralized source request method, or the centralized source.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the centralized source and on consumers contacting, or attempting to contact, the centralized source.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the centralized source from accepting all requests, and the period of time after which the centralized source is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the centralized source to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Reasonable measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide consumer reporting agency shall not be deemed in violation of section 610.2(b)(2)(i) of this part if a centralized source request method is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the other required request methods remain available during such time.

(d) *Disclosures required.* If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, regardless of whether the consumer report is owned by that nationwide consumer reporting agency or by an associated consumer reporting agency, that nationwide consumer reporting agency shall, upon proper identification in compliance with section 610(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. 1681h(a)(1), provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source.

(e) *High Request volume and extraordinary request volume.*

(1) *High request volume.* Provided that a nationwide consumer reporting agency has implemented reasonable procedures developed in accordance with paragraph (c) of this section, entitled "requirement to anticipate," the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time in which a centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences high request volume, if the nationwide consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide consumer reporting agency has implemented reasonable procedures developed in compliance with paragraph (c) of this section, entitled "requirement to anticipate," the nationwide consumer reporting agency shall not be deemed in violation of paragraph (b)(2)(i) of this section for any period of time during which a particular centralized source request method, the centralized source, or the nationwide consumer reporting agency experiences extraordinary request volume.

(f) *Information use and disclosure.* Any personally identifiable information collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the Fair Credit Reporting Act, made through the centralized source, may be used or disclosed by the centralized source or a nationwide consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this part; and

(4) To update personally identifiable information already maintained by the nationwide consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(g) *Communications provided by centralized source.*

(1) Any communications or instructions, including any advertising or marketing, provided through the centralized source shall not interfere with, detract from, contradict, or otherwise undermine the purpose of the centralized source stated in paragraph (a) of this section.

(2) Examples of interfering, detracting, inconsistent, and/or undermining communications include:

(i) A website that contains pop-up advertisements or other offers or promotions that hinder the consumer's ability to complete an online request for an annual file disclosure;

(ii) Centralized source materials that represent, expressly or by implication, that a consumer must purchase a paid product in order to receive or to understand the annual file disclosure;

(iii) Centralized source materials that represent, expressly or by implication, that annual file disclosures are not free, or that obtaining an annual file disclosure will have a negative impact on the consumer's credit standing; and

(iv) Centralized source materials that falsely represent, expressly or by implication, that a product or service offered ancillary to receipt of a file

disclosure, such as a credit score or credit monitoring service, is free, or fail to clearly and prominently disclose that consumers must cancel a service, advertised as free for an initial period of time, to avoid being charged, if such is the case.

(h) *Effective date.* Sections 610.1 and 610.2 shall become effective on December 1, 2004.

(i) *Transition.*

(1) *Regional rollout.* The centralized source required by this part shall be made available to consumers in a cumulative manner, as follows:

(i) For consumers residing in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, the centralized source shall become available on or before December 1, 2004;

(ii) For consumers residing in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, the centralized source shall become available on or before March 1, 2005;

(iii) For consumers residing in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, and Texas, the centralized source shall become available on or before June 1, 2005; and

(iv) For all other consumers, including consumers residing in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and all United States territories and possessions, the centralized source shall become available on or before September 1, 2005.

(2) *High request volume during transition.*

(i) *During the period of December 1, 2004 through December 7, 2004,* high request volume shall mean the following:

(A) For an individual request method: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in any 24-hour period is more than 115% of the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through that request method.

(B) For the centralized source as a whole: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source in any 24-hour period is more than 115% of the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through any request method.

(C) For a nationwide consumer reporting agency: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in any 24-hour period is more than 115% of the daily total number of consumers that were reasonably anticipated to contact that nationwide consumer reporting agency to request file disclosures, in compliance with paragraph (c) of this section.

(ii) *During the period of December 8, 2004 through August 31, 2005,* high request volume shall mean the following:

(A) For an individual request method: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in any 24-hour period is more than 115 % of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through that request method.

(B) For the centralized source as a whole: High request volume occurs when the number of consumers contacting or attempting to contact the centralized source in any 24-hour period is more than 115% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through any request method.

(C) For a nationwide consumer reporting agency: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in any 24-hour period is more than 115% of the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

(3) *Extraordinary request volume during transition.*

(i) *During the period of December 1, 2004 through December 7, 2004,* extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in any 24-hour period is more than 175% of the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through that request method.

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source in any 24-hour period is more than 175% of the daily total number of consumers that were reasonably anticipated to contact the centralized source, in compliance with paragraph (c) of this section, through any request method.

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in any 24-hour period is more than 175% of the daily total number of consumers that were reasonably anticipated to contact that nationwide consumer reporting agency to request their file disclosures, in compliance with paragraph (c) of this section.

(ii) *During the period of December 8, 2004 through August 31, 2005,* extraordinary request volume shall mean the following:

(A) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source through the request method in a 24-hour period is more than 175% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through that request method.

(B) For the centralized source as a whole: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the centralized source in a 24-hour period is more than 175% of the rolling 7-day daily average number of consumers who contacted or attempted to contact the centralized source to request file disclosures through any request method.

(C) For a nationwide consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide consumer reporting agency to request file disclosures in a 24-hour period is more than 175% of the rolling 7-day daily average of consumers who requested any type of file disclosure from that nationwide consumer reporting agency.

§ 610.3 Streamlined process for requesting annual file disclosures from nationwide specialty consumer reporting agencies.

(a) *Streamlined process requirements.* Any nationwide specialty consumer reporting agency shall have a streamlined process for accepting and processing consumer requests for annual file disclosures. The streamlined process required by this part shall:

(1) Enable consumers to request annual file disclosures by a toll-free telephone number that:

(i) Provides clear and prominent instructions for requesting disclosures by any additional available request methods, that do not interfere with, detract from, contradict, or otherwise undermine the ability of consumers to obtain annual file disclosures through the streamlined process required by this part;

(ii) Is published, in conjunction with all other published numbers for the nationwide specialty consumer reporting agency, in any telephone directory in which any telephone number for the nationwide specialty consumer reporting agency is published; and

(iii) Is clearly and prominently posted on any website owned or maintained by the nationwide specialty consumer reporting agency that is related to consumer reporting, along with instructions for requesting disclosures by any additional available request methods; and

(2) Be designed, funded, implemented, maintained, and operated in a manner that:

(i) Has adequate capacity to accept requests from the reasonably anticipated volume of consumers contacting the nationwide specialty consumer reporting agency through the streamlined process, as determined in compliance with paragraph (b) of this section;

(ii) Collects only as much personal information as is reasonably necessary to properly identify the consumer as required under the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations; and

(iii) Provides clear and easily understandable information and instructions to consumers, including but not necessarily limited to:

(A) Providing information on the status of the consumer's request while the consumer is in the process of making a request;

(B) For a website request method, providing access to a "help" or "frequently asked questions" screen, which includes more specific information that consumers might reasonably need to order their file disclosure, the answers to questions that consumers might reasonably ask, and instructions whereby a consumer may file a complaint with the nationwide specialty consumer reporting agency and with the Federal Trade Commission; and

(C) In the event that a consumer requesting a file disclosure cannot be properly identified in accordance with the Fair Credit Reporting Act, section 610(a)(1), 15 U.S.C. 1681h(a)(1), and other applicable laws and regulations, providing a statement that the consumer's identity cannot be verified; and directions on how to complete the request, including what additional information or documentation will be required to complete the request, and how to submit such information.

(b) *Requirement to anticipate.* A nationwide specialty consumer reporting agency shall implement reasonable procedures to anticipate, and respond to, the volume of consumers who will contact the nationwide specialty consumer reporting agency through the streamlined process to request, or attempt to request, file disclosures, including developing and implementing contingency plans to address circumstances that are reasonably likely to occur and that may materially and adversely impact the operation of the nationwide specialty consumer reporting agency, a request method, or the streamlined process.

(1) The contingency plans required by this section shall include reasonable measures to minimize the impact of such circumstances on the operation of the streamlined process and on consumers contacting, or attempting to contact, the nationwide specialty consumer reporting agency through the streamlined process.

(i) Such reasonable measures to minimize impact shall include, but are not necessarily limited to:

(A) To the extent reasonably practicable under the circumstances, providing information to consumers on how to use another available request method;

(B) To the extent reasonably practicable under the circumstances, communicating, to a consumer who attempts but is unable to make a request, the fact that a condition exists that has precluded the nationwide specialty consumer reporting agency from accepting all requests, and the period of time after which the agency is reasonably anticipated to be able to accept the consumer's request for an annual file disclosure; and

(C) Taking all reasonable steps to restore the streamlined process to normal operating status as quickly as reasonably practicable under the circumstances.

(ii) Measures to minimize impact may also include, as appropriate, collecting request information but declining to accept the request for processing until a reasonable later time, provided that the consumer is clearly and prominently informed, to the extent reasonably practicable under the circumstances, of when the request will be accepted for processing.

(2) A nationwide specialty consumer reporting agency shall not be deemed in violation of section 610.3(a)(2)(i) if the toll-free telephone number required by this part is unavailable to accept requests for a reasonable period of time for purposes of conducting maintenance on the request method, provided that the nationwide specialty consumer reporting agency makes other request methods available to consumers during such time.

(c) *High request volume and extraordinary request volume.*

(1) *High request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with paragraph (b) of this section, entitled "requirement to anticipate," a nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences high request volume, if the nationwide specialty consumer reporting agency:

(i) Collects all consumer request information and delays accepting the request for processing until a reasonable later time; and

(ii) Clearly and prominently informs the consumer of when the request will be accepted for processing.

(2) *Extraordinary request volume.* Provided that the nationwide specialty consumer reporting agency has implemented reasonable procedures developed in accordance with paragraph (b) of this section, entitled "requirement to anticipate," a nationwide specialty consumer reporting agency shall not be deemed in violation of paragraph (a)(2)(i) of this section for any period of time during which a streamlined process request method or the nationwide specialty consumer reporting agency experiences extraordinary request volume.

(d) *Information use and disclosure.* Any personally identifiable information

collected from consumers as a result of a request for annual file disclosure, or other disclosure required by the Fair Credit Reporting Act, made through the streamlined process, may be used or disclosed by the nationwide specialty consumer reporting agency only:

(1) To provide the annual file disclosure or other disclosure required under the FCRA requested by the consumer;

(2) To process a transaction requested by the consumer at the same time as a request for annual file disclosure or other disclosure;

(3) To comply with applicable legal requirements, including those imposed by the Fair Credit Reporting Act and this part; and

(4) To update personally identifiable information already maintained by the nationwide specialty consumer reporting agency for the purpose of providing consumer reports, provided that the nationwide specialty consumer reporting agency uses and discloses the updated personally identifiable information subject to the same restrictions that would apply, under any applicable provision of law or regulation, to the information updated or replaced.

(e) *Requirement to accept or redirect requests.* If a consumer requests an annual file disclosure through a method other than the streamlined process established by the nationwide specialty consumer reporting agency in compliance with this part, a nationwide specialty consumer reporting agency shall:

(1) Accept the consumer's request; or

(2) Instruct the consumer how to make the request using the streamlined process required by this part.

(f) *Effective date.* This section shall become effective on December 1, 2004.

(g) *High request volume and extraordinary request volume during initial transition.*

(1) During the period of December 1, 2004 through February 28, 2005, high request volume shall mean the following:

(i) For an individual request method: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency through a streamlined process request method in any 24-hour period is more than 115% of the daily total number of consumers who were reasonably anticipated to contact that request method, in compliance with paragraph (b) of this section.

(ii) For a nationwide specialty consumer reporting agency: High request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency to request file disclosures in any 24-hour period is more than 115% of the number of consumers who were reasonably anticipated to contact the nationwide specialty consumer reporting agency to request their file disclosures, in compliance with paragraph (b) of this section.

(2) *Extraordinary request volume.* During the period of December 1, 2004 through February 28, 2005, extraordinary request volume shall mean the following:

(i) For an individual request method: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency through a streamlined process request method in any 24-hour period is more than 175% of the daily total number of consumers who were reasonably predicted to contact that request method, in compliance with paragraph (b) of this section.

(ii) For a nationwide specialty consumer reporting agency: Extraordinary request volume occurs when the number of consumers contacting or attempting to contact the nationwide specialty consumer reporting agency to request file disclosures in any 24-hour period is more than 175% of the number of consumers who were reasonably anticipated to contact the nationwide specialty consumer reporting agency to request their file disclosures, in compliance with paragraph (b) of this section.

■ 3. Add new Part 698 with the following heading and authority citation:

PART 698 – SUMMARIES, NOTICES, AND FORMS

Sec.

698.1 Authority and purpose.
698.2 Legal effect.
Appendix A–C to Part 698—[Reserved]
Appendix D to Part 698—Standardized Form for Requesting Free File Disclosure.

Authority: 15 U.S.C. 1681g and 1681s; Pub. L. 108–159, sections 151, 153, 211(c) and (d), 213, and 311.

§ 698.1 Authority and purpose

(a) *Authority.* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as most recently amended by the Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, 117 Stat. 1952 (Dec. 4, 2003).

(b) *Purpose.* The purpose of this part is to comply with sections 607(d), 609(c), and 612(a) of the Fair Credit Reporting Act, as amended, and section 211 of the Fair and Accurate Credit Transactions Act of 2003.

§ 698.2 Legal effect

These summaries, forms and notices prescribed by the FTC do not constitute a trade regulation rule. They carry out the directives in the statute that the FTC prescribe these documents, which will constitute compliance with the part of any section of the FCRA requiring that such summaries, notices, or forms be used by or supplied to any person.

Appendix D to Part 698—Standardized form for requesting annual file disclosures.

BILLING CODE 6750–01–S

REQUEST FOR FREE CREDIT REPORT

Note to Consumers: **You have the right to obtain a free copy of your credit report once every 12 months (also known as an "annual file disclosure"), from each of the nationwide consumer reporting agencies. Your report may contain information on where you work and live, the credit accounts that have been opened in your name, if you've paid your bills on time, and whether you have been sued, arrested, or have filed for bankruptcy. Businesses use this information in making decisions about whether to offer you credit, insurance, or employment, and on what terms.**

Use this form to request your credit report from any, or all, of the nationwide consumer reporting agencies.

The following information is required to process your request:

Your Full Name: _____

Your Street Address: _____

Your City, State & Zip Code: _____

Your Telephone Numbers (with area code): Day: _____
Evening: _____

Your Social Security number: _____ Your Date of Birth_____

Place a check next to each credit report you want.

_____ I want a credit report from each of the nationwide consumer reporting agencies

OR

_____ I want a credit report from:

_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]
_____ [name of nationwide consumer reporting agency]

Please check how you would like to receive your report. (Note: because of the need to accurately identify you before we send you your credit report, we may not be able to offer every delivery method to every consumer. We will try to honor your preference.)

_____ [available delivery method]
_____ [available delivery method]
_____ [available delivery method]

_____ Check here if, for security purposes, you want your copy of your credit report to include only the last four digits of your Social Security number (SSN), rather than your entire SSN.

For more information on obtaining your free credit report, visit [insert appropriate website address], call [insert appropriate telephone number], or write to [insert appropriate address].

Mail this form to:
[insert appropriate address]

Your report(s) will be sent within 15 days after we receive your request.

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 04–14388 Filed 6–23–04; 8:45 am]
BILLING CODE 6750–01–C

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- Supplement Subchapter E; re-issuance; published 6-24-04

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H.R. 1086/P.L. 108–237

To encourage the development and promulgation of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes. (June 22, 2004; 118 Stat. 661)

S. 1233/P.L. 108–238

National Great Black Americans Commemoration Act of 2004 (June 22, 2004; 118 Stat. 670)

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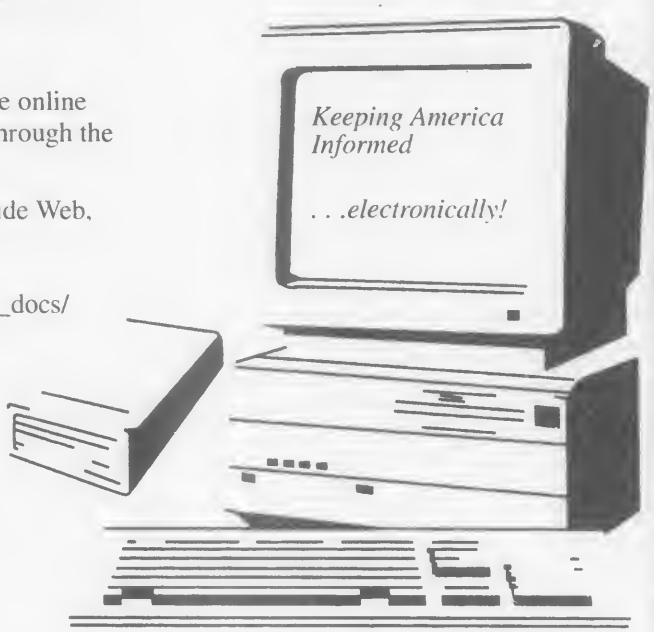

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