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7–12–04 Monday
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Rules and Regulations

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH33

Electronic Maintenance and Submission of Information; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: The Nuclear Regulatory Commission published a final rule in the **Federal Register** on October 10, 2003 (68 FR 58791), amending the NRC's regulations to clarify when and how licensees and other members of the public may use electronic means such as CD–ROM and e-mail to communicate with the agency. That final rule inadvertently changed the addressee for the submission of requests for action under 10 CFR 2.206. This action corrects the final regulations by inserting the correct addressee.

EFFECTIVE DATE: July 12, 2004.

FOR FURTHER INFORMATION CONTACT: John A. Skoczlas, (301) 415–7186, *EIE@nrc.gov;* or Brenda J. Shelton, (301) 415–7233, *INFOCOLLECTS@nrc.gov.*

SUPPLEMENTARY INFORMATION: The final regulation erroneously changed the addressee for the submission of requests under 10 CFR 2.206 from the Executive Director for Operations to the Secretary of the Commission. The NRC did not intend to change its long-standing practice of requiring that requests filed under § 2.206 be addressed to the Executive Director for Operations. This document corrects that error.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ Accordingly, 10 CFR part 2 is corrected by making the following correcting amendment:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(0); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Section 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200–2.206 also issued under secs. 161 b. i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub, L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.206, the second sentence of paragraph (a) is revised to read as follows:

§ 2.206 Requests for action under this subpart.

(a) * * * Requests must be addressed to the Executive Director for Operations and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by electronic submissions, for example, via facsimile, Electronic Information Exchange, e-mail, or CD–ROM. * * * * * * * * * *

Dated in Rockville, Maryland this 6th day of July, 2004.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 04–15697 Filed 7–9–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

19 CFR Part 101

[CBP Dec. 04–22]

Extension of Port Limits of Memphis, TN

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, a proposed extension of the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The port extension is being proposed in order to facilitate economic development in northern Mississippi, and to provide convenience and improved service to carriers, importers, and the general public.

EFFECTIVE DATE: August 11, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, (202) 927–6871.

SUPPLEMENTARY INFORMATION:

Background

The current port limits of Memphis, Tennessee are described in Treasury Decision (T.D.) 84–126, signed May 14, 1984, and published in the **Federal Register** (49 FR 22629) on May 31, 1984, as encompassing the corporate limits of the city of Memphis, Tennessee and all the territory within the limits of Shelby County, Tennessee.

Recently, northern Mississippi has experienced marked business expansion and population growth. Currently, businesses located in northern Mississippi utilize the nearest port of entry at Memphis, Tennessee, and the port limits of Memphis do not extend beyond the Tennessee border.

In order to facilitate economic development in northern Mississippi, and provide convenience and improved service to carriers, importers, and the general public, Customs and Border Protection (CBP), in a document published in the **Federal Register** (69 FR 2092) on January 14, 2004, proposed to extend the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The document proposed to amend § 101.3(b)(1) of the CBP Regulations if a determination was made to proceed with the expansion of the port limits.

Adoption of Proposal as Final Rule

Comments on the proposed amendment to the CBP Regulations were solicited. Five comments were submitted within the designated comment period. Each of the comments supported the proposed extension of the port limits and agreed that it will facilitate economic development in northern Mississippi. Upon further consideration of the matter, CBP has decided to adopt the proposal as published on January 14, 2004.

New Port Limits of the Port of Memphis, Tennessee

Accordingly, CBP is amending § 101.3(b)(1) of the CBP Regulations to reflect that the new limits of the port of entry of Memphis, Tennessee are as follows:

The corporate limits of Memphis, Tennessee and all of the territory within the limits of Shelby County, Tennessee and DeSoto County, Mississippi.

Authority

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12866

Although CBP solicited public comments, notice and public procedure was not required pursuant to 5 U.S.C. 553 because this document relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

Drafting Information

The principal author of this document is Kevin J. Fandl, Attorney, Office Regulations and Rulings, Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies), Customs ports of entry, Exports, Imports.

Amendment to the Regulations

■ For the reasons stated above, part 101 of the CBP Regulations (19 CFR part 101) is amended as follows:

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and specific authority provision for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

■ 2. In the list of ports table in § 101.3(b)(1), under the state of Tennessee, in the "Limits of port" column adjacent to "Memphis" in the "Ports of entry" column, remove the entry "(Restated in T.D. 84–126)" and add in its place "CBP Dec. 04–22".

Dated: July 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–15680 Filed 7–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB—15; Re: ATF Notice No. 961]

RIN 1513–AA33

Establishment of the Red Hills Lake County Viticultural Area (2001R–330P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Red Hills Lake County viticultural area in Lake County in northern California. This new viticultural area is entirely within the Clear Lake viticultural area, which is, in turn, within the larger multi-county North Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective September 10, 2004.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Program Manager, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 205(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical

features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS. map(s) with the proposed viticultural area's boundary prominently marked.

Notice of Proposed Rulemaking

Background

In 2001, the Bureau of Alcohol, Tobacco and Firearms (ATF), the predecessor to TTB, received a petition proposing a new viticultural area to be called "Red Hills" in Lake County, California, about 80 miles north of San Francisco. Sara Schorske of Compliance Service of America filed the petition on behalf of a group of Lake County grape growers. Also in 2001, ATF received a separate petition to establish the "Red Hill" viticultural area in Douglas County, Oregon. ATF published notices of proposed rulemaking regarding the two proposed viticultural areas in the **Federal Register** on October 30, 2002—Notice No. 960 for Red Hill (Oregon) and Notice No. 961 for Red Hills (California).

The two notices discussed the possible name confusion between the proposed Red Hills (plural) and Red Hill (singular) viticultural areas. As a remedy, ATF proposed to link the proposed areas' names to the State in which they were located and suggested the use of "Red Hills—California" and "Red Hill—Oregon." The two notices requested comments from all interested persons by December 30, 2002, and both stated:

> Specifically, ATF requests comments on the potential for name confusion between the [two proposed areas]. * * * Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Based on an industry request for additional time, ATF reopened the comment periods for both proposed areas until March 17, 2003. (See Notice No. 966, published in the **Federal Register** on January 16, 2003.) Comments received in response to Notice No. 960, Red Hill—Oregon will be discussed in a separate rulemaking document.

Comments, Evidence and TTB Responses

TTB received 14 comments regarding the proposed Red Hills—California viticultural area in response to Notice No. 961. One comment opposed the area's establishment. Thirteen comments supported it, and some of these comments recommended modifications to its name or proposed boundaries. We discuss the comments received regarding the area, its name, and its boundaries in detail below.

Opposing Comment

The owner of the "Red Hill Vineyard" trademark opposed the proposed Red Hills—California (Notice No. 961) and the Red Hill—Oregon (Notice No. 960) viticultural areas and stated:

> We are concerned that there will exist confusion with the appellation Red Hill or Red Hills and our brand Red Hill Vineyard that is located in neither of the proposed appellations. * * * We are concerned that the confusion of a brand name and a viticultural region would be similar to the confusion with the Napa appellation and the Napa Ridge brand. To avoid such confusion, we respectfully protest the appellation designations in Notice 961 and 960 so long as we own this Mark.

TTB's response to this comment is discussed in detail below.

General Supporting Comments

The five members of the Lake County Board of Supervisors signed a letter in support of the Red Hills viticultural area petition. In addition, TTB received four separate letters from wine industry members in support of the Red Hills petition. The supporting letters stated that the Red Hills area is a unique grape-growing region with distinctive soils and a distinctive microclimate.

Red Hills—Name Change and Evidence

"Red Hills—California" Name Comments

We received 4 comments proposing changes to the area's suggested name of "Red Hills—California." Three comments strongly opposed the use of "California" as part of the viticultural area's name. Ms. Barbara Snider of Snider Vineyards stated:

> [A] wine using the more generic state designation, "California," suggests to the consumer that the grapes used to make the wine could be grown anywhere in the State, and many times, grown in many different areas of the State and blended.

Another commenter asked, "How about making the [proposed area] 'possessive' of the State in which it lies? [*i.e.*] Red Hills of California * * *."

The petitioning group also opposed the linking of "California" with the Red Hills name, believing this would mislead consumers since California is such a large State with a wide variety of grape growing conditions. The group stated:

> We have invested substantial effort and expense to establish a small, premium vineyard area as an [American viticultural area]. * * * To prominently associate the area with the name California dilutes the area's identity.

The petitioning group argued in a second letter that, "'California' as a modifier will not be specific enough to distinguish our area from other possible grape growing areas," including, they noted, other possible "Red Hills" areas within California.

The petitioning group at first suggested "Red Hills District" as the appropriate name for the petitioned viticultural area, and they provided examples of this name's usage. Later, during the reopened comment period, the petitioning group suggested the use of "Red Hills Lake County" for the area. Ms. Snider, who had suggested "Red Hills—Lake County" in her first comment, added her support for "Red Hills—Lake County" as the appropriate name for this viticultural area.

Red Hills Lake County Name Evidence

Arguing that Red Hills Lake County was "the best and most logical name for the proposed appellation," the petitioners included substantive name evidence with their request showing links between the "Red Hills" and

"Lake County" names. For example, Vineyard and Winery Management magazine's November/December 2002 issue included an article titled "Value Vineyards? Growers Bet on Future of Lake County." The article included the subheadings "Red Hills for Red Wines" and "The Promising Red Hills," and described the vineyards and virtues of the Red Hills region.

An article in the July 5, 2001, St. Helena Star titled "More Vineyards, Four More Wineries Slated for Lake County," discussed vineyard acquisitions in the Red Hills area of Lake County. In February 1998, Wines and Vines magazine discussed the grape-growing qualities of Lake County in an article, "Red Soil, Red Grapes, But Not Red Ink," which noted that an area ranch was "in the Red Hills area southwest of [Clear Lake]." The article quoted a vineyard supervisor who described the virtues of the soils and climate of the Red Hills.

The petitioners submitted other name evidence, including a 1977 description of the area's "rolling red soil" by local historian Henry Mauldin. A 1949 account of the Red Hills walnut-growing region in Lake County shows its location on both sides of Red Hills Road within the viticultural area. Red Hills Road meanders through the area's southwestern quadrant and is shown on a Rand McNally county map, the Lake County Travel Atlas, DeLorme's Northern California Atlas, and in a published list of scenic roads in Lake County.

TTB Response to Name Comments

As discussed above, the original Red Hills petitioners suggesting modifying the petitioned name of their viticultural area to read "Red Hills Lake County." They believe that by using "Lake County" in conjunction with "Red Hills," rather than other modifiers such as "District" or "California," they will be able to better identify this name as that of a well-defined region of Lake County in northern California. TTB agrees that the "Red Hills Lake County" name is generally recognized and finds that there is adequate evidence to support this name for the viticultural area.

TTB Response to Opposing Comment

The commenter who objected to the establishment of this area and the proposed Red Hill area in Oregon is a winery that holds the trademark "Red Hill Vineyard." The proprietor is concerned that there will be confusion between the viticultural area(s) and the trademark, and stated:

> We are concerned that there will exist confusion with the appellation Red Hill or Red Hills and our brand Red Hill Vineyard that is located in neither of the proposed appellations. Sebastiani has established the Red Hill Vineyard trademark at significant expense and would not be willing to relinquish our right to use without compensation for the mark. We are concerned that the confusion of a brand and a viticultural region would be similar to the confusion with the Napa appellation and the Napa Ridge Brand. To avoid such confusion we respectfully protest the appellation designations in Notice 961 and 960 so long as we own this Mark.

As with other final rules establishing viticultural areas, the information submitted in support of establishing the Red Hills Lake County viticultural area shows that TTB is not creating the viticultural area name but instead is recognizing an existing geographic area. TTB recognizes the interplay between trademarks and geographical designations and in the past has rejected proposed viticultural area names when their use would be misleading to the consumer. At other times TTB or ATF (TTB's predecessor agency) has required modifiers such as "District", "Valley," or "Hills" to further distinguish the viticultural area names. This petition has evolved from the initial request to establish "Red Hills" as a viticultural area to the current and final version of "Red Hills Lake County," a more narrowly defined name for the new viticultural area.

We believe that the trademark owner's concern and objection over the use of "Red Hill" and "Red Hills" are addressed by the fact that the new viticultural area name will modify "Red Hills" with "Lake County" thus minimizing the opportunity for consumers to become misled by the use of the new viticultural area name and the trademarked name. The establishment of the Red Hills Lake County viticultural area will not cause the rule's opponent to "relinquish" using the trademark "Red Hill Vineyard" as a brand name. This is because, contrary to the case of "Napa Valley" and "Napa Ridge" cited by the commenter, we do not believe that any confusion will arise between "Red Hills Lake County" and the commenter's "Red Hill Vineyard." We note in this regard that the word "Napa" when used in a viticultural sense is only associated with the Napa Valley in California, with the result that any use of the word "Napa" to designate the origin for a wine not from that geographical area would be inherently misleading and therefore precluded. In the present case, however, the words "Red Hills" taken together or separately do not have comparable viticultural import, and it is for this reason that we consider only the entire name "Red Hills Lake County" and not merely the "Red Hills" portion of that name to be viticulturally significant.

Although the commenter who objected to the proposed rule will not lose its Red Hills Vineyard brand name as a result of this final rule, ATF, TTB's predecessor agency, did indicate in the past:

> It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted by a registered trademark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that designation of the Wild Horse Valley viticultural area is in conformance with the law and regulations. Accordingly, ATF finds that Federal registration of the term "Wild Horse" does not limit the Bureau's authority to establish a viticultural area known as "Wild Horse Valley."

(See the "Wild Horse Valley" viticultural area final rule, T.D. ATF–278, 53 FR 48247, November 30, 1988.)

Boundary Evidence and Changes

Red Hills—General Background

The Red Hills Lake County viticultural area is located in Lake County, California. The new area is within the existing Clear Lake viticultural area, which surrounds that large body of water, and which is, in turn, within the large, multi-county North Coast viticultural area. Historically, walnuts have been the major agricultural crop of this area, prospering in the red soil and rolling terrain. Around the time of Prohibition, two small vineyards were replaced with walnut orchards, but in more recent years growers have replanted several old orchards to wine grapes. There are now approximately 3,100 acres of vineyards within the Red Hills Lake County viticultural area, and more blocks are planned for future development.

Situated on a tract of rocky, red-colored volcanic soil, the Red Hills Lake County viticultural area is distinct from the surrounding region. Steep ridges, volcanic mountains, and Clear Lake's southwestern shoreline border the area's hilly terrain. These geographical elements promote the moderating microclimate and wind patterns that allow for favorable grape-growing conditions without damaging frosts.

Red Hills Boundary Comments

Two commenters requested expansion of the originally proposed Red Hills Lake County western boundary. In their reply comments, the original petitioners supported the smaller expansion on Benson Ridge, but opposed the other, larger expansion southwest of Kelseyville.

A comment from Barbara Snider supported the viticultural area petition, but requested a western boundary expansion in order to include her company's Fortress Vineyard on Benson Ridge, which is immediately west of the originally petitioned boundary area. The Snider comment included evidence showing the similarity of the soil, elevation, climate, and growing conditions found on the Benson Ridge area to those found in the Red Hills viticultural area. After studying Ms. Snider's comment and evidence, the petitioning group supported the expansion of the Red Hills area to include Ms. Snider's and several other vineyards on Benson Ridge.

Mark Welch of Welch Vineyard Management requested a non-contiguous expansion of the petitioned Red Hills Lake area outside of its proposed western boundary. His proposed 2,180-acre expansion area, southwest of Kelseyville, began about 0.75 miles outside of the petitioned viticultural area's western boundary line and ran south of State Road 29 and 175, ending between Big Valley and the Adobe Reservoir on the Highland Springs United States Geological Service (USGS) map. Mr. Welch contended that this non-contiguous land southwest of Kelseyville is similar to the petitioned Red Hills area and included supporting evidence in his comment.

After considering Mr. Welch's comment and evidence, the Red Hills petition group opposed the further expansion of their proposed viticultural area. The petitioners argued that this second expansion area is more appropriately considered a part of the Big Valley, which lies to the west of Kelseyville and, therefore, outside of the Red Hills.

TTB Response to Boundary Comments

In response to Ms. Snider's expansion request, we agree with the petitioning group that Benson Ridge should be included in the northwest corner of the Red Hills Lake County viticultural area. The ridge, at the base of Mt. Konocti, and the vineyards on it, including Ms. Snider's Fortress Vineyard, have soils, climate, elevation, and wind patterns similar to those found elsewhere in the viticultural area.

We have also carefully studied Mr. Welch's comment and expansion request. While noting the red and red-yellow soils from varied origins in his proposed expansion area southwest of Kelseyville, Notice No. 961 stated that a major distinguishing characteristic of the Red Hills area is its red, volcanic soil. The Lake County Soil Survey shows the soils in the second proposed expansion area are substantially different in origin and somewhat different in color from those of the Red Hills.

Mr. Welch's comment also provided climatic data showing similar rainfall and heat summation degree-day totals between his proposed expansion area and the petitioned Red Hills area. Mr. Welch's comment letter also indicates similar wind patterns in the proposed western expansion area and those in the Red Hills Lake County viticultural area. As noted in Notice No. 961, another major distinguishing point of the Red Hills area is its unique wind pattern, which helps provide natural frost protection for crops. However, we find that this proposed expansion area has wind patterns that run northward in the morning and southward in the afternoon, while a 1979 Geothermal study provided with the Red Hills petition shows the viticultural area has a generally perpetual west to east wind pattern.

Given the differences in soil and wind patterns, we believe the land in this proposed non-contiguous expansion is, geographically, a part of the Big Valley region of Lake County. Also, Mr. Welch did not provide name evidence for his proposed expansion area, but deferred to the original Red Hills petition. Therefore, we find that the proposed expansion area southwest of Kelseyville does not have the same distinguishing criteria as the Red Hills Lake County viticultural area.

Area Description and Distinguishing Geographical Features

Physical Features

Lake County is generally mountainous, with protected, fertile valleys allowing agriculture. Clear Lake, a large lake running northwest to southeast, and Mt. Konocti, a volcanic mountain to the lake's east, are two of the county's dominant geographical points. A field of volcanic hills lies southwest of Clear Lake and south of Mt. Konocti. These red, rolling hills contrast with the wider valleys and higher mountains of the surrounding regions.

The Red Hills Lake County viticultural area lies within this rolling terrain, which is covered with rocky, red volcanic soils. The viticultural area's boundaries are based on a combination of geography, terrain, soil, and climate factors that contrast with the surrounding area. These geographical elements promote the moderating microclimate and wind patterns that allow for favorable grape-growing conditions without damaging frosts within the area.

Mt. Konocti and the southwestern shore of Clear Lake border the Red Hills Lake County viticultural area on the north. To the south, the Mayacmas Mountains, part of California's Coast Ranges, border the area, while various ridges border the area on the east and west. The northern boundary line excludes Mt. Konocti above its 2,600-foot elevation and Clear Lake at its shoreline.

On its eastern side, the area excludes, at the southeastern end of Clear Lake, all of Anderson Flat with its different soils, the town of Lower Lake, which sits on an alluvial fan, and a steep ridge with older bedrock and different soils.

The Red Hills Lake County viticultural area's southern boundary generally coincides with the Clear Lake viticultural area's boundary line and also excludes the higher Mayacmas Mountains. These peaks share a common volcanic heritage with the rolling hills, but the steep slopes and high elevations are unsuitable for commercial viticulture. The area's southwestern corner skirts Boggs Lake, while the western boundary excludes Camel Back Ridge and some lower elevations south and southeast of Kelseyville.

Soils

Red, volcanic soils cover over 90% of the Red Hills Lake County viticultural area and are primarily composed of Glenview-Bottlerock-Arrowhead, Konocti-Benridge, and Collayomi-Aiken soil types. These reddish-brown soils are high in gravel content and are a primary factor for the recent growth of viticulture in the Red Hills Lake County area.

While the foothills of Mt. Konocti are within the area's northern boundary line, this volcanic mountain is not considered part of the Red Hills area and serves as a dividing point for several distinct geographical areas. A narrow border of red volcanic soils without significant gravel content helps define the new area's northern boundary along Mt. Konocti's 2,600-foot elevation line. Clear Lake's shoreline and marshy terrain have different soils as well.

The area's eastern boundary follows the edge of its defining volcanic field.

Beyond this field the red soils lack the rock content typical of the Red Hills Lake County viticultural area. Even though the red volcanic soils of the viticultural area extend south of its boundary line, the mountainous terrain to the south precludes commercial viticulture. While Salminas Meadow and Seigler Valley are within the larger Clear Lake viticultural area, they are excluded from the Red Hills area due to their different soils and terrain.

The area's southwestern corner follows the shoreline of Boggs Lake, while the western boundary generally follows Bottle Rock Road along the base of Camel Back Ridge and then runs north and then west to incorporate Benson Ridge at the base of Mt. Konocti. The ridges beyond the southwestern boundary line represent the approximate western extent of the prehistoric volcanic flows that form the area's soils and mark a change to steeper terrain. The land inside the boundary is geologically younger and has more porous volcanic rocks and soils that contrast with the bedrock of Franciscan formation beyond the western boundary area.

Climate

Rainfall in the Red Hills Lake County viticultural area is influenced by its location between the Mayacmas Mountains and Clear Lake. The mountainous region to the area's south gets about 80 inches of rain a year, while Clear Lake to the north averages 22 inches a year. The Red Hills area lies between these two places and receives from 25 to 40 inches of rain a year.

Fifty miles inland, the Red Hills Lake County viticultural area's relative lack of maritime influence greatly affects the area's microclimate, as does its hilly terrain and location between Clear Lake and the Mayacmas Mountains. The unique wind patterns in the Red Hills area result from the lake-land effect, driven by temperature contrasts between the large lake and the adjacent land, as well as the mountain-valley effect that pushes air either upward or downward in the valleys depending on temperatures.

The combination of the lake-land and the mountain-valley effects creates the area's perpetual motion wind machine, creating the unique wind systems that blow through its open terrain. These constant winds provide natural frost protection for the area's grapevines. Local residents confirm that in the early morning hours of cold spring days, when temperatures dip below the freezing point, the naturally generated winds keep frost from forming on grape shoots, while other Lake County viticultural areas require frost protection measures.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

Maps

The petitioner(s) provided the required maps, and we list them below in the regulatory text.

TTB Finding

After careful review of the petition and the comments, TTB finds that the evidence submitted supports the establishment of the viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the "Red Hills Lake County" viticultural area in Lake County in northern California, effective 60-days from this document's publication date.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that suggests an origin other than the wine's true place of origin. With certain exceptions, the regulations also prohibit the use of brand names of viticultural significance, such as the name of a State, county, or viticultural area, unless the wine meets the appellation of origin requirements for the named geographic area.

With the establishment of this viticultural area, its name, "Red Hills Lake County," becomes a term of viticultural significance. Wine bottlers using "Red Hills Lake County" in a brand name, including a trademark of the entire name, or in another label reference, must ensure the product is eligible to use the viticultural area's name as an appellation of origin. Because the trademark "Red Hill Vineyard" is different than "Red Hills Lake County," the establishment of this new viticultural area will not result in the Red Hill Vineyard trademark owner becoming ineligible to use the trademark as a brand name. In other words, the trademark does not contain any words that TTB considers viticulturally significant as a result of the establishment of the Red Hills Lake County viticultural area.

For a wine to be eligible to use a viticultural area name listed in part 9 of the TTB regulations as an appellation of origin, at least 85 percent of the grapes used to make the wine must have been grown within that viticultural area. If the wine is not eligible to use the viticultural area name and that name appears in the wine's brand name or in another label reference, the label is not in compliance and the bottler must change the brand name or other label reference and obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i) for details.

Regulatory Analyses and Notices

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This rule is not a significant regulatory action as defined by Executive Order 12866 (58 FR 51735). Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Procedures Division drafted this final rule document.

List of Subjects in 27 CFR Part 9

Wine.

The Final Rule

■ For the reasons discussed in the preamble, we amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.169 to read as follows:

§ 9.169 Red Hills Lake County.

(a) *Name.* The name of the viticultural area described in this section is "Red Hills Lake County".

(b) *Approved Map.* The appropriate maps for determining the boundary of the Red Hills Lake County viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Clearlake Highlands Quadrangle, CA—Lake Co. 1958, photorevised 1975;
(2) Lower Lake Quadrangle, CA—Lake Co. 1958, photorevised 1975;
(3) Whispering Pines Quadrangle, CA 1958, photoinspected 1975:
(4) Kelseyville Quadrangle, CA—Lake Co. 1959, photorevised 1975.

(c) *Boundary.* The Red Hills Lake County viticultural area is located entirely within the Clear Lake viticultural area of Lake County, California, on the southwestern shore of Clear Lake, between the towns of Lower Lake and Kelseyville, California. The Red Hills Lake County viticultural area boundary is as follows:

(1) Beginning on the Clearlake Highlands map at the intersection of the Clear Lake shoreline, south of Slater Island, with the common boundary line between sections 3 and 4, T12N, R7W, proceed approximately 0.1 miles due south along the common section line to its intersection with the 1,400-foot contour line, section 3, T12N, R7W (Clearlake Highlands Quadrangle); then

(2) Proceed east-southeasterly along the meandering 1,400-foot contour line onto the Lower Lake map south of Anderson Flat, then reverse direction with the contour line and continue westerly, leaving the Lower Lake map, to the 1,400-foot contour line's intersection with Seigler Canyon Creek, section 10, T12N, R7W (Clearlake Highlands Quadrangle); then

(3) Proceed generally west then south along Seigler Canyon Creek to its confluence with Perini Creek, section 9, R7W, T12N, and continue southerly about 1.2 miles along Perini Creek to its intersection with the 1,800-foot contour line, section 16, R7W, T12N (Clearlake Highlands Quadrangle); then

(4) Continue southerly along the 1,800-foot contour line, crossing on to the Whispering Pines map, and, turning westerly, continue along the 1,800-foot contour line to its intersection with Copsey Creek, section 28, T12N, R7W (Whispering Pines Quadrangle); then

(5) Proceed generally west-northwest along Copsey Creek to its headwaters in section 29, then continue straight west-southwesterly to the headwaters of Bad Creek at its intersection with the section 30 eastern boundary line, and, from that point, proceed approximately 0.1 miles due west to Big Canyon Road, section 30, T12N, R7W (Whispering Pines Quadrangle); then

(6) Proceed about 1.1 miles north-northwesterly along Big Canyon Road, leaving the Whispering Pines map, to its intersection with Loch Lomond Road, northeast of Hoberg Airport, section 19, T12N, R7W (Clearlake Highlands Quadrangle); then

(7) Proceed approximately 1.5 miles westerly then southerly along Loch Lomond Road, returning to the Whispering Pines map, passing through Seigler Springs, to the road's first intersection with the 2,640-foot contour line, northwest of Bonanza Springs, section 25, T12N, R8W (Whispering Pines Quadrangle); then

(8) From that point, proceed about 1.9 miles northwesterly in a straight line, passing through the peak of Seigler Mountain, elevation 3,692 feet, and returning to the Clearlake Highlands map, to the line's intersection with Salmina Road, section 23, T12N, R8W (Clearlake Highlands Quadrangle); then

(9) Proceed 1.25 miles northwesterly along Salmina Road to its intersection with State Highway 175, section 15, T12N, R8W (Clearlake Highlands Quadrangle); then

(10) Proceed south 0.6 miles on State Highway 175 to its intersection with the section 15 southern boundary line, T12N, R8W (Clearlake Highlands Quadrangle); then

(11) From that point, proceed about 1 mile in a straight northwesterly line to the peak of Mt. Hannah, elevation 3,978 feet, section 16, T12N, R8W (Clearlake Highlands Quadrangle); then

(12) From the peak of Mt. Hannah, proceed about 0.8 miles in a westerly straight line, crossing on to the Kelseyville map, to the intersection of the 3,000-foot contour line with the section 17 east boundary line, and continue for about 0.45 miles along the same line of direction to the 2,800-foot contour line east of Boggs Lake, section 17, T12N, R8W (Kelseyville Quadrangle); then

(13) Proceed northerly and then westerly along the 2,800-foot contour line around Boggs Lake to the contour line's intersection with Harrington Flat Road, section 18, T12N, R8W (Kelseyville Quadrangle); then

(14) Proceed about 0.4 miles northwesterly along Harrington Flat Road to its intersection with Bottle Rock Road, and continue north-northwesterly along Bottle Rock Road for about 4 miles to its intersection with Cole Creek Road to the west and an unimproved road to the east, section 25, T13N, R9W (Kelseyville Quadrangle); then

(15) Proceed east and then northeasterly on the unimproved road about 0.4 miles to its intersection with the east-west State Highway 29/175 and a northerly unimproved road, section 25, T13N, R9W (Kelseyville Quadrangle); then

(16) From that point, cross State Highway 29/175 and proceed about 1 mile northwesterly along the unnamed, unimproved road to its intersection with an east-west unimproved road just north of the common boundary line between sections 24 and 25, then go west a short distance on that road to the point where the road turns north along the common boundary between sections 23 and 24; then

(17) Proceed 0.5 miles north along the unimproved road marking the common boundary between sections 23 and 24 to the road's intersection with Wilkinson Road and continue straight north 0.25 miles on Wilkinson Road to its intersection with the 1,600-foot elevation line at the section 24 western boundary line, T13N, R9W (Kelseyville Quadrangle); then

(18) Proceed about 1.35 miles straight easterly to the 2,493 benchmark located along an unnamed light-duty road known locally as Konocti Road, section 19, T13N, R8W (Kelseyville Quadrangle); then

(19) Proceed less than 0.2 miles easterly and then northerly along the unnamed light-duty road to its intersection with the 2,600-foot elevation line, section 19, T13N, R8W (Kelseyville Quadrangle); then

(20) Proceed about 3.0 miles generally east along the 2,600-foot elevation line to its intersection, north of Bell Mine, with an unnamed intermittent stream near the section 20 east boundary line, T13N, R8W (Kelseyville Quadrangle); then

(21) Proceed about 1.2 miles in a straight east-northeasterly line to the intersection of Konocti Bay Road and Soda Bay Road, and continue due east to the shore of Clear Lake, section 22, T13N, R8W (Clearlake Highlands Quadrangle); then

(22) Proceed southeasterly along the shoreline of Clear Lake, returning to the point of beginning at the shoreline's intersection with the common boundary line between sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

Signed: May 10, 2004.

Arthur J. Libertucci,

Administrator.

Approved: June 25, 2004.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 04–15723 Filed 7–9–04; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

[Department of the Treasury Circular, Public Debt Series No. 3–72]

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing an interim rule that updates the method by which owners of State and Local Government Series (SLGS) securities will obtain access to SLGSafe℠. SLGSafe is a secure Internet site where customers subscribe for SLGS securities.

DATES: Effective date August 11, 2004. To be considered, comments must be received on or before July 27, 2004.

ADDRESSES: You may submit comments, identified by Docket Number BPD–01–04, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.publicdebt.treas.gov.*
- *E-mail: chcounsel@bpd.treas.gov.*
- *Fax:* 304–480–8601.
- *Mail:* Elizabeth Spears, Senior Attorney, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, P.O. Box 1328, Parkersburg, WV 26106–1328.
- *Hand Delivery/Courier:* Elizabeth Spears, Senior Attorney, Office of the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 200 3rd St., G–15, Parkersburg, WV 26106–1328.

Instructions: All submissions received must include "Bureau of the Public Debt," and Docket Number BPD–01–04. All comments received will be posted without change to *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Edward Gronseth, Deputy Chief Counsel, or Elizabeth Spears, Senior Attorney, Office of the Chief Counsel, Bureau of the Public Debt, 200 3rd St., G–15, Parkersburg, WV 26106–1328, (304) 480–8692, *chcounsel@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Treasury is improving the method by which holders of State and Local Government Series (SLGS) securities will gain access to SLGSafe. We will replace the current Public Key Infrastructure (PKI) technology, which requires you to load a digital certificate on your personal computer, with log-on information, such as a Personal Identification Number (PIN) and password, which enables remote access to your SLGSafe portfolio regardless of your physical location.

In the May 5, 2004, Quarterly Refunding Statement, Treasury announced proposed regulatory changes pertaining to trading activities. These changes will be published in a proposed rule that will be issued at a later date.

This interim rule revises the following provisions:

Section 344.3(c)(2)—Because digital certificates will no longer be issued, we deleted the reference to "Public Debt's Certificate Practice Statement."

Section 344.3(c)(3), (e)—We changed the name of the "SLGSafe Internet User's Guide" to the "SLGSafe User's Manual."

Section 344.3(f)(2), (3)—Under the current regulations, before an organization can obtain access to SLGSafe, a SLGSafe Access Administrator, and a backup administrator, must be appointed. The SLGSafe Application for Internet Access, PD F 4144–5 E, explains that the administrators are responsible for designating users, updating user information, renewing digital certificates, and forwarding user acknowledgements to us. Because we are replacing digital certificates with log-on information, it will no longer be necessary for organizations to appoint administrators. Each organization must ensure that only authorized users apply for SLGSafe access.

Section 344.3(g)(1)—Currently, access to SLGSafe is obtained through digital certificates. We are replacing digital certificates with log-on information.

Section 344.3(h)(1)—Currently, users sign an acknowledgement concerning digital certificate use. We are replacing digital certificates with log-on information. Users will be required to submit a signed acknowledgement concerning proper use of log-ons and security requirements.

Section 344.3(h)(4)—We deleted references to Public Debt's Certificate Practice Statement and accompanying Treasury Policy regarding digital certificates.

II. Procedural Requirements

A. Executive Order 12866

This rule is not a significant regulatory action as defined in E.O. 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. Therefore, a regulatory assessment of anticipated benefits, costs, and regulatory alternatives is not required.

B. Determination To Issue an Interim Final Rule

Because this rule relates to matters of public contract and procedures for United States securities, notice and public procedures are not required by 5 U.S.C. 553. In addition, Treasury finds that there is good cause why notice and public procedures are unnecessary because this rule merely updates the method of accessing SLGSafe in a manner that reduces burdens of using SLGSafe and imposes no substantive requirements on users of SLGSafe. The electronic subscription feature was announced in a Proposed Rule published in the **Federal Register** 61 FR 39228, 39230, Jul. 26, 1996. The SLGSafe system became operational under an interim rule announced in the **Federal Register** 65 FR 55399, Sept. 13, 2000.

C. Regulatory Flexibility Act

This rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), are inapplicable. Since a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

D. Paperwork Reduction Act

This rule does not alter the collection of information previously reviewed and approved by the Office of Management and Budget, under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507, under control number 1535–0091.

List of Subjects in 31 CFR Part 344

Bonds, Government Securities, Securities.

■ For the reasons set forth in the preamble, we amend 31 CFR part 344 as follows:

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES

■ 1. The authority citation for part 344 is revised to read as follows:

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

■ 2. Amend § 344.3 by revising paragraphs (c), (e), (f), (g)(1), (h)(1), and (h)(4), to read as follows:

§ 344.3 What special provisions apply to SLGSafe Internet transactions?

* * * * *

(c) *What special terms and conditions apply to SLGSafe?* The following terms and conditions, which are downloadable from Public Debt's website and which may change from time to time, apply to SLGSafe transctions:

(1) SLGSafe Application for Internet Access and SLGSafe User Acknowledgment; and

(2) SLGSafe User's Manual.

* * * * *

(e) *What SLGSafe functions can I perform in each role?* The role that you play in SLGSafe shall determine the functions that you will be allowed to perform. An explanation of the roles and functions is outlined in the SLGSafe User's Manual.

(f) *How do I apply for access to SLGSafe?* You must apply for SLGSafe access before performing any Internet functions. To apply for SLGSafe Internet access, you must:

(1) Submit to Public Debt a completed form, PD F 4144–5, SLGSafe Application for Internet Access;

(2) Certify that the information on the SLGSafe Application is accurate;

(3) Certify that you are authorized to perform the requested roles; and

(4) Await our written approval of your SLGSafe Application before you, or anyone acting on your behalf, uses an electronic connection to access any of our services or to send any electronic messages.

(g) * * *

(1) Issue log-on information to each user that is authorized on your approved application; and

* * * * *

(h) * * *

(1) Sign, and send to Public Debt, a User Acknowledgement regarding the use of log-on information;

* * * * *

(4) Agree that we may act on any electronic message to the same extent as if we had received a written instruction bearing the signature of your duly authorized officer;

* * * * *

Dated: July 2, 2004.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–15607 Filed 7–7–04; 3:17pm]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AL–112L–2004–1–FRL–7786–2]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Pulp Mills; State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Alabama Department of Environmental Management (ADEM) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. The Environmental Protection Agency has reviewed this request and found that it satisfies all of the requirements necessary to qualify for up-front program approval of the State's equivalency by permit (EBP) program. Thus, by approving the State's EBP program the EPA is hereby granting ADEM the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements.

DATES: This direct final rule is effective September 10, 2004, without further notice, unless EPA receives significant or adverse comments by August 2, 2004. If significant or adverse comments are received, EPA 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: Written comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Duplicate copies of all comments must also be submitted to Ronald W. Gore, Chief, Air Division, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130–1463. Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9131. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file for this action under AL–112L–2004–1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the Alabama Department of Environmental Management, Air Division, 1400 Coliseum Boulevard, Montgomery, Alabama 36110.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection. All comments received on this rulemaking package will be evaluated and addressed if necessary.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking AL–112L–2004–1" in the subject line on the first page of your comment. Duplicate copies of all comments should be transmitted to Ronald W. Gore, Chief, Air Division, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130–1463. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *page.lee@epa.gov.* Please include the text "Public comment on proposed rulemaking AL–112L–2004–1" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Also, send duplicate copies of comments to Ronald W. Gore, Chief, Air Division, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130–1463. Please include the text "Public comment on proposed rulemaking AL–112L–2004–1" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 a.m. to 3:30 p.m. excluding Federal holidays. Duplicate copies of comments should be delivered to Ronald W. Gore, Chief, Air Division, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, Montgomery, Alabama 36130–1463.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal**

Register citation related to your comments.

II. Background

On January 12, 2001, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Pulp Mills (*see* 66 FR 3180) which was codified in 40 CFR part 63, subpart MM, "National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills' (Pulp and Paper MACT II). The International Paper Prattville Mill in Prattville, Alabama, is one of twelve pulp and paper mills operating in the State and subject to subpart MM.

On March 31, 2004, the Alabama Department of Environmental Management (ADEM) requested delegation of subpart MM under 40 CFR 63.94 for the International Paper Prattville Mill. EPA received the request on April 9, 2004. Specifically, ADEM requested approval to implement and enforce EPA approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart MM under the process outlined in 40 CFR 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 Clean Air Act (CAA) standards, ADEM also requested, under 40 CFR 63.91, up-front approval of its demonstration that ADEM has adequate authorities and resources to implement and enforce all delegable CAA section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 65 FR 55810, dated September 14, 2000). Under these regulations, a State or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the "up-front approval" by EPA of the State EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is the State's submittal of alternative section 112 requirements in the form of pre-draft permit terms and conditions, which EPA reviews for a determination of equivalency. If EPA finds the pre-draft permit terms and conditions equivalent, it approves the State's alternative requirements and notifies the State in writing. The third step (*see* 40 CFR 63.94(e)) is incorporation of the EPA approved pre-draft permit terms and conditions into a specific title V permit through the title V permit issuance process. Until completion of step three, all requirements of the Pulp and Paper MACT II remain the federally enforceable and applicable requirements for the International Paper Prattville Mill.

The instant rulemaking involves step one of the EBP process. The purpose of step one, the "up-front approval" of the EBP program, is three fold: (1) It ensures that ADEM meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for ADEM to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which ADEM will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, ADEM's request for up-front approval is required to include the identification of the sources and the source categories for which the State is seeking authority to implement and enforce alternative requirements, the identification of the existing section 112 standard for which the State is seeking authority to implement and enforce alternative requirements, and a one time demonstration that the State has an approved title V operating permit program that permits the affected sources. In addition, § 63.94(b) requires the State to consult with the EPA regional office regarding the number of sources in a category.

III. Final Action

After reviewing the request for approval of ADEM's EBP program for subpart MM, EPA has determined that this request meets all the requirements necessary to qualify for up-front program approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. ADEM's request includes the identification of the sources and the source categories for which the State is seeking authority to implement and enforce alternative requirements (International Paper's Prattville, Alabama, facility: Chemical Recovery Combustion Sources at Pulp Mills). ADEM's request also includes a one time demonstration of an approved Title V permitting program (ADEM received full EPA approval for its Title V permitting program on October 29, 2001), and an identification of the existing section 112 standard for which it is seeking authority to implement and enforce alternative requirements (Pulp and Paper MACT II). Finally, ADEM has consulted with the EPA Regional Office regarding the number of sources in this category. Accordingly, EPA approves ADEM's request for program approval to implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Prattville Mill for subpart MM (step one approval).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no comments that would result in amending the direct final rule language (significant or adverse comments). However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) provisions should significant or adverse comments be filed. This rule will be effective September 10, 2004, without further notice unless the Agency receives significant or adverse comments by August 2, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 10, 2004, and no further action will be taken on the proposed rule. Please note that if we receive significant or adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of significant or adverse comment.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

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). Also, this action is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13175

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). Thus, Executive Order 13175 does not apply to this rule

C. Executive Order 13132

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 program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action allows Alabama to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. 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 September 10, 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 may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 29, 2004.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ Title 40, chapter I, part 63 of the *Code of Federal Regulations* is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(1) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(1) *Alabama.*

(i) [Reserved]

(ii) Alabama Department of Environmental Management (ADEM) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Prattville Mill, Prattville, Alabama, for subpart MM of this part — National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills. This action is contingent upon ADEM including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 04–15721 Filed 7–9–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. RSPA–03–14456]

RIN 2137–AD80

Pipeline Safety: Liquefied Natural Gas Facilities; Clarifying and Updating Safety Standards

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

ACTION: Final rule; petition for reconsideration.

SUMMARY: In the **Federal Register** of March 10, 2004, RSPA published a final rule concerning liquefied natural gas (LNG) facilities. The final rule clarified that regulations governing the fire protection of LNG facilities apply to facilities in existence or under construction as of March 31, 2000. The final rule also updated a reference to fire protection provisions of the National Fire Protection Association (NFPA) standard, NFPA 59A, from the 1996 edition to the 2001 edition of that standard. The American Gas Association submitted a petition for reconsideration of the final rule, requesting changes in the fire protection requirements. The present action responds to that petition and clarifies requirements that involve provisions of NFPA 59A.

DATES: This action takes effect August 11, 2004.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 10, 2004, RSPA published a final rule that, *inter alia,* amended regulations in 49 CFR part 193 related to the fire protection of LNG facilities used in gas pipeline transportation (69 FR 11330). An amendment to 49 CFR 193.2005 clarified that the fire protection requirements of part 193 (contained in § 193.2801, Fire protection) apply to LNG facilities existing on March 31, 2000. In addition, an amendment to § 193.2801 clarified which provisions of NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" were incorporated by reference. That amendment also provided an extended compliance time for actions to be taken regarding certain systems and personnel qualification. A separate amendment updated all part 193 references to the 1996 edition of NFPA 59A to the 2001 edition of that standard.

Petition for Reconsideration

By letter dated April 8, 2004, the American Gas Association, a trade association representing operators of LNG facilities, submitted a petition for reconsideration of the final rule as it relates to the fire protection requirements of § 193.2801. These requirements are as follows:

Section 193.2801 Fire protection.

Each operator must provide and maintain fire protection at LNG plants according to sections 9.1 through 9.7 and section 9.9 of NFPA 59A [2001 edition] * * *. However, LNG plants existing on March 31, 2000, need not comply with provisions on emergency shutdown systems, water delivery systems, detection systems, and personnel qualification and training until September 12, 2005.

The following is our response to the petition:

As a general issue, the petitioner argues that there has not been sufficient opportunity to discuss retroactive application of sections 9.1 through 9.7 and section 9.9 of NFPA 59A. To demonstrate this point, the petitioner states that the retroactive issue was left open at the Technical Pipeline Safety Standards Committee (TPSSC) meeting on July 31, 2003, and that a workshop to clarify retroactive requirements, which was announced at the meeting, was not held.

On the contrary, the TPSSC did complete its consideration of the proposal to apply NFPA 59A (2001 edition) fire protection requirements retroactively. It voted unanimously that the requirements should apply only to new LNG facilities (transcript p. 76 (motion to apply only to new facilities clarified) and p. 86 (motion passed with unrelated amendments)). We regret that the demand for expeditious action on the final rule did not allow time for the workshop. However, we believe the public proceedings that led to the final rule provided ample opportunity for operators to express their views on retroactivity consistent with applicable legal requirements.

The petitioner also makes four specific requests. The first is that we remove the requirement that operators of LNG plants existing on March 31, 2000, provide and maintain fire protection according to sections 9.1 through 9.7 and section 9.9 of NFPA 59A (2001 edition). In support of this request, the petitioner contends that requiring operators to upgrade or retrofit their existing detection systems to meet the requirements of NFPA 72, National Fire Alarm Code, 1999 edition, regardless of existing conditions, is impracticable and could result in unnecessary equipment or system changes.

Under the final rule, such arbitrary upgrading or retrofitting is not mandatory. Compliance with NFPA 72 is governed by section 9.3.4 of NFPA 59A, which reads:

The detection systems determined from the evaluation in 9.1.2 shall be designed, installed, and maintained in accordance with NFPA 72, National Fire Alarm Code, or NFPA 1221, Standard for the Installation, Maintenance, and Use of Public Fire Service Communication Systems, as applicable.

Under section 9.1.2, operators have to determine the type, quantity, and location of equipment necessary for the

detection and control of certain fires, leaks, and spills "by an evaluation based on sound fire protection engineering principles, analysis of local conditions, hazards within the facility, and exposure to or from other property." Reading sections 9.1.2 and 9.3.4 together, NFPA 72 requirements do not apply regardless of existing conditions, but in light of them. If an operator determines from the evaluation required by section 9.1.2 that the type, quantity, and location of existing detection equipment are adequate for fire protection, no upgrading or retrofitting is required. Also, even if an operator determines that the type, quantity, or location of existing detection equipment is inadequate for fire protection, only detection equipment that is changed or added would have to meet applicable NFPA 72 requirements. In view of this clarification, we do not consider the upgrading issue a sufficient reason to grant the first request.

As further justification for the first request, the petitioner asserts that to meet the training requirements of NFPA 72, many operators may contract out the maintenance of detection equipment. Doing so, the petitioner speculates, could degrade the quality of maintenance since only operators have firsthand experience and understanding of the equipment. We addressed this potential problem in the final rule by allowing operators until September 12, 2005, to train plant personnel according to NFPA 72 requirements. Since the petitioner's second request accedes to this deadline for training, we do not consider the training issue a sufficient reason to grant the first request.

The petitioner's concern that operators may have to contract out the maintenance of detection equipment is apparently based on its belief that NFPA 72 requires the use of certified personnel for this maintenance. However, NFPA 72 does not mandate the use of certified personnel. Rather section 7–1.2.2 of NFPA 72 (1999 edition) requires that service personnel be qualified and experienced in the inspection, testing, and maintenance of fire alarm systems. While individuals certified by various organizations are included in examples of qualified personnel, individuals may be qualified otherwise. For example, personnel who meet the qualification requirements of 49 CFR 193.2707, "Operations and maintenance," for fire alarm system maintenance at LNG plants, would , in our view, also be qualified for that function under NFPA 72.

The second request is that we limit the September 12, 2005, compliance deadline to reviewing equipment or systems and making required changes to training and procedures. The basis of this request is the petitioner's belief that operators are required to change existing equipment or systems "regardless of whether it is appropriate." The petitioner argues that although this is not practicable, an engineering review and changes to training and procedures, once clarified, can be completed by the September 12, 2005, deadline. As clarified above, operators are required to make equipment or system changes only as determined by an evaluation of existing conditions. Given this clarification and because the petition does not specify which requirements related to training and procedures are considered unclear, we have not granted the second request.

The third request is that we establish September 12, 2006, as the deadline for making equipment or system changes. The petitioner argues that for planning and budgeting reasons, operators are unlikely to complete the evaluation of existing equipment or systems and make all necessary changes before the September 12, 2005, deadline. Given the clarification above of what changes, if any, may be needed, there is insufficient evidence that operators will need additional compliance time for changes. Even if additional time is needed, 1 year may not be appropriate in all cases. Under these circumstances, we think the need to establish September 12, 2006, as the deadline for making equipment or system changes is unclear. Thus the third request is denied.

The last request is that we hold a public meeting on the petition. Since this response clarifies requirements that are central to the petition, we do not believe a public meeting on the petition is necessary.

Issued in Washington, DC, on July 2, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–15654 Filed 7–9–04; 8:45 am]

BILLING CODE 4910–60–U

Proposed Rules

Federal Register
Vol. 69, No. 132
Monday, July 12, 2004

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

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3402

RIN 0524–AA30

Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to revise administrative provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program. The revisions would relax constraints that are causing grantees to return unexpended funds to CSREES and provide support to the training of students awarded Fellowships from grants of the Program.

DATES: Submit comments on or before August 11, 2004.

ADDRESSES: Written comments should be submitted by first-class mail to: Policy and Program Liaison Staff, Office of Extramural Programs, USDA–CSREES, U.S. Department of Agriculture, STOP 2299, 1400 Independence Avenue, SW., Washington, DC 20250–2299. Electronic comments should be submitted via e-mail to: *RFP–OEP@csrees.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gilmore, Ph.D.; Director, Higher Education Programs; phone: (202) 720–1973; fax: (202) 720–2030; e-mail: *jgilmore@csrees.usda.gov*.

SUPPLEMENTARY INFORMATION: On December 30, 1994, CSREES published in the **Federal Register** (59 FR 68072–68078) a final rule on the Administrative Provisions (7 CFR part 3402) for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program.

The current rule (7 CFR part 3402) requires that grantees refund all unexpended money to the Agency, if (1) Fellows are not appointed within 15 months of the effective date of the grant; or (2) Fellowships are prematurely terminated. The Agency uses refunded money to provide Fellows with supplemental grants for international travel and thesis/dissertation travel. Numerous stakeholders have expressed dissatisfaction with the requirement to refund unexpended grant funds. CSREES has concluded that the Fellowship Program's purpose would be better served by extending the amount of time for Fellowship appointment and permitting grantees to recruit and train replacement Fellows.

The existing rule requires that (1) new Graduate Fellows are newly recruited; and (2) have a strong interest in preparing for careers as food or agricultural scientists or professionals. Project Directors have indicated that the recruitment restriction limits their ability to gauge whether new Fellows have the requisite interest. To give Project Directors more time to interact with potential Graduate Fellows before recruiting them into the Program, the proposed rule would allow them to appoint students who have completed less than two semesters of full-time study as new Graduate Fellows.

Under the existing rule, a grantee may award a Fellowship to a student enrolled as a master's or doctoral degree candidate, but a grantee is prohibited from awarding a Fellowship to a postdoctoral candidate. Because of the new and multidisciplinary expertise required of the next generation of food and agricultural scientists, stakeholders and CSREES have concluded that postdoctoral training is an integral part of their preparation.

During the period of support, the existing rule restricts Fellows from accepting employment from their sponsoring institution or any other agency. Grantees have complained that this unfairly prohibits Fellows from participating in assistantships or other employment opportunities that include, as compensation, tuition waivers. At the discretion of sponsoring institutions, the proposed rule would allow Fellows to accept additional supplemental employment that positively contributes to their training or research and provides eligibility for tuition waivers.

The Agency proposes revising the existing rule for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program at 7 CFR part 3402 to address these problems. The proposed rule would allow grantees up to 18 months after award to appoint Fellows, and permit the recruitment and training of replacement Fellows under certain circumstances. The proposed rule would permit grantees to appoint as new Graduate Fellows students who have completed less than two semesters of full-time study. It would also permit the Agency to fund postdoctoral Fellows preparing for a career in agricultural research, teaching or extension. Finally, the proposed rule would authorize Fellows, at the discretion of their institutions, to accept additional supplemental employment that would contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers provided with research or teaching assignments).

CSREES is soliciting public comments regarding this proposed rule and will consider and address such comments in subsequent rulemaking on this subject. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this proposed rule.

Paperwork Reduction Act of 1995—Information Collection

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Proposed Rule have been approved (OMB Approval No. 0524–0039).

List of Subjects in 7 CFR Part 3402

Administrative practice and procedure, Colleges and universities, Educational study programs, Grant programs—agriculture, scholarships and fellowships.

For the reasons stated in the preamble, the Cooperative State Research, Education, and Extension Service proposes to revise 7 CFR part 3402 to read as set forth below:

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

Subpart A—General Introduction

Subpart B—Program Description

Subpart C—Preparation of an Application

Subpart D—Submission and Evaluation of an Application

Subpart E—Supplementary Information

Authority: 7 U.S.C. 3316.

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(b)(6) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). The Act designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417(b)(6) authorizes the Secretary of Agriculture, who has delegated the authority to the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate and postdoctoral fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The Graduate Fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by CSREES through the Office of Higher Education Programs (HEP) as national needs. The postdoctoral Fellowships are intended to provide additional mentoring and training to outstanding USDA Graduate Fellows who completed their doctoral degrees no more than five (5) years before they begin the postdoctoral Fellowships.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

Citizen or national of the United States means (1) A citizen or native resident of a State; or, (2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College and university means an educational institution in any State which (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) Is legally authorized within such State to provide a program of education beyond secondary education, (3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) Is a public or other nonprofit institution, and (5) Is accredited by a nationally recognized accrediting agency or association.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences in the broadest sense of these terms including but not limited to research, extension and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied fields.

Graduate degree means a master's or doctoral degree.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Virgin Islands of the United States, and the District of Columbia.

Teaching activities means formal classroom instruction, laboratory instruction, and practicum experience specific to the food and agricultural sciences and matters relating thereto conducted by colleges and universities offering baccalaureate or higher degrees.

§ 3402.3 Institutional eligibility.

Applications may be submitted by land-grant colleges and universities, by colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and by other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences. All applicants must be institutions that confer a graduate degree in at least one area of the food and agricultural sciences targeted for National Needs Fellowships, that have a significant ongoing commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which a grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The Graduate Fellowships are specifically intended to support programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific and professional expertise. The postdoctoral Fellowships are designed to support academic programs that provide additional training and mentoring to USDA Graduate Fellows and have notable teaching and research competencies in the CSREES designated national need areas. Institutions which

currently have excellent programs of graduate study and training in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply for all National Needs Fellowships.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for National Needs Graduate and Postdoctoral Fellowship Grants Program support.

Areas of the food and agricultural sciences, including multidisciplinary studies, appropriate for Fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by HEP for National Needs Graduate and Postdoctoral Fellowship Grants Program support. When funds are available and HEP determines that a new competition is warranted, the specific areas and funds per area will be identified in a funding opportunity announcement announcing the program and soliciting program applications.

§ 3402.5 Overview of National Needs Graduate and Postdoctoral Fellowship Grants Program.

(a) The program will provide funds for a limited number of grants to support graduate student stipends and cost-of-education institutional allowances. These grants will be awarded competitively to eligible institutions. In order to encourage the development of special activities that are expected to contribute to Fellows' advanced degree objectives, the program will also provide competitive, special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows. To encourage academic institutions to provide additional training/mentoring to outstanding USDA Graduate Fellows who have completed their doctoral degrees, the program will also provide postdoctoral Fellowship grants to a limited number of USDA Graduate Fellows.

(b) Based on the amount of funds appropriated in any fiscal year, HEP will determine:

(1) Whether new competitions for graduate Fellowships, postdoctoral Fellowships, and/or special international study or thesis/dissertation research travel allowances will be held during that fiscal year;

(2) The degree level(s) to be supported—master's, doctoral and/or postdoctoral;

(3) The proportion of appropriations to be targeted for Fellowship stipends for each respective degree level supported;

(4) The proportion of appropriations to be targeted for the cost-of-education institutional allowances for each respective degree level supported;

(5) The proportion of appropriations to be targeted for the special international study or thesis/dissertation research travel allowances for each respective degree level supported;

(6) The allowable stipend amount for each respective degree level supported, the cost-of-education institutional allowance for each respective degree level supported, and the maximum funds available for each special international study or thesis/dissertation research travel allowance for each respective degree level supported;

(7) The activities for which the cost-of-education allowance may be used for awards made in that year; and

(8) The maximum total funds that may be awarded to an institution under the program in a given fiscal year.

(c) HEP will also determine:

(1) The maximum number of national needs areas for which funding may be requested in a single application;

(2) The degree levels for which funding may be requested in a single application;

(3) The minimum and maximum number of fellowships for which an institution may apply in a single application; and

(4) The limits on the total number of applications that can be submitted by an institution, college, school, or other administrative unit.

(d) These determinations will be published as a part of the solicitation, which will be available at *http://www.grants.gov*.

§ 3402.6 Overview of the special international study and/or thesis/dissertation research travel allowance.

(a) For each USDA Graduate Fellow who desires to be considered for a special international study or thesis/dissertation research travel allowance, the Project Director must apply to HEP for a supplemental grant in accordance with instructions published in the solicitation.

Postdoctoral Fellows are not eligible to receive the special international study or thesis/dissertation research travel allowance. Each application must include a "Proposal Cover Page" (Form CSREES–2002), "Project Summary" (Form CSREES–2003), "Budget" (Form CSREES–2004) and National Environmental Policy Act Exclusions Form (Form CSREES–2006).

(1) To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following:

(i) The specific destination(s) and duration of the travel;

(ii) The specific study or thesis/dissertation research activities in which the Fellow will be engaged;

(iii) How the international experience will contribute to the Fellow's program of study;

(iv) A budget narrative specifying and justifying the dollar amount requested for the travel;

(v) Summary credentials of the faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person);

(vi) A letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and

(vii) A letter from the fellowship grant Project Director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

(2) The narrative portion of the application must not exceed the page limitation included in the program solicitation.

(b) All complete requests will be evaluated by professional staff from USDA or other Federal agencies, as appropriate. Evaluation criteria will be published in the solicitation. HEP will award grants in accordance with evaluation criteria and to the extent possible based on availability of funds.

(c) Any current Fellow with sufficient time to complete the international experience before the termination date of the grant under which he/she is supported is eligible for a special international study or thesis/dissertation research travel allowance. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the Fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

§ 3402.7 Fellowship appointments.

(a)(1) Fellows must be identified and Fellowships must be awarded within 18

months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded Fellowship(s). Graduate Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in the national need area and at the degree level supported by the grant. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching or extension in the national need area and are supervised by the mentor indicated in the grant application.

(2) It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability.

(3) Graduate Fellows:

(i) must be appointed before completing two semesters or equivalent hours of full-time study, as defined by the institution, or immediately after passing of candidacy/qualifying examinations, whichever is later;

(ii) must be citizens or nationals of the United States as determined in accordance with Federal law; and

(iii) must have strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional.

(4) Postdoctoral Fellows:

(i) must have been USDA Graduate Fellows who successfully completed their doctoral degrees in areas of the food and agricultural sciences designated by CSREES as national need areas;

(ii) must not have obtained their doctoral degrees more than five years prior to beginning their postdoctoral Fellowships;

(iii) must have strong interest, as judged by the institution, in preparing for a career in agricultural research, teaching or extension.

(5)(i) A doctoral level Graduate Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 42-month period. A master(s level Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 24 months during a 30-month period. A postdoctoral Fellow who achieves his or her training objectives is eligible for support for a maximum of 36 months during a 60-month period. It is the intent of this program that Graduate Fellows pursue full-time uninterrupted study or thesis/dissertation research, including time spent pursuing USDA-funded special international study or thesis/dissertation research activities.

(ii) Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application. However, during the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers with research or teaching assignments).

(iii) For graduate Fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to Fellowships through such other institutional means as teaching assistantships and research assistantships. For postdoctoral Fellows who terminate the Fellowships prematurely, the institution must return all unexpended monies to USDA. For USDA Graduate Fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree) or terminate their Fellowships prematurely, the institution may use any unexpended monies, within the time remaining on the project grant, to support pursuit of a doctoral degree in a discipline in the food and agricultural sciences by a master's degree level Fellow at the grantee institution; or a replacement Graduate Fellow. Where less than one semester/quarter remains before the expiration date of the Graduate Fellowship grant, the institution must refund any unexpended monies to the granting agency. Such funds cannot be used to increase the annual stipend amounts for current USDA Graduate or Postdoctoral Fellows.

(b) Within the framework of the regulations in this part, all decisions with respect to the appointment of Fellows will be made by the institution. However, institutions are urged to take maximum advantage of opportunities for awarding Fellowships to members of underrepresented groups at the graduate and postdoctoral level in the food and agricultural sciences, particularly minorities and women. Throughout a USDA Graduate Fellow's tenure, the institution should satisfy itself that the Fellow is making satisfactory academic progress, and carrying out, or planning to carry out, national needs related research. If an institution finds it necessary to terminate support of a USDA Graduate Fellow or a postdoctoral Fellow for insufficient progress or by decision on the part of the Fellow, the Fellow may no longer receive funds from the active grant. However, termination does not automatically disqualify a Fellow from receiving future grant support under this program. If a graduate or postdoctoral Fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, or outside employment, the institution must reserve the funds for the purpose of allowing the Fellow to resume funded training any time within a six (6) month period. However, a USDA Graduate or Postdoctoral Fellow who finds it necessary to interrupt his/her program of training more than one time cannot exceed a total of six (6) months' cumulative leave status without forfeiting eligibility. For a USDA Graduate Fellowship terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution may use any unexpended monies to support, within the time remaining on the project grant, and subject to the limitations above, a replacement Fellow at the same master's or doctoral levels. For postdoctoral Fellowships terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution must return all the unexpended monies to CSREES.

(c) Only Fellows enrolled in master's programs of study may be supported under master's Fellowships grant. Master's degree level Fellows who complete their degree early may be supported under master's Fellowship grants, if they are enrolled in Ph.D. programs in areas of the food and agricultural sciences designated as national need areas. Only Fellows enrolled in doctoral programs of study may be supported under doctoral degree Fellowships grants. Only USDA Graduate Fellows who have completed their doctoral degrees may be supported under postdoctoral Fellowship grants.

§ 3402.8 Fellowship activities.

A USDA Graduate Fellow shall be enrolled as a full-time graduate student, as defined by the institution, at all times during the tenure of the Fellowship in the national need area and at the degree level supported by the grant. This includes the time used for special international study or thesis/dissertation research, if the international

travel is funded through a special international study or thesis/dissertation research travel allowance under this grant program. However, the normal requirement for formal registration during part of this tenure may be waived if permitted by the policy of the Fellowship institution, provided that the Graduate Fellow is making satisfactory progress toward degree completion and remains engaged in appropriate full-time Fellowship activities such as thesis/dissertation research. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application. Graduate and postdoctoral Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the grant period. During the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers provided with research or teaching assignments). A Fellow may accept from any other entity a grant supporting the Fellow's research costs.

§ 3402.9 Financial provisions.

An institution may elect to apply the cost-of-education/training institutional allowance to a Fellow's tuition, fees and laboratory expenses and to defray other program expenses (*e.g.*, recruitment, travel, publications, or salaries of project personnel), unless stated otherwise in the solicitation. Tuition and fees are the responsibility of the Fellow unless an institution elects to use its cost-of-education institutional allowance for this purpose or elects to pay such costs out of non-USDA monies. No dependency allowances are provided to any USDA Graduate or Postdoctoral Fellows. Stipend payments and special international study or thesis/dissertation research travel allowances may be made to Fellows by the institution, in accordance with standard institutional procedures for graduate and postdoctoral fellowships and assistantships.

Subpart C—Preparation of an Application

§ 3402.10 Application package.

Applications will be available at *http://www.grants.gov* and through the CSREES Web site. An application package will be made available to any potential grant applicant upon request. This package will include all necessary forms and instructions to apply for a grant under this program.

§ 3402.11 Proposal cover page.

The Proposal Cover Page, Form CSREES–2002, must be completed in its entirety, including all authorizing signatures. One copy of each grant application must contain the original pen-and-ink signatures, or approved electronic equivalent, of:

(a) The Project Director(s); and

(b) The Authorized Organizational Representative for the institution.

§ 3402.12 Project summary.

Using the Project Summary, Form CSREES–2003, applicants must summarize the proposed graduate program of study and/or the academic and research strengths of the institution in the national need area for which funding is requested. To the extent possible, applicants should emphasize the uniqueness of the proposed program of training. The summary should not include any reference to the specific number of fellowships requested. The information on Form CSREES–2003 will be used in assigning the most appropriate panelists to review an application. If an application is supported, this Form may be used in program publications.

§ 3402.13 National need narrative.

HEP will determine the composition of the narrative for each competition, including page limits, font size, the number and the order of sections, and other supporting information that may be required. Detailed instructions for preparing the narrative will be published in the solicitation.

§ 3402.14 Budget and budget narrative.

Applicants must prepare the Budget, Form CSREES–2004, and a budget narrative identifying all costs associated with the application. Instructions for completing the Budget are provided with the form.

§ 3402.15 Faculty vitae.

This section should include a Summary Vita, no more than 2 pages excluding publications listing, for each faculty member contributing significantly to institutional competence at the level of graduate study for the national need area addressed in the application. Applicants should arrange the faculty vitae with the Project Director(s) first, followed by the remaining faculty, in alphabetical order.

§ 3402.16 Appendix.

Any additional supporting information deemed essential to enhancing the application should be included in an Appendix and referenced in the national need narrative.

Subpart D—Submission and Evaluation of an Application

§ 3402.17 Where to submit an application.

The solicitation will indicate the date for submission of applications and the number of application copies required to apply for a grant. In addition, the solicitation will provide the address to which the application, the required number of accompanying duplicate copies, and any other required forms and materials should be sent.

§ 3402.18 Evaluation criteria.

Applications addressing a particular national need area at a particular Fellowship level (master's, doctoral or postdoctoral) will be evaluated in competition with other applications addressing the same national need area at the same level. Both USDA internal staff and the panelists will evaluate applications on the basis of the criteria published in the solicitation.

Subpart E—Supplementary Information

§ 3402.19 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose applications are judged most meritorious according to evaluation criteria stated in the solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

§ 3402.20 Other Federal statutes and regulations that apply.

Several Federal statutes and regulations apply to grant applications considered for review and to grants awarded under this program. These include, but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 331 and 9 CFR part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR part 3015, or any successor rule—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR part 3407—CSREES implementation of the National Environmental Policy Act.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3402.21 Confidential aspects of applications and awards.

When an application results in a grant, the application and supporting information become part of the record of CSREES transactions, and available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 3402.22 Access to peer review information.

After final decisions have been announced, HEP will, upon request, inform the PD of the reasons for its decision on an application. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective PDs upon specific request.

§ 3402.23 Documentation of progress on funded projects.

(a) Fellowships/Scholarships Entry/Exit Forms (Form CSREES–2010) are available from CSREES upon request. Upon request by HEP, Project Directors awarded Graduate Fellowships (excluding supplemental international and postdoctoral) grants under the program shall complete and submit this form.

(1) Appointment Information shall be submitted to HEP within 3 months of appointment of a Fellow;

(2) The Project Director shall submit an annual update of each Fellow's progress to HEP by September 30 each year. Additional progress reports may be needed to assess continuing progress of Fellows supported by any special international study or thesis/dissertation research allowance and/or institutional adherence to program guidelines.

(3) Exit Information shall be completed and submitted to HEP by the Project Director for each Fellow supported by a grant as soon as a Fellow either: graduates; is officially terminated from the Fellowship or the academic program due to unsatisfactory academic progress; or voluntarily withdraws from the Fellowship or the academic program. If a Fellow has not completed all degree requirements at the end of the five-year grant duration, HEP may request a preliminary exit report. In such a case, a final exit report shall be required at a later date. When a final exit report for each Fellow supported by a grant has been accepted by HEP, the grantee institution will have satisfied the requirement of a final performance report for the grant. Additional follow-up reports to track Fellows' career patterns may be requested.

(b) All grantees (supplemental international, graduate, and postdoctoral) shall submit initial project information and annual and summary reports to CSREES' Current Research Information System (CRIS). The CRIS database contains narrative project information, progress/impact statements, and final technical reports that are made available to the public. For applications recommended for funding, instructions on preparation and submission of project documentation will be provided to the applicant by the agency contact. Documentation must be submitted to CRIS before CSREES funds will be released. Project reports will be requested by the CRIS office when required. For more information about CRIS, visit *http://cris.csrees.usda.gov.*

§ 3402.24 Evaluation of program.

Grantees should be aware that HEP may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by HEP to analyze both the institutional context and the impact of any supported project.

Done in Washington, DC, this 7th day of June, 2004.

Colien Hefferan,

Administrator, Cooperative State Research, Education and Extension Service.

[FR Doc. 04–15779 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 667

Office of the Secretary

29 CFR Part 37

RIN 1291–AA29

Use of Federal Financial Assistance for Religious Activities Under the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary and Employment and Training Administration, Labor.

ACTION: Proposed rule; partial withdrawal and termination.

SUMMARY: The Department of Labor is withdrawing portions of the proposed rule, published in the **Federal Register** on September 30, 2003 (68 FR 58386), that proposed to amend several provisions in the interim final regulations that implement the equal opportunity and nondiscrimination provisions of the Workforce Investment Act of 1998 (WIA), and the regulations promulgated by the Employment and Training Administration that implement the general provisions of WIA. This withdrawal covers only the proposed amendments that would have prohibited the use of all types of WIA Title I financial assistance for the employment or training of participants in religious activities. For the reason discussed below, the Department is also terminating the part of the rulemaking proceeding that relates to the proposed amendments here withdrawn.

DATES: This partial withdrawal and termination of the NPRM published on September 30, 2003 (68 FR 68386) is issued as of July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Regarding the withdrawal of part of the proposed amendments to 29 CFR part 37: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693–6500 (VOICE). Please note that this is not a toll-free number. Individuals who do not use voice telephones may contact Ms. Lockhart via TTY/TDD by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Regarding the withdrawal of the proposed amendments to 20 CFR part 667: Maria Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, (202) 693–3700 (VOICE) or (202) 877–889–5627 (TTY/TDD). Please note that these are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Department is withdrawing portions of a Notice of Proposed Rulemaking (NPRM) published on September 30, 2003 (68 FR 58386) that proposed amendments to the interim final regulations, codified at 29 CFR part 37, that implement section 188 (a)(3) of the Workforce Investment Act of 1998 (WIA), and the regulations promulgated by the Employment and Training Administration (ETA), codified in 20 CFR part 667, that implement the general provisions of WIA. In the NPRM, the Department proposed to revise 29 CFR 37.6(f)(1), which barred recipients from employing or training participants in religious activities; 29 CFR 37.6(f)(2), which limited the circumstances under which participants in programs receiving WIA Title I financial assistance could be employed to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship; and 29 CFR 37.6(f)(3), which provided an exception to the limitation in 29 CFR 37.6(f)(2). In addition, the September 30 NPRM proposed to revise 20 CFR 667.266(b)(1), which at that time referenced 29 CFR 37.6(f)(1) in providing that WIA Title I financial assistance could not be spent on the employment or training of participants in religious activities, and 20 CFR 667.275(b), which at that time also referenced the prohibition on employment and training in religious activities found in the then-current version of 29 CFR 37.6(f).

As explained in the preamble to the September 30 NPRM, the Department has determined that the broad prohibition in the then-current version of 29 CFR 37.6(f)(1) on the use of all types of WIA Title I financial assistance to employ or train participants in religious activities is inconsistent with current law, which permits the use of such financial assistance to provide religious training in cases in which the assistance is provided indirectly within the meaning of the Constitution. Such assistance is provided indirectly, for example, when participants are given a genuine and independent private choice among training providers, and freely elect to receive training in religious activities. Thus, the September 30 NPRM proposed to revise paragraph 37.6(f)(1) to clarify that only where financial assistance is provided directly is the use of such assistance to support religious employment or training prohibited. In addition, consistent with current law, the September 30 NPRM proposed to add a new paragraph 37.6(f)(2) that would have set forth specific criteria, applicable only to WIA programs and activities, for determining whether financial assistance was indirect and therefore could be used to support religious employment or training.

As a result of the insertion of this new paragraph, the September 30 NPRM proposed to redesignate then-current paragraphs 37.6(f)(2) and (f)(3) as paragraphs 37.6(f)(3) and (f)(4), respectively. The NPRM also proposed to revise the latter two paragraphs to make them easier to understand, and to adhere more closely to the language of WIA section 188(a)(3).

Finally, because ETA's then-current programmatic regulations at 20 CFR 667.266(b)(1) and 667.275(b) also prohibited the use of WIA financial assistance for employment and training in religious activities. and referenced the prohibition in 29 CFR 37.6(f)(1), the September 30 NPRM proposed to revise those two ETA provisions to conform to the proposed amendments to 29 CFR 37.6(f).

After the September 30 NPRM was published, the Department determined that further rulemaking was needed in order to implement the policies and principles of Executive Order 13279 (67 FR 77141, December 16, 2002), "Equal Protection of the Laws for Faith-Based and Community Organizations." Executive Order 13279 directs executive branch agencies to take the action necessary to ensure equal treatment to faith-based and community organizations that apply for or receive Federal financial assistance to meet social needs in America's communities. The Department concluded that its general regulations at 29 CFR part 2 should be revised to clarify that faith-based and community organizations can participate in all DOL social service programs without regard to the organizations' religious character or affiliation, and can apply for and compete on an equal footing with other organizations to receive DOL support. Accordingly, on March 9, 2004, the Department published an NPRM that proposed adding to DOL's general regulations in 29 CFR part 2 a new subpart D, to be entitled "Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries." 69 FR 11234, 11235.

During the development of the March 9 NPRM, the Department determined

that, in order to ensure uniformity and consistency in implementing the principles of Executive Order 13279 throughout DOL, the regulations dealing with faith-based and community organizations, and with religious activities, should to the extent possible be consolidated in one place. 69 FR 11234. The Department further determined that these regulations should not be program-specific, but should apply to all such organizations receiving DOL support, except where the implementing statute imposed particular requirements. Accordingly, in the March 9 NPRM, the Department proposed new revisions to 29 CFR 37.6(f)(1), as well as to 20 CFR 667.266(b)(1) and 667.275(b). Instead of the language proposed in the September 30 NPRM, the March 9 NPRM proposed that each of these regulatory provisions cross-reference 29 CFR part 2, subpart D. *See* 69 FR at 11237, 11238, 11241. Thus, the amendments to 29 CFR 37.6(f)(1), 20 CFR 667.266(b)(1), and 20 CFR 667.275(b) proposed in the September 30 NPRM were superseded by the amendments to those paragraphs that were proposed in the March 9 NPRM and finalized in the final rule published elsewhere in today's **Federal Register**. The March 9 NPRM also superseded the proposal in the September 30 NPRM to add a new paragraph (f)(2) to 29 CFR 37.6.

For these reasons, the Department is withdrawing, and is terminating the rulemaking proceedings on, the portion of the September 30 NPRM that proposed to revise 29 CFR 37.6(f)(1), 20 CFR 667.266(b)(1), and 20 CFR 667.275(b), and to add a new 29 CFR 37.6(f)(2). The Department has proceeded with that part of the September 30 NPRM that proposed other amendments to 29 CFR 37.6(f). A final rule accomplishing these amendments is published elsewhere in today's **Federal Register**.

Signed at Washington, DC this 7th day of July, 2004.

Emily S. DeRocco,

Assistant Secretary for Employment and Training.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 04–15709 Filed 7–8–04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 36 and 48

RIN 1076–AE51

Home-Living Programs and School Closure and Consolidation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: As required by the No Child Left Behind Act of 2001, the Secretary of the Interior has developed proposed regulations using negotiated rulemaking that address home-living programs and school closure and consolidation.

DATES: Comments on the proposed rule must be received on or before November 9, 2004.

ADDRESSES: You may submit comments, identified by the number 1076-AE51 by any of the following methods:

—Direct Internet response: *http://www.blm.gov/nhp/news/regulatory/index.htm,* or at *http://www.blm.gov,* or at *regulations.gov* under Indian Affairs Bureau.

—Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE51.

—Hand delivery: No Child Left Behind Act, 1620 L Street, NW., Room 401, Washington, DC 20036.

Send comments on the information collections in the proposal to: Interior Desk Officer (1076–AE51), Office of Information and Regulatory Affairs, OMB, (202) 395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103–1430; Phone: (505) 248–7240; e-mail: *cfreels@bia.edu.*

SUPPLEMENTARY INFORMATION As required by the No Child Left Behind Act of 2001 (Pub. L. 107–110; enacted January 8, 2002, referred to in this preamble as "NCLBA" or "the Act"), the Department of the Interior established a Negotiated Rulemaking Committee to develop proposed rules to implement several sections of the Act relating to the Bureau of Indian Affairs-funded school system. Negotiated Rulemaking is a process sanctioned by subchapter III, or chapter 5, title 5, United States Code and the Federal Advisory Committee Act, 5 U.S.C. Appendix (FACA), that employs Federal representatives and members of the public who will be affected by rules to jointly develop proposed rules.

In this case, the Act required the Secretary of the Interior to select representatives of Indian tribes and Bureau-funded schools as well as Federal government representatives to serve on the Committee. The Committee's task was to draft proposed rules to recommend to the Secretary. Upon the Secretary's approval, draft rules are published in the **Federal Register** for written public comments within a 120-day public comment period. After the close of the public comment period, the Committee will reconvene to review these comments and to recommend promulgation of final rules to the Secretary.

The Secretary chartered the Committee under the Federal Advisory Committee Act on May 1, 2003. It is comprised of 19 members nominated by Indian tribes and tribally operated schools. The law required that, to the maximum extent possible, the tribal representative membership should reflect the proportionate share of students from tribes served by the bureau-funded school system. The Secretary also appointed to the Committee six members from within the Department of the Interior. The Committee selected three tribal representatives and two Federal representatives as co-chairs. Six individuals were hired to facilitate all Committee meetings.

The Committee initially met in five week-long sessions in the months of June through October 2003 to develop regulations in the following six areas:

1. Definition of "Adequate Yearly Progress";
2. Attendance boundaries;
3. Allocation formula for school funding;
4. Direct funding procedures;
5. Student rights; and
6. Grants under the Tribally Controlled Schools Act.

The Department published proposed rules developed by the Committee on February 25, 2004 (69 FR 8751). Since then, the Department has reconvened the Committee to develop regulations in the areas of closure or consolidation of schools and criteria for home-living situations. The Committee met on several occasions and developed the proposed rules being published today. The rules are discussed in detail in the remainder of this preamble, which is organized as follows:

I. Part 48—School Closure or Consolidation of Schools

The No Child Left Behind Act (NCLBA) required the Secretary of the Interior to develop draft regulations to implement section 1121(d) governing the "closure or consolidation of schools." Although the NCLBA Negotiated Rulemaking Committee reached consensus in other areas, it did not reach consensus in the area of closure or consolidation of schools. The Committee could not reach consensus regarding this issue due to differing Federal and tribal legal interpretations of section 1121(d) of the NCLBA.

After much thoughtful deliberation, it became clear that consensus could not be reached on one particular issue: Whether section 1121(d)(7) authorizes the Secretary (without the consent of a tribal governing body) to carry out the regulations promulgated under section 1121(d)(3)–(5) to close, consolidate, or substantially consolidate a school. The Committee considered two differing legal interpretations of section 1121(d)(7). Some tribal members of the Committee interpreted the "may" in section 1121(d)(7) to condition the Secretary's ability to close, consolidate, transfer to another authority, or substantially curtail the programs of a school upon the mandatory approval of the affected tribal governing body. The interpretation of the Federal team was that "may" was not "shall not" and that approval from the tribal governing body was discretionary.

Ultimately, the proposed rule attempts to incorporate the committee's discussions. The proposed rule authorizes the Secretary to close, consolidate, transfer to another authority or substantially curtail a school under the following three circumstances:

(1) Under section 1121(d)(2)(A), the Secretary may close, consolidate, or substantially curtail a school based upon the request of the tribal governing body or the local school board;

(2) Under section 1121(d)(2)(B), the Secretary may temporarily close, consolidate or substantially curtail a school if there was an immediate hazard to health and safety conditions that meets the requirements of section 1125(e); and

(3) The Secretary may also close, consolidate, transfer to another authority, or substantially curtail a bureau-funded school if the Secretary provides the appropriate notice to the affected school, tribal governing body and community (as required by section 1121(d)(4)), and follows all appropriate reporting requirements in section 1121(d)(5).

The tribal team members agreed that the Secretary could take both the actions described in numbers 1 and 2. As previously discussed, the Committee could not come to consensus on the Secretary's authority to close, consolidate or substantially curtail a school (without tribal governing body approval) as outlined in number 3, above. Although consensus could not be reached by the Committee on the Secretary's authority to close or consolidate a school without tribal governing body approval, the Committee members did consider and draft proposed procedures that the Secretary would have to take if she were to begin such an action. Those procedures are discussed in §§ 48.3–48.9 of the proposed regulations.

A. Substantial Curtailment of a Bureau School

The Committee also considered whether there is a difference between the substantial curtailment of a school's program and the substantial curtailment of a school itself. Some tribal members of the Committee interpreted the law to read that no program—including a pilot, discretionary, or competitive program—could be modified once a school had received funding for that program. The Federal Committee members and some tribal members believed that there was a distinction between substantial curtailment of a program and substantial curtailment of a school. The Federal team was concerned and asked the Committee to consider the Bureau's need to effectively monitor programmatic compliance. Ultimately, consensus was reached on a definition of substantial curtailment that defined it as, "the reducing of the fundamental structure or scope of a 'school'."

B. Procedures for School Closure, Consolidation, Transfer to Another Authority or Substantial Curtailment (Absent a Request From the Tribal Governing Body)

The Committee developed regulations for when the Department considers closing, consolidating, transferring to another authority, or substantially curtailing a bureau-funded school. The tribal team asked the Committee to consider procedures similar to those outlined in the law. The Federal team asked the Committee to consider more comprehensive regulations that would provide a more defined process. The Committee considered both views and ultimately proposed regulations that expanded on the framework provided for in the NCLBA, sections 1121(d)(3)–(5). The Committee as a whole came to consensus on draft language that supplemented section 1121(d)(3)–(5). The tribal members argued that these regulations were contingent on tribal governing body approval. The Federal team argued that these regulations only applied when the Secretary took action to close, consolidate, or substantially curtail a school without tribal authorization. As proposed in this document, these regulations apply when the Secretary proposed to take an action that was not based on a tribal request.

C. First Notice

In order to ensure the highest level of communication between the affected tribal governing body, school board, and school administrator, the Committee considered and determined that prompt and immediate notification of the involved parties must occur within 30 days of when the Secretary begins active consideration of the closure, consolidation, transfer of another authority or substantial curtailment of a bureau-funded school. The Committee considered how comprehensive this notice provision should be. Ultimately, the Committee determined that the first notification should include general information such as, the action proposed, the reasoning for such action and an outline of future steps.

D. Second Notice

The Committee also considered and determined that an additional, more comprehensive notice should be given to the interested parties within 90 days after the first notice was sent. The purpose of this second notice is to encourage communication between the

affected tribe, school board and school administrator, community and the Department. The Committee determined that the second notice:

(1) Was the appropriate time to begin to receive feedback from the parents or guardians of students who attend the affected school;

(2) Was also the appropriate time to begin informing the appropriate committees of Congress of what action was being considered by the Secretary; and

(3) Should be more specific and detailed as to the history of the proposed action, the alternatives that might help remedy the situation, the timetables for conducting the study required by NCLBA section 1121(d)(5), and the timetable for consultation and communication. This timetable will include a monthly status report from the Director OIEP to the interested parties (§ 43.8).

E. Further Procedures and Requirements

The Committee considered the need for comprehensive public comment. Therefore, it recommends that the Director allow a 90-day comment period after the second notice is issued.

F. Consultation Process

The Committee considered the importance of direct tribal community input regarding any proposed decision to close, consolidate, transfer to another authority or substantially curtail a school. Therefore, the consultation process (§ 48.6) requires the Director to hold at least one public meeting in the affected community to listen and gather information. In addition, the Director must also hold at least one public meeting to present information to support the proposed action.

The Committee was concerned about situations where a school may serve more than one tribe. To deal more effectively with that situation, the regulations require the Director to hold a meeting in a single location and invite the governing bodies of all tribes involved.

G. Final Report on Proposed Action

The Committee considered the importance of a thorough and comprehensive record for the proposed action. Therefore, the regulations require the Director OIEP to prepare a final written report on the proposed action as required in NCLBA section 1121(d)(5) and submit it to the tribe, tribal governing body, local school board, school administrator, and the appropriate committees of Congress. The report must describe all of the following:

(1) The impact of this proposed action on students;

(2) The students served by the affected school;

(3) Alternative services available to the affected students; and

(4) The consultation process that was undertaken.

H. Conclusion

During negotiated rulemaking, differences in statutory interpretation are not uncommon. Although every effort is made by all parties to reach consensus, differences in legal interpretation often prevent negotiated rulemaking for reaching consensus. When consensus is not reached in negotiated rulemaking, it is the Department's responsibility to develop and publish a proposed regulation. The Committee encourages all tribal communities who are concerned regarding both national home-living standards and the issue of school closure and consolidation to provide comments during the 120 day public comment period. This public comment period is invaluable in assisting the Department in fulfilling both the letter and the intent of the NCLBA.

II. Part 36—Home-Living Situations

The No Child Left Behind Negotiated Rulemaking Committee reconvened February 2–7, 2004, to develop recommendations for proposed regulations regarding the National Criteria for Home-Living Situations under the No Child Left Behind Act of 2001 (Act), section 1122. In developing the proposed regulations for home-living (dormitories/residential) situations, the Committee considered draft regulations proposed by Bureau of Indian Affairs school and residential administrators. These draft regulations formed the foundation of the Committee's consensus and proposed regulations published today. The Committee decided to organize the proposed regulations into three broad categories: Home-living staffing, Home-living programs, and Home-living privacy.

A. Home-Living Staffing

In order to reach consensus on these proposed regulations, the Committee worked to develop home-living standards that were feasible within the existing budget process and other parameters governing the delivery of residential services. In order to allow for resource and budget planning, the Committee recommends that the regulations regarding higher qualifications for staff and lower student-to-staff ratios be implemented in the 2009–2010 school year (§ 36.75).

Many Committee members and public commenters expressed concern about current student-to-staff ratios and the qualifications for home-living staff. Public comments and tribal caucus reports indicated a need to lower the student-to-staff ratios in order to better serve students in home-living situations. Federal Committee members, some tribal Committee members, and some public commenters indicated a need to raise qualifications of home-living staff to better serve the students housed in the residential programs. The Committee discussed requiring a minimum of 32 hours of college credit in a field related to child development and at least one year of relevant experience. The Committee decided, in § 36.75 to require that new program staff have at least 32 post-secondary semester hours (or 48 quarter hours) in an applicable academic discipline, including fields working with children, such as child development, education, behavioral sciences or cultural studies. The Home-living Manager and Home-living Supervisor now also are required to have an associate's degree and bachelor's degree, respectively.

The Committee also considered the behavioral health needs of students in BIA's residential program. The Committee discussed what the appropriate ratio of behavioral health staff to students and the qualifications and licensure of this staff should be. Tribal Committee members expressed concern about licensure and objected to requiring State licensure for behavioral health staff. Tribal Committee members advocated allowing tribal licensure. To reach consensus, the Committee agreed that the first full-time behavioral health staff member in a home-living program must be either a Licensed Social Worker (LSW) or a Licensed Professional Counselor (LPC) licensed to practice in the State where the home-living program is located (§ 36.79). Other behavioral health staff supervised by this person may come from a variety of fields, including art, music, physical education, or academic subjects and are not required to be LSW's or LPC's. All behavioral health staff must have tribal, State, or Federal licensure or certification.

The Committee also considered the difficulty in finding behavioral health staff to work all hours at dormitory facilities. In addition, the Committee recognized the importance of limiting the time students are removed from the academic setting. Therefore, the Committee proposed guidelines for work hours and a maximum number of

hours a student may receive behavioral health services during school hours (§ 36.82).

The Committee considered the need for on-site medical health services and determined that these services were readily available through the Indian Health Service. However, in large or isolated home-living situations the Committee recommends retaining a nurse on staff to provide those services.

B. Home-Living Program

The Committee discussed the need for a home-living program that promotes both personal and academic achievement. The Committee agreed that program requirements are best determined at the local level. The Committee also considered and drafted regulations that require residential programs to make available specific activities such as physical activities on weekends, structured study hours, native language and cultural activities, wellness and other personal education activities (§ 36.92). Some Committee members questioned the appropriateness of some of the suggested activities, such as native language or sex education, but deferred to those with home-living situation experience and agreed to the inclusion of these items as recommended activities.

The Committee also considered and drafted regulations that required each home-living situation to distribute a home-living handbook that discussed student conduct and other procedural information (§ 36.93).

Another issue the committee considered was provision of health services to students in home-living situations. The Committee decided that the best way to facilitate efficient delivery of health services to students in home-living situations was through agreements between the Office of Indian Education Programs and the Indian Health Service. The Committee also drafted a regulation to cover those occasions when, because of illness, it may be necessary to remove a student from the rest of the student body. Another section addresses removal of a student for emergency behavioral or health reasons (§ 36.98).

C. Home-Living Privacy

The Committee determined by consensus that standards relating to heating, cooling, and lighting of dormitories for home-living situations should be deferred for later consideration by the negotiated rulemaking committee charged with negotiating school construction under section 1125 of the Act. The Committee determined that it did not have the necessary expertise to define standards for these areas. However, the Committee felt it was appropriate to give general guidance on what types of space and resources must be made available to students in home-living situations. The Committee also:

(1) Discussed the importance of students' ability to safely store personal belongings and other privacy issues (§ 36.110); and

(2) Acknowledged that any storage compartments were the property of the dormitory and subject to random search.

D. Conclusion

The Committee considered drafting provisions to implement section 1122(d) of the Act, which would allow grant and contract schools to waive the home-living standards in the rule. As a result, the proposed regulation outlines the process by which a tribal governing body or school board may petition the Director of the Office of Indian Education Programs for a waiver of these proposed standards and the implementation of alternate tribal standards. Finally, the Committee considered the need for accountability in the home-living programs and proposed regulations requiring an annual report from each residential program to the local school board, the tribal governing body, the Office of Indian Education Programs, and the Secretary of the Interior.

III. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and the Office of Management and Budget (OMB) has reviewed the rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule does not pertain to funding, and is not expected to have an effect on budgets.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule has been prepared in consultation with the U.S. Department of Education.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule does not pertain to funding and is not expected to have an effect on budgets.

(4) OMB has determined that this rule raises novel legal or policy issues.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Nothing in the rule proposes rules of private property rights, constitutional or otherwise, or invokes the Federal condemnation power or alters any use of Federal land held in trust. The focus of this rule is civil rights and due process rights. A takings implication assessment is not required. Federalism (E.O. 13132) In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nothing in this rule has 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. This rule does not implicate State government. Similar to federalism concepts, this rule leaves to local school board discretion those issues of student civil rights and due process that can be left for local school boards to address. A federalism assessment is not required.

D. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, we have identified potential effects on federally recognized Indian tribes that will result from this rule. Accordingly: (1) We have consulted with the affected tribe(s) on a government-to-government basis. The consultations have been open and candid to allow the affected tribe(s) to fully evaluate the potential effect of the rule on trust resources. (2) We will fully consider tribal views in the final rule. (3) We have consulted with the appropriate bureaus and offices of the Department about the political effects of this rule on Indian tribes. The Office of Indian Education Programs and the Office of the Assistant Secretary—Indian Affairs have been consulted.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department is requesting comments on the information collection

incorporated in this proposed rule. Comments on this information must be received by August 11, 2004. You may submit your comments to the Desk Officer for the Department of the Interior at OMB by facsimile at (202) 395–6566 or by e-mail at *OIRA_DOCKET@ omb.eop.gov.*

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden including the validity of methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

The information collection will be used to enable BIA to better administer the No Child Left Behind program subject to this rulemaking. In all instances, the Department has striven to lessen the burden on the public and ask for only information that is absolutely essential to the administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally recognized tribes.

A synopsis of the new information collection burdens for parts 36 and 48 is provided below. Burden is defined as the total time, effort, or financial resources expended (including filing fees) by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

CFR section	Number of respondents	Responses per respondent	Burden per response (hours)	Total annual burden (hours)	Cost @ $12/hour (dollars)
36.75(b)(2)	50	1	.25	12.50	150
36.86	1110	1	40.00	44,400.00	532,800
36.93	Covered by existing OMB approval 1076–0163				
36.94	Covered by existing OMB approval 1076–0163				
36.97(c)	10	1	.25	2.50	30
36.100(g)	76	1	.02	1.52	18
36.111	19	1	.50	9.50	114
36.111(a)	19	1	40.00	760.00	9,120
36.120	Covered by existing OMB approval 1076–0122				
48.2	1	1	1.00	1.00	12
Totals	1205			45,187.00	542,244

[**Note:** There are 53 residential schools, of which 29 are Bureau-operated = 24 tribally operated. There are 14 peripheral dormitories, of which 1 is Bureau-operated = 13 tribally operated. Thus, we must cover the collection of information from 37 of the 67 home-living residences. The cost of reporting and recordkeeping is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or requirements submission) completed, the cost of the time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill the information collection requirements in these parts.]

Under § 36.75(b)(2) we estimate that 50 of the present staff will not meet the new qualifications and will request a waiver; we expect that others will retire before having to meet the new qualification requirements.

Under § 36.86, we estimate that the tribal schools will train 1,110 staff for a total burden of 44,400 hours at a cost of $ 532,800. Each year, the schools are required to train new employees and update the training of present employees.

Under § 36.97(c), we estimate that about 10 parents may request to opt out of any non-emergency services, taking about .25 hours each for a total of 2.5 hours annually at a cost of $30 per year.

Under § 36.100(g), we estimate that 76 students will be reported ill and unable to attend school; we estimate that it will take .02 hours to report each for a total annual burden of 1.52 hours, costing $18.24 annually.

Under § 36.111, a tribe, tribal governing body, or local school board may waive in whole or in part the standards established under this section. While the question and answer does not specify that these entities must submit a request, it is implicit that they will have to submit a request to waive such standards. We estimate that each year 19 tribally operated dormitories would request a waiver of the standards as being otherwise inappropriate for the dormitory. We also estimate that it would take these entities ½ hour to compose such a waiver request through a letter to the Secretary.

Under § 36.111(a), a tribe, tribal governing body, or local school board that waives the standards established under this section must submit proposed alternative standards to the Office of Indian Education Programs. We estimate that 19 respondents (corresponding to the estimate for those requesting waivers) will submit proposed alternative standards and that the standards will require approximately 40 hours to prepare.

Under § 48.2, we expect that a tribe will only rarely request closure, consolidation or substantial curtailment of a school. Because this will be such a rare occurrence, we estimate 1 per year at a burden of 1 hour and a cost of $12.

F. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

H. Clarity of This Regulation

Executive Order 12866 requires each agency to write rules that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section"

appears in bold type and is preceded by the symbol "Sec." and a numbered heading; for example: Sec. 42.2 What rights do individual students have?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

I. Public Comment Solicitation

Although this rule is published by the Bureau of Indian Affairs, the Bureau of Land Management is processing comments under agreement with BIA. If you wish to comment on this proposed rule, you may submit your comments by any one of several methods.

(1) You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE51.

(2) You may submit comments electronically by direct Internet response to either *http://www.blm.gov/nhp/news/regulatory/index.html* or *http://www.blm.gov.*

(3) You may hand-deliver comments to 1620 L Street, NW., Room 401, Washington, DC 20036.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects

25 CFR Part 36

Indians—Education, Schools, Elementary and Secondary education programs, grant programs—Indians, Government programs—education.

25 CFR Part 48

Indians—Education, Schools, Students, Elementary and Secondary education programs.

Dated: June 4, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

For the reasons given in the preamble, parts 36 and 48 of Title 25 of the Code of Federal Regulations are proposed to be amended as follows:

* * * * *

1. Subpart H of part 36 is revised to read as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

Subpart H—Home-Living Programs

Sec.

Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110 (115 Stat. 1425).

§ 36.70 What terms do I need to know?

Home-living Manager means the employee responsible for direct supervision of the home living program staff and students.

Home-living Program means a program that provides room and board in a boarding school or dormitory to residents who are either:

(1) Enrolled in and are current members of a public school in the community in which they reside; or

(2) Members of the instructional program in the same boarding school in which they are counted as residents and:

(i) Are officially enrolled in the residential program of a Bureau-operated or funded school; and

(ii) Are actually receiving supplemental services provided to all students who are provided room and board in a boarding school or dormitory.

Home living Program Staff means the employee(s) responsible for direct supervision of students in the home living area.

Home-living Supervisor means the employee with overall administrative responsibility for supervising students, programs and personnel in the home living area.

§ 36.71 What is the purpose of this part?

The purpose of this part is to establish standards for Home-living situations.

Staffing

§ 36.75 What qualifications must home living staff possess?

(a) Home living staff must possess the qualifications shown in the following table:

Position	Required training
(1) Home-living Supervisor	Must be qualified based on size and complexity of the school but at minimum possesses a bachelor's degree.
(2) Home-living Manager	Must be qualified based on the size and complexity of the student body but must at a minimum have an associate's degree no later than 2008.
(3) Home living Program Staff	Must have at least 32 post-secondary semester hours (or 48 quarter hours) in an applicable academic discipline, including fields related to working with children, such as, child development, education, behavioral sciences and cultural studies.

(b) A person employed as a home-living program staff when this part is published in final:

(1) Should meet the requirements of paragraph (a) of this section by the 2009–2010 school year; and

(2) May, upon showing good cause, petition the school supervisor (or the home-living supervisor for peripheral dorms) for a waiver from the new qualifications.

§ 36.76 Must an identified staff member be in charge of all home-living operations?

Yes, an identified staff member must be in charge of all home-living operations. The person in charge is the home-living supervisor, the administrative head of the home-living program who has the authority to ensure the successful functioning of all phases of the home-living program. The program must ensure clear lines of authority under an organizational chart approved by the local board responsible for operations of the home-living program.

§ 36.77 Are home-living programs required to have other home-living staffing requirements?

Home-living programs must meet the staffing requirements of this section.

(a) Effective with the 2009–2010 school year, each home-living program must maintain the following student minimum supervisory requirements on weekdays:

Grade level	Time of day	Ratio
Elementary (Grade 1–6).	Morning	1:20
	During school	(1)
	Evening	1:20
	Night	1:40
High School (Grade 7–12).	Morning	1:40
	During school	(1)
	Evening	1:30
	Night	1:50

[1] As school needs.

(b) The following staffing ratios apply on weekends:

Grade level	Time of day	Ratio
Elementary (Grade 1–6).	Morning/day	1:20
	Evening	1:20
	Night	1:40
High School (Grade 7–12).	Morning/day	1:40
	Evening	1:30
	Night	1:50

[1] As school needs.

§ 36.78 What are the staffing requirements for home-living programs offering less than 5 nights service?

For home-living programs providing less than 5 nights service, the staffing levels from § 36.77 apply. To fill this requirement, the program must use only employees who work a minimum of 20 hours per week.

§ 36.79 What are the home-living behavioral staff/student ratio requirements?

Behavioral health staff is necessary in home-living programs to address issues, such as abuse, neglect, trauma, cultural conflict, and lack of school success. Each home-living program must provide a minimum of one half-time behavioral health professional for every 50 students.

(a) The program may fill the staffing requirements of this section by using contract services, other agencies (including the Indian Health Service) or private/nonprofit volunteer service organizations.

(b) Off-reservation home-living programs should consider providing one full-time behavioral health professional for every 50 students.

(c) For purposes of this section, a one half-time behavioral health professional is one that works for the home-living program a minimum of 20 hours per week.

§ 36.80 If a school has separated boys' and girls' home-living programs, may the same behavioral staff be used for each program?

Yes, a program may use the same behavioral staff for both boys' and girls' programs. However, behavioral health staffing requirements are based on combined enrollment during the home-living count period.

§ 36.81 May a home-living program use support staff or teachers to meet behavioral health staffing requirements?

No, a home-living program must not use support staff or teachers to meet behavioral health staffing requirements. The only exception is if the individual support staff employee has the appropriate behavioral health license or certification.

§ 36.82 May behavioral health staff provide services during the academic school day?

Behavioral health staff must average at least 75 percent of their work hours with students in their dormitories. These work hours must occur outside of the academic school day, except in emergency situations as deemed by the administrative head of the home-living program or designee. The purpose of this requirement is to maximize contact time with students in their home-living setting.

§ 36.83 How many hours can a student be taken out of the academic setting to receive behavioral health services?

A student may spend no more than 5 hours per week out of the academic setting to receive behavioral health services from the home-living behavioral health staff, except for emergency situations.

§ 36.84 Can a program hire or contract behavioral health professionals to meet staffing requirements?

A program may hire or contract behavioral health professionals to meet staffing requirements.

(a) At least one individual must be a Licensed Professional Counselor (LPC) or a Licensed Social Worker (LSW) who is licensed to practice at the location where the services are provided.

(b) For additional staffing, other individuals with appropriate certifications and licenses are acceptable to meet staffing requirements.

§ 36.85 Is a nurse required to be available in the evenings?

No, a program is not required to make a nurse (LPN or RN) available in the evenings. However, this is encouraged for home-living programs with an enrollment greater than 300 or for programs that are more than 50 miles from available services.

§ 36.86 Are there staff training requirements?

Yes. All home-living program staff must have the appropriate certification and requirements up to date and on file. Programs must provide annual and continuous professional training and development appropriate to the certification and licensing requirements.

(a) Annually, all home-living staff must be given the following training before the first day of student occupancy for the year:

(1) First Aid/Safety/Emergency & crisis preparedness;

(2) CPR—Automated External Defibrilator;

(3) Student Checkout Policy;

(4) Confidentiality (Health Information Patient Privacy Act);

(5) Medication Administration;

(6) Student Rights;

(7) Child Abuse Reporting and Protection Standards;

(b) Home-living staff must be given the following training annually at any time during the year:

(1) De-escalation/conflict resolution;

(2) Substance Abuse issues;

(3) Ethics;

(4) Parent training (parenting skills for home-living program staff)/child care;

(5) Special education and working with students with disabilities;

(6) Student supervision skills;

(7) Child development; and

(8) Basic counseling skills.

Program Requirements

§ 36.90 What recreation, academic tutoring, student safety and health care services must home-living programs provide?

All home-living programs must provide for appropriate student safety, academic tutoring, recreation, and health care services for their students, as deemed necessary by the local school board or home-living program board.

§ 36.91 What are the program requirements for behavioral health services?

A home-living program's behavioral health program must include:

(a) Behavioral health screening/assessment;

(b) Diagnosis;

(c) Treatment Plan;

(d) Treatment and placement;

(e) Evaluation; and

(f) Record of services, in coordination with the student's Individual Education Plan, where appropriate.

§ 36.92 Are there any activities that must be offered by a home-living program?

Yes, a home-living program must make available the following activities:

(a) One hour per day of scheduled, structured physical activity Monday through Friday and 2 hours of scheduled physical activities on the weekends;

(b) One hour per day of scheduled, structured study at least four days per week for all students and additional study time for students who are failing any classes;

(c) Tutoring during study time;

(d) Native language or cultural activities; and

(e) Character, health, wellness, and sex education.

§ 36.93 Is a home-living handbook required?

Yes, each program must publish a home-living handbook, which may be incorporated into a general student handbook. The home-living program must:

(a) Provide each student with a copy of the handbook;

(b) Provide all school staff and students with a current and updated copy of student rights and responsibilities before the first day of school;

(c) Conduct an orientation for all students on the handbook; and

(d) Ensure that all students, school staff and, to the extent possible, parents and guardians confirm in writing that they have received a copy and understand the home-living handbook.

§ 36.94 What must a home-living handbook contain?

A home-living handbook must contain all of the following, and may include additional information:

(a) Mission/Vision Statement;

(b) Discipline Policy;

(c) Parent/Student Rights and Responsibilities;

(d) Confidentiality;

(e) Sexual Harassment Policy;

(f) Violence/Bullying Policy;

(g) Home-living Policies and Procedures;

(h) Services Available;

(i) Personnel and Position Listing;

(j) Emergency Procedures and Contact Numbers;

(k) Bank Procedures;

(l) Transportation Policy;

(m) Check-Out Procedures;

(n) Dress Code;

(o) Drug/Alcohol;

(p) Computer Usage Policy;

(q) Medication administration; and

(r) Isolation/separation policy.

§ 36.95 What sanitary standards must home-living programs meet?

Each home-living program must meet all of the following standards:

(a) Restrooms, showers, and common areas must be cleaned daily;

(b) Rooms must be cleaned daily;

(c) Linens must be changed and cleaned weekly;

(d) Linens are to be provided;

(e) Toiletries must be provided; and

(f) Functional washing machines and dryers must be provided.

§ 36.96 May students be required to assist with daily or weekly cleaning?

Yes, students can be required to assist with daily or weekly cleaning. However, the ultimate responsibility of cleanliness rests with the home living supervisor and local law or rules regarding chemical use must be followed.

§ 36.97 What basic requirements must a program's health services meet?

(a) Each home-living program must make available basic medical, dental, vision and other necessary health services for all students residing in the home-living program, subject to agreements between the Office of Indian Education Programs and the Indian Health Service.

(b) Each home-living program must have written procedures for dealing with emergency health care issues.

(c) Parents or guardians may opt out of any non-emergency services by submitting a written request.

(d) The home living supervisor or designee must act *in loco parentis* when the parent or guardian cannot be found.

§ 36.98 Must the home-living program have an isolation room for ill children?

Yes, the home-living program must have an isolation room for ill children. At least two isolation rooms must be made available for use by students with contagious conditions—one for boys and one for girls. The isolation rooms should have a separate access to shower and restroom facilities. Students isolated for contagious illness must be supervised as frequently and as closely as the circumstances and protocols require, but at least every 30 minutes.

§ 36.99 Are immunizations required for residential program students?

Each student must have all immunizations required by state, local, or tribal governments before being admitted to a home-living program. Annual flu shots are not required but are encouraged.

§ 36.100 Are there minimum requirements for student attendance checks?

Yes, there are minimum requirements for student attendance checks as follows:

(a) All students must be physically accounted for four times daily;

(b) Each count must be at least two hours apart;

(c) If students are on an off-campus activity, physical accounts of students must be made at least once every two hours or at other reasonable times depending on the activity;

(d) At night all student rooms should be physically checked at least once every hour;

(e) If a student is unaccounted for, the home-living program must follow its established search procedures; and

(f) If a student is going to be absent from school, the home-living program is required to notify the school.

§ 36.101 How often must students who have been separated for emergency health or behavioral reasons be supervised?

Students who have been separated for emergency behavioral or health reasons must be supervised as frequently and as closely as the circumstances and protocols require. No student will be left unsupervised for any period until such factors as the student's health based on a medical assessment, the safety of the student, and any other applicable guidance for dealing with behavior or health emergencies are considered.

§ 36.102 What student resources must be provided by a home-living program?

The following minimum resources must be available at all home-living programs:

(a) Library resources;

(b) A copy of each textbook used by the academic program or the equivalent for peripheral dorms; and

(c) Reasonable access to a computer with internet access to facilitate homework and study.

§ 36.103 Are there requirements for multipurpose spaces in home living programs?

Home living programs must provide adequate areas for sleeping, study, recreation, and related activities.

Privacy

§ 36.110 Must programs provide space for storing personal effects?

Yes, students are entitled to private personal spaces for storing their own personal effects, including at least one lockable closet, dresser drawer, or storage space. However, all drawers, dressers, storage space, or lockable space are the property of the home-living program and are subject to random search.

Waivers and Accountability

§ 36.111 Can a tribe, tribal governing body or local school board waive the home-living standards?

A tribal governing body or local school board may waive some or all of the standards established by this part if the body or board determines that the standards are inappropriate for the needs of the tribe's students.

(a) If a tribal governing body or school board waives standards under this section, it must, within 60 days, submit proposed alternative standards to the Director of the Office of Indian Education Programs.

(b) Within 90 days of receiving a waiver and proposal under paragraph (a) of this section, the Director must either:

(1) Approve the submission; or

(2) Deliver to the governing body or school board a written explanation of the good cause for rejecting the submission.

(c) If the Director rejects a submission under paragraph (c) of this section, the governing body or school board may submit another waiver and proposal for approval. The standards in this part remain in effect until the Director approves alternative standards.

§ 36.112 Can a home-living program be closed, transferred, consolidated, or substantially curtailed for failure to meet these standards?

No, a home-living program cannot be closed, transferred to any other authority, consolidated, or its programs substantially curtailed for failure to meet these standards.

§ 36.120 What type of reporting is required to ensure accountability?

The home-living program must provide to the local school board, the tribal governing body, OIEP, and the Secretary of the Interior an annual accountability report consisting of:

(a) Enrollment figures for the program;

(b) A brief description of programs offered;

(c) A statement of compliance with the requirements of this part; and

(d) Identification of issues and needs.

2. Part 48 is added to read as follows:

PART 48—SCHOOL CLOSURES

Sec.

Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110 (115 Stat. 1425).

§ 48.1 What definitions are used in this subpart?

Active consideration means any action by the Director of OIEP to consider the closure, consolidation, transfer of authority or substantial curtailment of programs of a school.

Director means the Director of the Office of Indian Education Programs in the Bureau of Indian Affairs.

Interested parties means the affected tribe, tribal governing body, designated local school board, or other affected recognized educational organizations.

Secretary means the Secretary of the Interior or a designee.

Substantial curtailment means reducing the fundamental structure or scope of a school by, for example, eliminating Bureau-funded grades, eliminating residential services, or removing core academic services. This term does not include eliminating discretionary programs.

§ 48.2 Can the Secretary close, consolidate, or substantially curtail a Bureau-funded school?

Yes, the Secretary can close, consolidate, or substantially curtail a Bureau-funded school:

(a) If facility conditions constitute an immediate hazard to health and safety pursuant to 25 U.S.C. 1125(e);

(b) If the tribal governing body or local school board requests the closure, consolidation, or substantial curtailment; and

(c) If neither paragraphs (a) or (b) of this section apply, by following the procedures in § 48.3.

§ 48.3 What must the Secretary do before closing, consolidating, curtailing, or transferring a Bureau-funded school, without the tribal governing body's approval?

Before closing, consolidating, or substantially curtailing a Bureau-funded school, without the approval of the tribal governing body, the Secretary and the Director of the Office of Indian Education Programs must take the following actions:

(a) Within 30 days of actively considering closure, consolidation, substantial curtailment, or transferring any school to an authority other than BIA, the Director must send a notice that meets the requirements of § 48.4;

(b) Within 90 days of sending the letter required by paragraph (a) of this section, the Director must mail and publish a second notice as required by § 48.5;

(c) The Director will provide to interested parties a monthly status report that includes updates on any items, new developments and changes in the timetables, or procedures;

(d) The Director must allow 90 days following the receipt of the notice under paragraph (b) of this section for submission of written comments from the tribe, tribal governing body, local school board, school administrator, or parents;

(e) Within 180 days receipt of the notice under paragraph (b) of this section, the Director must initiate a consultation process that meets the requirements of § 48.6; and

(f) The Secretary will prepare and distribute a report as required by section 1121(d)(5) of the No Child Left Behind Act that meets the requirements of § 48.7.

§ 48.4 What requirements must the first notice meet?

The notice required by § 48.3(a) must meet all requirements of this section.

(a) The Director must send the notice to the interested parties;

(b) The notice required by § 48.3(a) must include all of the following:

(1) The name and address of the school that is under active consideration of the proposed action;

(2) The nature of the action that is under active consideration;

(3) The reasons for the active consideration of the proposed action.

(4) An outline of future actions that OIEP will take; and

(5) The name and contact information for an OIEP liaison and a request for a designated tribal liaison.

§ 48.5 What requirements must the second notice meet?

The notice required by § 48.3(b) must meet all requirements of this section.

(a) The Director of OIEP must send the notice to:

(1) The tribe, tribal governing body, local school board, school administrator;

(2) Parents; and

(3) The appropriate committees of Congress.

(b) The notice must include the following:

(1) A statement of the history of the conditions that led to the proposed action, including a statement of known attempts to remedy that condition;

(2) Alternatives to the proposed action that have been considered, including what happens to students;

(3) A timetable for conducting the student impact study;

(4) A description of the process for commenting on the proposed action; and

(5) A timetable and procedures for consultation and regular communication.

§ 48.6 How must consultation on school closure be conducted?

The consultation process required by § 48.3(e) must include the following:

(a) At least one public meeting in the attendance area served by the school to gather information from the community about the proposed action, including alternatives to remedy the conditions that led to the proposed action;

(b) At least one public meeting at which the Director presents information to support the proposed action and any alternatives to remedy the conditions that led to the proposed action;

(c) Additional public meetings for discussions with identified alternative service provider;

(d) A meeting in a single location with the tribal governing bodies of all tribes served by the school; and

(e) Additional opportunity to submit written comments.

§ 48.7 What must the Department's report contain?

The report required by § 48.3(f) must meet all requirements of this section.

(a) The Department must submit the report to interested parties and the appropriate committees of Congress.

(b) The report must contain all of the following:

(1) A study of the impact of the proposed action on the student population;

(2) A description of the affected students with particular educational and social needs;

(3) Recommendations to ensure that alternative services are available to such students; and

(4) A description of the consultation conducted between the potential service provider, current provider, tribal representatives and the tribes or tribes involved, and the Director of OIEP.

§ 48.8 What happens when the Secretary decides to close, consolidate, or substantially curtail a Bureau-funded school or dormitory?

If the Secretary makes a formal decision to close, consolidate, or substantially curtail a Bureau-funded school or dormitory, the Secretary must notify interested parties at least 180 days before the end of the school year preceding the proposed closure date. Copies of the notice must be submitted to the appropriations committee and be published in the **Federal Register**.

§ 48.9 What is the earliest date that the Secretary can implement the formal decision?

The Secretary can close, transfer to another authority, consolidate, or substantially curtail a Bureau-funded school or dormitory, only after the end of the first full academic year after the report required by § 48.3(f) is made.

[FR Doc. 04–15832 Filed 7–8–04; 3:16 pm]
BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AL–112L–2004–1–FRL–7786–1]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Pulp Mills; State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), the Alabama Department of Environmental Management (ADEM) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. In the rules section of this **Federal Register**, EPA is granting ADEM the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA

has approved the state's alternative requirements. A detailed rationale for this approval is set forth in the direct final rule. If no significant, or adverse comments are received, no further activity is contemplated. If EPA receives significant, or 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 rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 2, 2004.

ADDRESSES: Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Duplicate copies of all comments must also be submitted to Ronald W. Gore, Chief, Air Division, Alabama Department of Environmental Management, P.O. Box 301463, Montgomery, Alabama 36130–1463. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** section (part (I)(B)(1)(i) though (iii)) which is published in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9141. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 29, 2004.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 04–15722 Filed 7–9–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 132
Monday, July 12, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–061–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States.

DATES: We will consider all comments that we receive on or before September 10, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–061–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–061–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–061–1" on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the regulations allowing the importation of wheat seed, straw, and other products from the Mexicali Valley of Mexico into the United States, contact Mr. Robert Spaide, Senior Program Advisor, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–3769. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Mexicali Valley, Karnal Bunt.

OMB Number: 0579–0132.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act.

To prevent the introduction and spread of various wheat diseases, including Karnal bunt, a fungal disease, the regulations in "Subpart-Wheat Diseases" (7 CFR 319.59 through 319.59–2) prohibit the importation of wheat seed, straw, and other products into the United States from certain parts of the world. Section 319.59–2(b)(3) recognizes a wheat-growing area within the Mexicali Valley of Mexico as being free from Karnal bunt and allows wheat seed, straw, and other products from the Mexicali Valley to be imported into the United States under specified conditions.

Because the remainder of Mexico is not designated as free of Karnal bunt, we require that a phytosanitary certificate accompany wheat seed, straw, and other products imported from the Karnal bunt free area of the Mexicali Valley. The certificate is issued by the Mexican national plant protection organization and states that the wheat or wheat-related articles were grown in the designated Karnal bunt free area of the Mexicali Valley and remained in the Mexicali Valley prior to and during their movement to the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.2 hours per response.

Respondents: Mexican plant health authorities and growers and exporters of wheat products in the Mexicali Valley, Mexico.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of July 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–15702 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), will meet on July 21, 2004, in the Florence Events Center located at 715 Quince Street, Florence, Oregon. The meeting will begin at 8 a.m. and adjourn at approximately 12 noon. The purpose of the meeting in general is to continue committee discussions related to NWFP implementation. Meeting agenda items include, but are not limited to the 10-year monitoring report process, Northern Spotted Owl status analysis, stewardship contracting, and several status reports related to ongoing implementation improvement activities. The meeting is open to the public and fully accessible for people with disabilities. A 15-minute time slot is reserved for public comments at 8:15 a.m. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW., First Avenue, PO Box 3623, Portland, OR 97208 (telephone: 503–808–2165).

Dated: June 24, 2004.

Anne Badgley,

Designated Federal Official.

[FR Doc. 04–15669 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Advisory Committee; Notice of Meeting

Summary: The Siskiyou Resource Advisory Committee will meet on Tuesday, July 27, 2004 for (1) updates from working groups; (2) a report on the May NW Forest Plan Implementation monitoring field review on the Umpqua NF; (3) a presentation from the Oregon Caves National Monument; (4) an overview of the National Fire Plan; and (5) an update on interagency fire management plans. The meeting will be held at the Rogue River-Siskiyou National Forest's Illinois Valley Ranger District office in Cave Junction. It begins at 9 a.m., ends at 5 p.m. and the open public forum begins at 11:30 a.m. with a 4-minute limitation per individual presentation. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official Scott Conroy at the Rogue River-Siskiyou National Forest, PO Box 520, Medford, OR 97501.

For Further Information Contact: Rogue River-Siskiyou National Forest Public Affairs Officer Mary T. Marrs at (541) 858–2211, email: *mmarrs@fs.fed.us*, or USDA Forest Service, PO Box 520, 333 West 8th Street, Medford, OR, 97501.

Dated: July 6, 2004.

Virginia Grilley,

Acting Forest Supervisor, Rogue River-Siskiyou National Forest.

[FR Doc. 04–15689 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet on Wednesday, July 21, 2004 at the Skamania County Public Works Department basement located in the Courthouse Annex, 170 N.W. Vancouver Avenue, Stevenson, WA 98610. The meeting will begin at 8:30 a.m. and continue until 5 p.m. The purpose of the meeting is to review proposals for Title II funding of Forest projects under the Secure Rural Schools and County Self-Determination Act of 2000.

All South Gifford Pinchot National Forest Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 8:45 a.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Peterson, Public Affairs Specialist, at (360) 891–5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 6, 2004.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 04–15690 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public and a draft agenda of the meeting is attached.

DATES: The meeting will convene on Wednesday, July 21, 2004, at 8 a.m., and continue until 5 p.m.; resume Thursday, July 22, 2004, from 8 a.m. to 4 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact the Natural Resources Conservation Service (NRCS), at the address below on or before July 12, 2004.

ADDRESSES: The meeting will be held at the Best Western Coeur d'Alene Inn, 414

West Appleway, Coeur d'Alene, Idaho 83814; telephone: (1–800) 359–7234. Written material and requests to make oral presentations should be sent to Elvis L. Graves, Acting Designated Federal Official, USDA, Natural Resources Conservation Service, Post Office Box 2890, Room 6158–S, Washington, DC 20013.

FOR FURTHER INFORMATION, CONTACT: Questions or comments should be directed to Elvis L. Graves, Acting Designated Federal Official; telephone: (202) 720–3905; fax: (202) 720–2646; e-mail: *elvis.graves@usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF, including any revised agendas for the July 21–22, 2004, meeting that occur after this **Federal Register** notice is published, may be found on the World Wide Web at *http://aaqtf.tamu.edu*.

Draft Agenda of the July 21 and 22, 2004, Meeting of the AAQTF

A. *Welcome to Idaho*
   1. USDA, NRCS and local officials
B. *Discussion of Federal Advisory Committee Act status*
C. *USDA Update*
   1. Natural Resources Conservation Service
   2. Agricultural Research Service
   3. Cooperative State Research, Education, and Extension Service
   4. Forest Service
D. *Environmental Protection Agency Update*
   1. Program Implementation and Designations
   2. Non-Road Diesel Rule
   3. Other issues
E. *New Topics*
   1. Discussion of goals for Task Force during this charter
   2. National Research Council—Air Quality Management in the United States
   3. External speaker to be decided upon
   4. Committee Reports
F. *Next Meeting, Time/Place*
G. *Public Input*

(Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes.)

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Graves no later than July 12, 2004. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 30 copies to Mr. Graves no later than July 12, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. Graves. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on June 25, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04–15703 Filed 7–9–04; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Industry and Security (BIS).

Title: Foreign Availability Procedures and Criteria.

Agency Form Number: None.

OMB Approval Number: 0694–0004.

Type of Request: Extension of a currently approved collection of information.

Burden: 510 hours.

Average Time Per Response: 105 to 120 hours per response.

Number of Respondents: 2 respondents.

Needs and Uses: The office identifies foreign goods and technology analogous to American equipment subject to export controls. The foreign equipment must be available in sufficient quantities to controlled destinations. Continued restrictions on exports when comparable items are available from uncontrollable sources decreases U.S. competitiveness in high-technology industries and undermines U.S. national security interests. Without this information from the exporting community, the U.S. could easily lose its competitiveness in foreign markets.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 7, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15679 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD MAY 21, 2004 THROUGH JUNE 18, 2004

Firm name	Address	Date petition accepted	Product
Omega Design Corporation	211 Phillips Road, Exton, PA 19341	26–May–04	Packaging equipment, shrink wrap and bottle unscramblers.
Anderson Wood Products Company	1381 Beech Street, Louisville, KY 40211.	28–May–04	Wood handrails and wooden parts for beds, molding and drawers.
Bel-Cro Machine Shop, Inc	2142 Denly Road, Houman, LA 70363.	28–May–04	Parts of valves.
Whitaker Furniture Company, Inc	409 Remington Street, Searcy, AR 72145.	28–May–04	Wooden casual and game furniture.
Clover Wire Forming Co., Inc	1021 Saw Mill River Road, Yonkers, NY 10710.	4–Jun–04	Wire formed products including garden hooks, display products, and paper guides for computer printers.
Auburn Vacuum Forming Co., Inc	40 York Street, Auburn, NY 13021	14–Jun–04	Vacuum formed plastic products including material handling trays, machine guards and covers.
Dacon Manufacturing Co., Inc	1651 99th Lane, NE., Blaine, MN 55449.	14–Jun–04	Metal heat dissipaters for semiconductors.
Orb Enterprises, Inc	4724 S. Christiana, Chicago, IL 60632.	14–Jun–04	Components of cash and key registers.
Accu-Router, Inc	634 Mtn. View Industrial Dr., Morrison, TN 37537.	17–Jun–04	Woodworking machines for wooden furniture.
Lakeview Industries, Inc	1225 Lakeview Drive, Chaska, MN 55318.	17–Jun–04	Seals and gaskets, extruded, molded and die cut of soft rubber for automotive applications, and custom molded and extruded rubber and silicone seals and vibration mounts.
Schoggi, Inc. d.b.a. West Paw Design	32050 East Frontage Road, Bozeman, MT 59715.	17–Jun–04	Pet beds.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 2, 2004.

Anthony J. Meyer,

Senior Program Analyst, Office of Strategic Initiatives.

[FR Doc. 04–15665 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Correction to the Amended Final Results of Antidumping Duty Administrative Review: Bulk Aspirin From the People's Republic of China

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

ACTION: Correction to amended final results of antidumping duty administrative review.

EFFECTIVE DATE: July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4194.

Background

On March 13, 2003, the Department of Commerce ("the Department") published in the **Federal Register** the amended final results of its administrative review of bulk acetylsalicylic acid, commonly referred to as bulk aspirin, from the People's Republic of China ("PRC") (*Notice of Amended Final Results of Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China*, 68 FR 12036 (March 13, 2003) ("*Amended Final Results*")). In the *Amended Final Results*, the Department inadvertently stated in the cash deposit rates section that "if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise." The correct language, however, was used in the preliminary and final results of the same review (*see Bulk Aspirin from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Changed Circumstances Review*, 67 FR 51167 (August 7, 2002) and *Bulk Aspirin from the People's Republic of China; Final Results of Antidumping Duty Review*, 68 FR 6710 (February 10, 2003), namely that, "for all other PRC exporters the cash deposit rate will be 144.02 percent, the PRC-wide rate established in the less than fair value investigation." This language, therefore, corrects the cash deposit rates section of the *Amended Final Results*. The cash deposit instructions sent to U.S. Customs and Border Protection included the correct language.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 6, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–15735 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–806]

Certain Hot-Rolled Carbon Steel Flat Products From Romania: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the preliminary results in the antidumping duty administrative review of certain hot-rolled carbon steel flat products (hot-rolled steel) from Romania covering the period November 1, 2002, through October 31, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher C. Welty at (202) 482–0186 or Charles Riggle at (202) 482–0650, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On December 24, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on hot-rolled steel from Romania, covering the period November 1, 2002 through October 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 74550. The preliminary results for this review are currently due no later than August 2, 2004.

Section 751(a)(3)(A) of the Act requires the Department to complete the preliminary results of review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order or finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit due to the complex nature of this review. Specifically, on March 10, 2003, the Department reclassified Romania as a market economy effective January 1, 2003, for the purposes of antidumping and countervailing duty proceedings. Because this review covers the period November 1, 2002, through October 31, 2003, the Department has determined to conduct a simultaneous split review, applying its non-market-economy methodology to the period November 1 through December 31, 2003, and its market-economy methodology from January 1 through October 31, 2003. Accordingly, the Department is analyzing both market-economy and non-market-economy questionnaire responses. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than November 29, 2004. We intend to issue the final results no later than 120 days after publication of notice of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 6, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–15730 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894 and A–570–895]

Certain Tissue Paper Products and Certain Crepe Paper Products From the People's Republic of China: Postponement of the Preliminary Determinations of the Antidumping Duty Investigations

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

ACTION: Notice of postponement of the preliminary determinations of antidumping duty investigations.

EFFECTIVE DATE: July 12, 2004.

SUMMARY: The Department of Commerce ("the Department") is postponing the preliminary determinations in the investigations of certain tissue paper products and certain crepe paper products from the People's Republic of China. These investigations cover the period July 1, 2003, through December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Rachel Kreissl, or Kit Rudd, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–2667, (202) 482–0409 and (202) 482–1385 respectively.

Background

On March 15, 2004, the Department published a notice of initiation of investigations of certain tissue paper products and certain crepe paper products from the People's Republic of China covering the period July 1, 2003, through December 30, 2003. *See Notice of Initiation of Antidumping Duty Investigations: Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China:* 69 FR 12128 (March 15, 2004). The notice of initiation stated that the Department would issue preliminary determinations no later than 140 days after the date of initiation. *See Id.* Currently, the preliminary determinations in these investigations are due on July 26, 2004. *See* 19 CFR 351.205(e).

Postponement of Preliminary Determinations

Under section 733(c)(1)(A) of the Tariff Act of 1930, as amended ("the Act"), the petitioner may request a postponement from 140 days to not later than 190 days after the initiation of an

investigation. A written request, including reasons for the postponement, must be submitted to the Department at least 25 days prior to the preliminary determination.

The Department finds that the petitioners in the investigations submitted a timely request for postponement of the preliminary determinations on July 1, 2004, in accordance with section 773(c)(1)(A) of the Act. Further, the petitioners stated the following reasons for requesting a postponement of the preliminary determinations in the investigations: to allow the Department time to fully analyze and consider the information and arguments presented by the parties to the investigations and to issue and receive supplemental questionnaires and responses in the preliminary phase of the proceedings.

Pursuant to section 733(c)(1)(A) of the Act, the Department has determined that additional time is necessary to allow complete analysis and consideration of information and arguments presented by parties and to permit issuance of supplemental questionnaires and responses in the proceedings. Therefore, the Department is partially extending the preliminary determination date for the investigations until August 25, 2004.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: July 6, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–15729 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

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

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

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be non-confidential. An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at *oetca@ita.doc.gov*. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant, if necessary, for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 85–11A18."

A summary of the application for an amendment follows.

Summary of the Application

Applicant: U.S. Shippers Association ("USSA"), P.O. Box 67, East Texas, Pennsylvania 18046–0067.

Contact: Ronald Baumgarten, Jr., Counsel to Applicant, telephone: (202) 662–5265.

Application No.: 85–11A18.

Date Deemed Submitted: June 30, 2004.

The USSA original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986), and last amended on April 3, 2001 (66 FR 35773, July 9, 2001). In addition to the application for amendment described below, there is also a previously noticed application for amendment currently pending to add other additional members. *See* 69 FR 28880, May 19, 2004.

Proposed Amendment: USSA seeks to amend its Certificate to: Add AMCOL International Corporation as a new "Member" of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l) (2004)).

Dated: July 7, 2004.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 04–15776 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070704C]

Proposed Information Collection; Comment Request; Human Dimensions of Marine Resource Management

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 September 10, 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 Susan Abbott-Jamieson, NMFS ST5, 1315 East West Hwy SSMC3, Room 12609, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to address the National Environmental Policy Act (NEPA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) requirements, NOAA Fisheries social scientists must collect a broad range of social, cultural and economic information currently unavailable. NOAA Fisheries social scientists conduct social science research and apply research findings to fishery management needs. This research is designed to improve social science data related to the human dimensions of fisheries management by: (1) investigating social, cultural and economic issues/processes related to marine fishery stakeholders including but not limited to commercial and recreational fishermen, subsistence fishermen, fishing vessel owners, fishermen's families, fish processors and processing workers, related fishery support businesses, and fishing communities as defined in MSA section 3(16); (2) improving the current knowledge of baseline information related to marine fishery stakeholders, as described in (1) above; and (3) monitoring and measuring trends among marine fishery stakeholders, as described in (1) above, affected by fishery management decisions.

II. Method of Collection

Qualitative and quantitative research methods will be used to collect social, cultural and economic data. Examples of qualitative methods that will be employed are ethnographic research including participant observation, focus groups, and informal unstructured and formal structured interviews. Examples of quantitative methods that will be used include in-person, mail and phone surveys and questionnaires.

III. Data

OMB Number: 0648–0488.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals and households; business or other for-profit organizations; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.
Estimated Number of Respondents: 6,000.
Estimated Time Per Response: 60 minutes (Burden hours are directly related to the type of data collection tool used. Small surveys and participant observation may require minimal burden to participants and respondents. For example a small survey could take five minutes to administer. Other methods such as detailed surveys and informal and formal interview discussions can take much longer).
Estimated Total Annual Burden Hours: 6,000.
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: July 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15742 Filed 7–9–04; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070704D]

Proposed Information Collection; Comment Request; Processed Products Family of Forms

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 September 10, 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 Steven J. Koplin, F/ST1, #12456, 1315 East West Highway, Silver Spring, MD 20910–3282 (301–713–2328).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA, on an annual basis, collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. Monthly, NOAA collects information on the production of fishmeal and oil. The information gathered is used by NOAA in the economic and social analyses used when proposing and evaluating fishery management actions.

II. Method of Collection

In the current survey, NOAA Fisheries provides each processor a pre-printed form that includes the products produced by the dealer in the previous year. The dealer only needs to fill in the quantities, and add any new products, before returning the form every year. Processors have the option to use a web-based application that allows them to submit the data electronically.

III. Data

OMB Number: 0648–0018.
Form Number: NOAA Forms 88–13, 88–13C.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1,320.
Estimated Time Per Response: 30 minutes for an Annual Processed Products Report; and 15 minutes for a Fishery Products Report Fish Meal and Oil, monthly.
Estimated Total Annual Burden Hours: 680.
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: July 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15743 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070704E]

Proposed Information Collection; Comment Request; Northeast Region Vessel Identification Collection

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 September 10, 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 Brian Hooker, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 648.8 and 697.8 require that vessels, over 25 ft (7.6 m) in registered length with Federal permits to fish in the Northeast, display the vessel's name and official number. The name and number must be of a specific size at specified locations. The vessel's name must be affixed to the port and starboard sides of the bow and, if possible, on its stern. The official number must be displayed on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft that aids in fishery law enforcement.

II. Method of Collection

No information is submitted to NOAA Fisheries as a result of this collection.

III. Data

OMB Number: 0648–0350.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 0.75 hours.

Estimated Total Annual Burden Hours: 4,500 hours.

Estimated Total Annual Cost to Public: $60,000.

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: July 2, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–15744 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070604A]

Endangered Species; File No. 1489

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. James P. Kirk, U.S. Army, Engineer Research and Development Center, 3903 Halls Ferry Road, Vicksburg, MS 39180, has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 11, 2004.

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

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

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

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

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

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail

comment the following document identifier: File No. 1489.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Most populations of shortnose sturgeon in southern rivers are believed to be depressed. The Army's Fort Stewart has been supporting shortnose sturgeon monitoring studies in the Ogeechee River, Georgia, for almost a decade and have requested to continue that work for the next five years. The purpose of the proposed study is to continue to meet the objectives created for Fort Stewart in the Endangered Species Management. To address these objectives, the researchers are requesting authorization to capture 300 adult shortnose sturgeon via gillnets, trammel nets, trawls and trot lines. Adult sturgeon would be measured, weighed, handled, Floy or PIT tagged, tissue sampled and released. In addition, they are requesting to externally radio tag and track a subset of 20 fish and externally or internally sonic/radio tag and track a subset of 40 fish over the life of the permit. Researchers also request authorization to collect 40 eggs via buffer pads, annually. An annual accidental mortality of 2 fish annually is also requested.

Dated: July 6, 2004.

Tammy C. Adams,

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

[FR Doc. 04–15741 Filed 7–9–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 4,619,986: Epoxy Phthalonitrile Polymers, Navy Case No. 67,775.//U.S. Patent No. 4,642,271: BN Coating of Ceramic Fibers for Ceramic Fiber Composites, Navy Case No. 68,008.//U.S. Patent No. 4,648,083: All-optical Towed and Conformal Arrays, Navy Case No. 68,099.//U.S. Patent No. 4,689,628: Adaptive Sidelobe Canceller System, Navy Case No. 57,807.//U.S. Patent No. 4,739,661: Fiber-optic Accelerometer Having Cantilevered Acceleration-sensitive Mass, Navy Case No. 69,713.//U.S. Patent No. 4,816,881: A TiW Diffusion Barrier for AuZn Ohmic Contacts to P-type InP, Navy Case No. 71,295.//U.S. Patent No. 4,823,177: Method and Device for Magnetizing Thin Films by the Use of Injected Spin Polarized Current, Navy Case No. 70,708.//U.S. Patent No. 4,843,235: Devices for Protection of Sensors from Damaging and Interrogating Radiation, Navy Case No. 55,577.//U.S. Patent No. 4,849,925: Maximum Entropy Deconvolver Circuit Based on Neural Net Principles, Navy Case No. 70,552.//U.S. Patent No. 4,856,095: OPFET Demodulator-downconverter for Detecting Microwave Modulated Optical Signals, Navy Case No. 69,500.//U.S. Patent No. 4,881,813: Passive Stabilization of a Fiber Optic Nonlinear Interferometric Sensor, Navy Case No. 70,232.//U.S. Patent No. 4,897,543: Apparatus and Method for Minimizing Polarization-induced Signal Fading in an Interferometric Fiber-optic Sensor Using Input-polarization Control, Navy Case No. 70,942.//U.S. Patent No. 4,900,681: Hydrazine Detection, Navy Case No. 70,566.//U.S. Patent No. 4,911,929: Blood Substitute Comprising Liposome-encapsulated Hemoglobin, Navy Case No. 71,217.// U.S. Patent No. 4,932,783: Apparatus and Method for Minimizing Polarization-induced Signal Fading in an Interferometric Fiber-optic Sensor Using Input-polarization Modulation, Navy Case No. 71,465.//U.S. Patent No. 4,965,803: Room-temperature, Laser Diode-pumped, Q-switched, 2 Micron, Thulium-doped, Solid State Laser, Navy Case No. 72,611.//U.S. Patent No. 4,969,150: Tunable, Continuous Wave, Thulium-doped, Solid State Laser, Navy Case No. 72,123.//U.S. Patent No. 5,003,039: Amino Phenyl Containing Curing Agent for High Performance Phthalonitrile Resin, Navy Case No. 70,430.//U.S. Patent No. 5,049,890: Sampled Data Processing, Navy Case No. 57,994.//U.S. Patent No. 5,073,409: Environmentally Stable Metal Powders, Navy Case No. 71,608.//U.S. Patent No. 5,096,551: Metallized Tubule-based Artificial Dielectric, Navy Case No. 72,680.//U.S. Patent No. 5,104,222: System and Method for Minimizing Input Polarization-induced Phase Noise in an Interferometric Fiber-optic Sensor Depolarized Input Light, Navy Case No. 72,995.//U.S. Patent No. 5,106,829: Method of Making Substantially Single Phase Superconducting Oxide Ceramics Having a Tc Above 85 Degrees, Navy Case No. 73,114.//U.S. Patent No. 5,119,383: Antiresonant Nonlinear Mirror for Passive Laser Modelocking, Navy Case No. 72,558.//U.S. Patent No. 5,126,674: Planar Imaging by Nuclear Magnetic Resonance, Navy Case No. 71,641.//U.S. Patent No. 5,132,396: Phthalonitrile Monomers Containing Imide and/or Phenoxy Linkages, and Polymers Thereof, Navy Case No. 71,224.//U.S. Patent No. 5,140,154: Inline Fiber Optic Sensor Arrays with Delay Elements Coupled Between Sensor Units, Navy Case No. 71,595.// U.S. Patent No. 5,141,312: Fiber Optic Photoluminescence Sensor, Navy Case No. 71,714.//U.S. Patent No. 5,143,545: Antifouling Marine Coatings, Navy Case No. 72,531.//U.S. Patent No. 5,150,192: Field Emitter Array, Navy Case No. 73,671.//U.S. Patent No. 5,151,407: Method of Producing Bi-Sr-Ca-Cu-O Superconducting Materials in Cast Form, Navy Case No. 71,262.//U.S. Patent No. 5,155,741: High Data Rate Long Pulse Compression Waveform Communication System for M-ary Encoding Voice Messages for Air Traffic Control Systems, Navy Case No. 71,275.//U.S. Patent No. 5,159,054: Synthesis of Phthalonitrile Resins Containing Ether and Imide Linkages, Navy Case No. 73,345.//U.S. Patent No. 5,162,805: Frequency Diversity Sidelobe Canceller, Navy Case No. 57,228.//U.S. Patent No. 5,177,644: Tilt Mechanism, Navy Case No. 72,904.//U.S. Patent No. 5,182,496: Method and Apparatus for Forming an Agile Plasma Mirror Effective as a Microwave Reflector, Navy Case No. 73,830.//U.S. Patent No. 5,193,383: Mechanical and Surface Force Nanoprobe, Navy Case No. 71,785.//U.S. Patent No. 5,196,302: Enzymatic Assays Using Superabsorbent Materials, Navy Case No. 70,724.//U.S. Patent No. 5,196,358: Method of Manufacturing InP Junction FETS and Junction HEMTS Using Dual Implantation and Double Nitride Layers, Navy Case No. 71,579.//U.S. Patent No. 5,198,667: Method and Apparatus for Performing Scanning Tunneling Optical Absorption Spectroscopy, Navy Case No. 73,347.//U.S. Patent No. 5,200,966: Resonantly Pumped, Erbium-doped, GSGG, 2.8 Micron, Solid State Laser with Energy Recycling and High Slope Efficiency, Navy Case No. 74,158.//U.S. Patent No. 5,202,414: Pyrolzed Amine

Cured Polymer of Dithioether-linked Phthalonitrile Monomer, Navy Case No. 73,184.//U.S. Patent No. 5,202,747: Fiber Optic Gyroscope with Wide Dynamic Range Analog Phase Tracker, Navy Case No. 72,824.//U.S. Patent No. 5,206,867: Suppression of Relaxation Oscillations in Flashpumped, Two-micron Tunable Solid State Lasers, Navy Case No. 73,374.//U.S. Patent No. 5,206,924: Fiber Optic Michelson Sensor and Arrays with Passive Elimination of Polarization Fading and Source Feedback Isolation, Navy Case No. 74,894.//U.S. Patent No. 5,211,731: Plasma Chemical Vapor Deposition of Halide Glasses, Navy Case No. 70,998.//U.S. Patent No. 5,214,347: Layered Thin-edged Field-emitter Device, Navy Case No. 70,526.//U.S. Patent No. 5,225,374: Method of Fabricating a Receptor-based Sensor, Navy Case No. 74,119.//U.S. Patent No. 5,227,725: Nuclear Magnetic Resonance Imaging with Short Gradient Pulses, Navy Case No. 72,761.//U.S. Patent No. 5,227,857: System for Cancelling Phase Noise in an Interferometric Fiber Optic Sensor Arrangement, Navy Case No. 73,165.//U.S. Patent No. 5,231,606: Field Emitter Array Memory Device, Navy Case No. 70,560.//U.S. Patent No. 5,237,045: Curing Phthalonitrile Resins with Acid and Amine, Navy Case No. 73,797.//U.S. Patent No. 5,238,610: Method of Detecting Oxidizing Agents in Aqueous Media Through the Use of Chemiluminescent Microemulsions, Navy Case No. 74,327.//U.S. Patent No. 5,242,755: High Temperature Adhesive, Navy Case No. 71,223.//U.S. Patent No. 5,243,403: Three-axis Fiber Optic Vector Magnetometer, Navy Case No. 68,711.// U.S. Patent No. 5,246,879: Method of Forming Nanometer-scale Trenches and Holes, Navy Case No. 73,344.//U.S. Patent No. 5,247,060: Curing Phthalonitriles with Acid, Navy Case No. 73,174.//U.S. Patent No. 5,247,887: Dynamic Method for Enhancing Effects of Underwater Explosions, Navy Case No. 56,996.//U.S. Patent No. 5,247,894: Pro-submarine Mobile Decoy, Navy Case No. 29,995.//U.S. Patent No. 5,252,695: Fast Switching Ferroelectric Liquid Crystalline Polymers, Navy Case No. 74,792.//U.S. Patent No. 5,253,216: Sonar Countermeasure, Navy Case No. 31,588.//U.S. Patent No. 5,262,514: Polymer from Diimido-di-phthalonitrile, Navy Case No. 70,672.//U.S. Patent No. 5,266,155: Method for Making a Symmetrical Layered Thin Film Edge Field-emitter-array, Navy Case No. 75,109.//U.S. Patent No. 5,268,875: Acoustic Decoy, Navy Case No. 41,932.// /U.S. Patent No. 5,268,920: System for End-pumping a Solid State Laser Using a Large Aperture Laser Diode Bar, Navy Case No. 73,373.//U.S. Patent No. 5,270,252: Method of Forming Platinum and Platinum Silicide Schottky Contacts on Beta-silicon Carbide, Navy Case No. 74,790.//U.S. Patent No. 5,270,853: Method and Apparatus for Imaging an Object in or Through a Scattering Medium by Using Multiple-wave Mixing, Navy Case No. 74,287.//U.S. Patent No. 5,272,131: Method for Forming Aligned Superconducting Bi-Sr-Ca-Cu-O, Navy Case No. 71,999.// U.S. Patent No. 5,272,237: Carborane-(siloxane or Silane)-unsaturated Hydrocarbon Based Polymers, Navy Case No. 74,945.//U.S. Patent No. 5,272,708: Two-micron Modelocked Laser System, Navy Case No. 73,829.// U.S. Patent No. 5,282,936: Decomposition of Halogenated and Polyhalogenated Organic Materials by Electrified Microheterogeneous Catalysis, Navy Case No. 73,614.//U.S. Patent No. 5,287,378: Holmium Quasi-two Level Laser, Navy Case No. 74,205./ /U.S. Patent No. 5,289,482: Intracavity-pumped 2.1.mu.m Ho.sup.3+: YAG Laser, Navy Case No. 74,075.//U.S. Patent No. 5,290,960: Diacetylenic Phospholipids Containing Heteroatom Near Diacetylenic Functionality for Modulation of Microstructure Morphology, Navy Case No. 74,307.// U.S. Patent No. 5,291,266: Depolarized Light Source for Fiber Optic Sensors, Navy Case No. 72,926.//U.S. Patent No. 5,292,779: Carborane-(silane or Siloxane)-unsaturated Hydrocarbon Based Thermosetting Polymers, Navy Case No. 74,948.//U.S. Patent No. 5,292,854: Synthesis of Phthalonitrile Resins Containing Ether and Imide Linkages with Aromatic Diamine Curing Agent, Navy Case No. 74,797.//U.S. Patent No. 5,296,865: MTI Compatible Coherent Sidelobe Canceller, Navy Case No. 55,855.//U.S. Patent No. 5,301,166: Remote Control Command System, Navy Case No. 42,780.//U.S. Patent No. 5,303,314: Method and Apparatus for Polarization-maintaining Fiber Optical Amplification with Orthogonal Polarization Output, Navy Case No. 74,328.//U.S. Patent No. 5,304,625: Phosphazene-containing Amine as Curing Agent for Phthalonitrile-based Polymer, Navy Case No. 75,245.//U.S. Patent No. 5,305,414: Low Loss Glass and Optical Fibers Therefrom, Navy Case No. 73,520.//U.S. Patent No. 5,313,477: Rare Earth Ion Doped CW Cascade Fiber Laser, Navy Case No. 74,166.//U.S. Patent No. 5,314,866: Formation of Superconducting Bi-Sr-Ca-Cu-O Films by Organometallic Chemical Vapor Deposition, Navy Case No. 71,315.//U.S. Patent No. 5,319,440: Fiber Optic Gyroscopes with Depolarized Light, Navy Case No. 73,684.//U.S. Patent No. 5,319,652: Super Luminescent Light Source, Navy Case No. 73,675.//U.S. Patent No. 5,331,404: Low Noise Fiber Gyroscope System Which Includes Excess Noise Subtraction, Navy Case No. 73,910.// U.S. Patent No. 5,332,659: Light Emission-or Absorbance-based Binding Assays for Polynucleic Acids, Navy Case No. 75,191.//U.S. Patent No. 5,333,667: Superstrength Metal Composite Material and Process for Making the Same, Navy Case No. 72,144.//U.S. Patent No. 5,339,057: Limited Bandwidth Microwave Filter, Navy Case No. 74,067.//U.S. Patent No. 5,347,281: Frequency-coded Monopulse MTI, Navy Case No. 60,208.//U.S. Patent No. 5,348,917: Ceramics Formed by Pyrolysis of Either Linear or Thermosetting Carborane (siloxane or Silane) Acetylene Based Precursor Polymers, Navy Case No. 75,190.//U.S. Patent No. 5,350,828: Synthesis and Polymerization of Dithioether-linked Phthalonitrile Monomers, Navy Case No. 75,140.//U.S. Patent No. 5,351,057: Directive Optimization of Coherent Sidelobe Canceller 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83,836.//U.S. Patent No. 6,646,643: User Control of Simulated Locomotion, Navy Case No. 79,402.//U.S. Patent No. 6,649,091: Electrically Conducting Ruthenium Dioxide Aerogel Composite, Navy Case No. 83,365.//U.S. Patent No. 6,649,211: Selective Deposition of Hydrous Ruthenium Oxide Thin Films, Navy Case No. 79,838.//U.S. Patent No. 6,649,327: Method of Patterning Electrically Conductive Polymers, Navy Case No. 83,229.//U.S. Patent No. 6,650,420: Nanoscale Vibrometric Measurement Apparatus and Method, Navy Case No. 77,390.//U.S. Patent No. 6,660,780: Molecularly-imprinted Material Made by Template-directed Synthesis, Navy Case No. 84,318.//U.S. Patent No. 6,661,160: High Power Density Dual-rotor Device, Navy Case No. 83,631.//U.S. Patent No. 6,667,257: Heavy Metal Modified Silica Glass Fibers Doped with Thulium, Holmium, and Thulium-sensitized-holmium High Quantum Efficiencies, Navy Case No. 82,315.//U.S. Patent No. 6,673,246: Reusable Polysilsesquioxane Adsorbents for Pollutants, Navy Case No. 83,361.// U.S. Patent No. 6,673,953: Polymeric and Carbon Compositions with Metal Nanoparticles, Navy Case No. 82,460.// U.S. Patent No. 6,674,928: Optical Sensing Device Containing Fiber Bragg Gratings, Navy Case No. 80,209.//U.S. Patent No. 6,677,877: Comparator, Analog-to-digital Converter and Method of Analog-to-digital Conversion Using Non-linear Magneto-electronic Device, Navy Case No. 83,010.//U.S. Patent No. 6,677,882: Multi-octave High-resolution Receiver for Instantaneous Frequency Measurements, Navy Case No. 59,262./ /U.S. Patent No. 6,680,142: Bio-based Microbattery and Methods for Fabrication of Same, Navy Case No. 82,409.//U.S. Patent No. 6,683,359: Hall Effect Device with Multiple Layers, Navy Case No. 83,835.//U.S. Patent No. 6,683,678: Optic Flow Sensor with Negative Iris Photoreceptor Array, Navy Case No. 84,340.//U.S. Patent No. 6,684,219: Method and Apparatus for Building and Maintaining an Object-oriented Geospatial Database, Navy Case No. 78,530.//U.S. Patent No. 6,686,494: Synthesis of S-alkyl and S-aryl Thiocarbamates, One-pot Two-step General Synthesis, Navy Case No. 84,422.//U.S. Patent No. 6,686,680: Method and Apparatus for Regulating Electron Emission in Field Emitter Devices, Navy Case No. 83,362.//U.S. Patent No. 6,687,188: Underwater Telemetry Apparatus and Method, Navy Case No. 83,167.//U.S. Patent No. 6,688,241: Microfiche Emergency Destruct System, Navy Case No. 56,919./ /U.S. Patent No. 6,689,620: Method, Detector, and Apparatus for Colorimetric Detection of Chemical and Biological Agents, Navy Case No. 84,510.//U.S. Patent No. 6,690,566: Trigger Circuit for Marx Generators, Navy Case No. 79,357.//U.S. Patent No. 6,695,986: Electrocatalytic Enhancement with Catalyst-modified Carbon-silica Composite Aerogels, Navy Case No. 82,330.//U.S. Patent No. 6,696,171: Method of Ion Implantation Using Oxygen and a Metallic Surface Layer Formed Therefrom, Navy Case No. 83,419.//U.S. Patent No. 6,700,832: Method and Apparatus for Passive Acoustic Imaging Using a Horizontal Line Array, Navy Case No. 83,165.//U.S. Patent No. 6,700,858: Method and Apparatus for Parallel Readout and Correlation of Data on Optical Disks, Navy Case No. 84,342.//U.S. Patent No. 6,703,639: Nanofabrication for InAs/ AlSb Heterostructures, Navy Case No. 83,495.//U.S. Patent No. 6,704,479: Method for Coupling Light Into Cladding-pumped Fiber Sources Using an Embedded Mirror, Navy Case No. 83,011.//U.S. Patent No. 6,710,343: Photon Detector, Navy Case No. 79,849./ /U.S. Patent No. 6,713,272: Attachment of Biomolecules to Hydrophobic Surfaces, Navy Case No. 79,318.//U.S. Patent No. 6,713,416: Molecularly-imprinted Material Made by Template-directed Synthesis, Navy Case No. 84,470.//U.S. Patent No. 6,713,563: Electrostrictive Poly(vinylidene Fluoride-co-trifluoroethylene) Networks, Navy Case No. 83,110.//U.S. Patent No. 6,714,868: Similarity Transformation Method for Data Processing and Visualization, Navy Case No. 82,482.//U.S. Patent No. 6,717,337: Piezoelectric Acoustic Actuator, Navy Case No. 82,285.//U.S. Patent No. 6,721,358: Signal Synthesizer and Method Therefor, Navy Case No. 79,429.//U.S. Patent No. 6,724,528: Polarization-maintaining Optical-Fiber Amplifier Employing Externally Applied Stress-induced Birefringence, Navy Case No. 80,237.//U.S. Patent No. 6,724,916: Composite Hough Transform

for Multitarget Multisensor Tracking, Navy Case No. 79,739.//U.S. Patent No. 6,733,838: Robust Nontoxic Antifouling Elastomers, Navy Case No. 84,616.//U.S. Patent No. 6,734,043: Pressure-bonded Heat Sink Method, Navy Case No. 83,954.//U.S. Patent No. 6,737,793: Apparatus for Emitting Electrons Comprising a Subsurface Emitter Structure, Navy Case No. 84,585.//U.S. Patent No. RE34322: Preparation of Hard Magnetic Alloys of a Transition Metal and Lanthanide, Navy Case No. 73,309.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: July 6, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–15717 Filed 7–9–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meetings.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet to hold classified briefs of proprietary information. All sessions of the meetings will be devoted to briefings, discussions, and technical examination of information related to the relationship of science and technology to modular systems acquisitions, system engineering, open architectures and spiral development and to make recommendations for improving these relationships where appropriate. The sessions will also identify and analyze cost effective and technically feasible high speed, high capacity connectors to close a Marine Expeditionary Brigade from the continental U.S. to a sea base and operate forces from the sea base to objectives ashore.

DATES: The meetings will be held on Monday, July 26, 2004, through Friday, July 30, 2004, from 8 a.m. to 5 p.m.; Monday, August 2, 2004, through Thursday, August 5, 2004, from 8 a.m. to 5 p.m.; and Friday, August 6, 2004, from 8 a.m. to 11 a.m.

ADDRESSES: The meetings will be held at the Naval Postgraduate School, Monterey, CA 93943.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meetings will be devoted to executive sessions that will include discussions and technical examination of information related to sea basing technologies. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meetings. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meetings be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: July 6, 2004.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 04–15798 Filed 7–9–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–052–California]

California Department of Water Resources; Notice of Designation of Certain Commission Personnel as Non-Decisional

June 29, 2004.

Commission staff member Elizabeth Molloy was assigned to help resolve environmental and related issues associated with development of a comprehensive settlement agreement for the Oroville Project. The parties anticipate completing the comprehensive settlement agreement and filing an offer of settlement by January 31, 2005.

As a "non-decisional" staff, Ms. Molloy will take no part in the Commission's review of the offer of settlement and the comprehensive settlement agreement, or deliberations concerning the disposition of the relicense application.

Different Commission "advisory staff" will be assigned to review the offer of settlement, the comprehensive settlement agreement, and process the relicense application, including providing advice to the Commission with respect to the agreement and the application. Non-decisional staff and advisory staff are prohibited from communicating with one another concerning the settlement and the relicense application.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1518 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–113–000]

Central Hudson Gas & Electric Corp., et al. v. New York Independent Transmission System Operator, Inc.; Notice of Meeting on New York Independent System Operator, Inc. Filing

June 29, 2004.

The Commission hereby gives notice that members of its staff will meet with New York Independent System Operator, Inc. (NYISO) on July 1, 2004, from 11 a.m. to 1 p.m. (e.s.t.). The meeting will be held at the Commission, 888 First Street, NE., Washington, DC 20426. The purpose of the meeting is to discuss a possible upcoming filing by NYISO concerning Transmission Congestion Credits. The meeting is open to the public. Parties interested in further information about the meeting may contact Alice Fernandez at (202) 502–8284.

During the course of the meeting, it is possible that the discussion may

address matters pending in the above-captioned docket.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1514 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2403, 2534, 2666, 2710, 2712, 2721, and 10981; and Docket No. DI97–10; Project No. 2312; Project No. 2600]

PPL Maine, LLC, PPL Great Works, LLC, Bangor Pacific Hydro Associates; Notice of Comprehensive Settlement Accord and Soliciting Comments

June 29, 2004.

Take notice that the following Comprehensive Settlement Accord has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Lower Penobscot River Basin comprehensive settlement accord with explanatory statement (comprehensive settlement).

b. *Project Nos.:* 2403, 2534, 2666, 2710, 2712, 2721, 10981, 2312, and 2600.

Docket No.: DI97–10.

c. *Date Filed:* June 25, 2004.

d. *Applicant:* PPL Maine, LLC (PPL Maine) and affiliated companies (PPL).

e. *Names of Projects:* Veazie (P–2403), Milford (P–2534), Medway (P–2666), Orono (P–2710), Stillwater (P–2712), Howland (P–2721), Basin Mills (P–10981), Great Works (P–2312), and West Enfield (P–2600).

Location: The Veazie, Great Works, and West Enfield Projects are located on the Penobscot River in Penobscot County, Maine. The Milford Project is located on the Penobscot and Stillwater Rivers in Penobscot County, Maine. The Stillwater and Orono Projects are located on the Stillwater River in Penobscot County, Maine. The Medway Project is located on the West Branch Penobscot River in Penobscot County, Maine. The Howland Project is located on the Piscataquis River in Penobscot County, Maine. The Basin Mills Project would be located on the Penobscot River in Penobscot County, Maine.

f. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

g. *Applicant Contact:* John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, (202) 371–5766, *jwhittak@winston.com.*

h. *FERC Contact:* Ed Lee at (202) 502–6082 or *Ed.Lee@ferc.gov.*

i. *Deadline for Filing Comments:* The deadline for filing comments on the Comprehensive Settlement, the Joint Request (*see* below), and the FWS Modified Prescriptions (*see* below) is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the 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 will publicly notice for comment the five license amendment applications and the application for new license discussed below when those applications are accepted for Commission processing.

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 may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 395.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

j. *Description of Filing:* PPL filed the Comprehensive Settlement jointly with 12 stakeholders: The Penobscot Indian Nation (PIN), the United States Department of the Interior acting through its bureaus the Fish and Wildlife Service (FWS), the Bureau of Indian Affairs (BIA), and the National Park Service (collectively DOI), the Maine Agencies (the Maine State Planning Office, the Maine Atlantic Salmon Commission, the Maine Department of Inland Fisheries and Wildlife, and the Maine Department of Marine Resources), the Conservation Interests (American Rivers, Inc., the Atlantic Salmon Federation, the Maine Audubon Society, the Natural Resources Council of Maine, and Trout Unlimited), and the Penobscot River Restoration Trust (Trust) (collectively Parties). The Comprehensive Settlement is embodied in the Lower Penobscot River Multiparty Settlement Agreement dated June 2004 (the MPA) and in two additional agreements attached to the MPA: the Lower Penobscot River Option Agreement dated June 2004 (Option Agreement) and the Comprehensive Settlement Agreement Between the Penobscot Indian Nation, PPL Maine, LLC, and the Bureau of Indian Affairs of the Department of the Interior dated June 2004 (PIN Agreement).

The Parties propose in the Comprehensive Settlement a phased approach to resolving all fish passage, energy generation, and tribal issues associated with PPL's Lower Penobscot River hydroelectric projects. Under the Comprehensive Settlement, PPL will grant the Trust a five-year option to acquire Veazie, Howland, and Great Works (Designated Projects), and thereafter decommission and remove Veazie and Great Works and decommission and either alter Howland by constructing a fish bypass system that would substantially or entirely maintain the existing dam structure and impoundment or remove the dam. If the option is exercised, PPL and the Trust would file applications to transfer the licenses for the Designated Projects to the Trust and the Trust would file applications to surrender the licenses and to obtain Commission authorization to decommission and remove/alter them. If the Commission approves those subsequent applications, the MPA provides an opportunity for certain energy enhancements to be pursued. To allow the option process to work, the Parties propose in a Joint Request submitted with the Comprehensive Settlement that the Commission suspend the relicensing proceedings for Howland and Great Works and extend certain requirements of the Milford and Veazie licenses until the option has been exercised, has expired, or has been terminated (Joint Request). As required by the MPA, PPL has separately filed separate applications to amend the licenses for Veazie, Milford, Stillwater, Medway, and West Enfield and an application for a new 40-year license for Orono. These applications propose energy enhancements at West Enfield, Stillwater, and Medway (one-foot headpond increases) and at Orono (refurbishment at existing capacity). The Milford and West Enfield applications propose the addition of provisions to address impacts on the PIN Reservation and other interests. The Parties also propose that the fish passage provisions of the Veazie, Milford, Stillwater, and West Enfield licenses be modified (and the new Orono license contain provisions) as specified in an attachment to the MPA (Attachment A). To implement these modified fish passage provisions, PPL has included in four of the license amendment applications and in the new license application requests for incorporation of provisions consistent with Attachment A, and the FWS has separately submitted Preliminary Prescription

Modifications and Preliminary Prescriptions for Milford, Veazie, Stillwater, and Orono (FWS Modified Prescriptions). The FWS Modified Prescriptions contain fish passage provisions to be implemented initially and when the Designated Projects are acquired by the Trust.

The Parties included the MPA, the Option Agreement, and the PIN Agreement with the Comprehensive Settlement filing for informational purposes only and are not requesting that the Commission approve any of these three agreements. Rather, they request that the Commission approve the applications/requests that they have submitted to implement the initial phase of the Comprehensive Settlement (Phase 1 Requests): The Joint Request, the license amendment applications for Veazie, Milford, Stillwater, Medway, and West Enfield, the application for new license for Orono, and the FWS Modified Prescriptions. The MPA provides that, if the Commission approves all of the Phase 1 Requests without material change, the requests for rehearing of the Commission's April 20, 1998 orders in the Basin Mills, *et al.* proceedings and certain submittals made by DOI in the Milford relicensing proceeding will be withdrawn.

k. Copies of the Comprehensive Settlement, the Joint Request, and the FWS Modified Prescriptions are 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 documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1513 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–114–000]

City of Santa Clara, California v. Enron Power Marketing, Inc.; Notice of Complaint

July 6, 2004.

Take notice that on July 2, 2004, the City of Santa Clara, California (City) filed a formal complaint against Enron Power Marketing, Inc. (EPMI) pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e and 825h (2002), and Rule 206 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2003) seeking relief from EPMI's alleged unlawful attempts to terminate certain contracts with the City, and seeking to prohibit EPMI from collecting unjust and unreasonable termination charges from City.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. 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 for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 22, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1515 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–114]

Georgia Power Company; Notice of Availability of Environmental Assessment

June 29, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff (staff) reviewed the request for a municipal water withdrawal from the Sinclair Project, located on the Oconee River in Baldwin, Putnam, and Hancock Counties, Georgia, and prepared an environmental assessment (EA) for the proposed water withdrawal. In this EA, staff analyze the potential environmental effects of the proposed water withdrawal of six million gallons per day as a monthly average from the project reservoir for municipal water supply, and conclude that the proposed water withdrawal 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 Commission order and attached EA, issued June 23, 2004 (107 FERC ¶ 62,264). For assistance, contact FERC On-Line Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676. For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1516 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 199–203]

South Carolina Public Service Authority; Notice of Availability of Environmental Assessment

June 29, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects staff (staff) reviewed the request to use Santee-Cooper Project lands and waters in the development of a Lake Marion Regional Water System Project. The project is located on the Santee and Cooper Rivers (Lake Marion and Lake Moultrie) in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina. Staff prepared an environmental assessment (EA) for the application and analyzed the effects of structures to be constructed on project lands, as well as the water withdrawal from Lake Marion. Staff concluded that the licensee's proposal 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 Commission order and attached EA, issued June 28, 2004 (107 FERC ¶ 62,285). For assistance, contact FERC On-line Support at *FERCOnlineSupport@ferc.gov* or call toll-free (866) 208–3676 for TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1517 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–8–000]

Electric Creditworthiness Standards; Notice of Agenda for the July 13, 2004, Technical Conference on Credit-Related Issues for Electric Transmission Providers, Independent System Operators, and Regional Transmission Organizations

July 6, 2004.

As announced in the Notice of Conference issued May 28, 2004, the Federal Energy Regulatory Commission (Commission) will hold a Staff technical conference on Tuesday, July 13, 2004, from 9:30 a.m. to 4 p.m. e.s.t. 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) may also participate. All interested parties are invited to attend. There is no requirement to register and no registration fee to attend the conference. The Commission's summer dress code is business casual.

The purpose of the conference is to consider, among other things, whether the Commission should institute a generic rulemaking to consider credit-related issues for service provided by jurisdictional transmission providers,[1] Independent System Operators (ISOs), and Regional Transmission Organizations (RTOs).

The conference agenda is appended to this Notice. The agenda includes four subject panels. Panelists are encouraged to file prepared written statements addressing the issues on or before July 13, 2004. Such statements should be filed with the Secretary of the Commission. Following the four panels, there will be time for public comment on issues related to the conference.

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 ten days after the Commission receives them.

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, as soon as possible, David Reininger or Julia Morelli at Capitol Connection (703–993–3100) or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

Interested parties are urged to watch the docket for any further notices on the conference. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new issuances and filings related to this docket. For additional information please contact Eugene Grace, 202–502–8543 or by e-mail at *eugene.grace@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1519 Filed 7–9–04; 8:45 am]

BILLING CODE 6717–01–P

[1] For the purposes of this notice, a Transmission Provider is defined as an entity that provides electric transmission service and is neither an ISO nor an RTO.

ENVIRONMENTAL PROTECTION AGENCY

[Region 2 Docket No. NY69–278 FRL–7785–8]

Adequacy Status of the Submitted 2003, 2009 and 2013 Carbon Monoxide Budgets for the Attainment and Maintenance of the Carbon Monoxide National Ambient Air Quality Standards for Transportation Conformity Purposes for Onondaga County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets ("budgets") for carbon monoxide (CO) in the submitted revision to the Carbon Monoxide Maintenance Plan for Onondaga, New York to be adequate for conformity purposes. These budgets were recalculated using EPA's latest motor vehicle emissions factor model, MOBILE6. On March 2, 1999, the D.C. Circuit Court ruled that submitted state implementation plan budgets cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, Onondaga County, New York must use the new 2003, 2009 and 2013 CO budgets from the revision to the Carbon Monoxide Maintenance Plan for

Onondaga County for future conformity determinations.

DATES: This finding is effective July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie A. Zeman, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4022, *Zeman.Melanie@epa.gov.*

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New York Department of Environmental Conservation on June 30, 2004 stating that the revised carbon monoxide budgets in the submitted Carbon Monoxide Maintenance Plan revision for Onondaga County, New York (dated June 22, 2004) are adequate for conformity purposes. The purpose of New York's June 22, 2004 submittal was to fulfill its commitment to update the current ten year Maintenance Plan for Carbon Monoxide for Onondaga County. The state is required to submit a new maintenance plan ten years after EPA approves the initial maintenance plan for the area. EPA approved the Onondaga County, New York redesignation request and Maintenance plan in 1993 (58 FR 50851, September 29, 1993). EPA's adequacy finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance, which can also be found on EPA's Web site at: *http://www.epa.gov/otaq/traq*, in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04–15720 Filed 7–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7785–9]

Notice of Two Open Meetings of the Environmental Financial Advisory Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will hold two open meetings. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

First, a meeting of the full board will be held to discuss progress with work products under EFAB's current strategic action agenda and develop an action agenda to direct the Board's ongoing and new activities through FY 2005. Topics of discussion include financial assurance mechanisms; innovative environmental financing tools; non-point source (watershed) financing; useful life financing of water facilities; and joint operations of the drinking water and wastewater state revolving loan funds.

The second meeting will be a workshop to address affordability issues. The purpose of the workshop is to explore U.S. water and wastewater affordability problems and solutions, particularly those that affect lower income groups. The Board will collect information, ideas, and recommendations from a group of expert panelists who will share their perspective on affordability issues.

Both meetings are open to the public, however; seating is limited. All members of the public who wish to attend either meeting must register in advance, no later than Wednesday, August 4, 2004.

DATES: Full Board Meeting is scheduled for August 16, 2004, from 1 p.m.–5 p.m. and August 17, 2004, from 8:45 a.m.–5 p.m.

Affordability Workshop is scheduled for August 18, 2004, from 9 a.m.–5 p.m.

ADDRESSES: Omni San Francisco Hotel, 500 California St., Telegraph Hill Room, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: To register for the meeting or get further information, please contact Alecia Crichlow, U.S. EPA, (202) 564–5188 or *crichlow.alecia@epa.gov.*

Dated: July 2, 2004.

Joseph Dillon,

Director, Office of Enterprise Technology and Innovation.

[FR Doc. 04–15719 Filed 7–9–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0101 FRL–7369–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 14, 2004 to June 25, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0101 and the specific PMN number or TME number, must be received on or before August 11, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets

at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2004–0101. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0101 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040101 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 14, 2004 to June 25, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 45 PREMANUFACTURE NOTICES RECEIVED FROM: 06/14/04 TO 06/25/04

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0645	06/14/04	09/11/04	CBI	(S) Resin for coatings applied by electrodeposition ts-s709p4; resin for coatings applied by electrodeposition ts-s727p4; resin for coatings applied by electrodeposition ts-s728p4	(G) Amine functional epoxy resin salted with organic acid
P–04–0646	06/14/04	09/11/04	CBI	(S) Resin for coatings applied by electrodeposition ts-s709p4; resin for coatings applied by electrodeposition ts-s727p4; resin for coatings applied by electrodeposition ts-s728p4	(G) Amine functional epoxy resin salted with organic acid
P–04–0647	06/14/04	09/11/04	CBI	(S) Resin for coatings applied by electrodeposition ts-s7o9p4; resin for coatings applied by electrodeposition ts-s727p4; resin for coatings applied by electrodeposition ts-s728p4	(G) Amine functional epoxy resin salted with organic acid
P–04–0648	06/14/04	09/11/04	CBI	(S) Resin for coatings applied by electrodeposition	(G) Amine functional epoxy resin salted with organic acid
P–04–0649	06/14/04	09/11/04	Autoliv north america	(G) Open, destructive use as a gas generant for automotive airbag inflators.	(G) Basic copper aminotetrazole nitrate
P–04–0651	06/14/04	09/11/04	Na Industries, Inc.	(G) Concrete additive	(G) Polycarboxylated derivertive
P–04–0652	06/14/04	09/11/04	Na Industries, Inc.	(G) Concrete-additive	(G) Polycarboxylated derivertive
P–04–0653	06/15/04	09/12/04	CBI	(G) Coating additive	(G) Styrene-butadiene copolymer latex
P–04–0654	06/14/04	09/11/04	CBI	(G) Aliphatic solvent for fragrances	(G) Branched fatty acid mixed ester with tripropylene glycol
P–04–0655	06/14/04	09/11/04	CBI	(G) Aliphatic solvent for fragrances	(G) Branched fatty acid mixed ester with tripropylene glycol
P–04–0656	06/16/04	09/13/04	Johnson Polymer LLC	(G) Polymeric coating vehicle.	(G) Styrene acrylic copolymer
P–04–0657	06/16/04	09/13/04	CBI	(G) Foam stabilizer additive	(G) Trimethylolpropane dialkyl diester.
P–04–0658	06/16/04	09/13/04	Wacker Silicones. A Division of Wacker Chemical Corporation	(S) Crosslinker for adhesive/sealants	(S) 2-propenoic acid, 2-methyl-, (triethoxysilyl)methyl ester
P–04–0659	06/16/04	09/13/04	CBI	(G) Polymer admixture for cements	(G) N-sulfoalkylaminocarbonylalkenyl, polymer modified with n,n-dialkylaminocarbonylalkenyl, calcium salt
P–04–0660	06/16/04	09/13/04	CBI	(G) Polymer admixture for cements	(G) N-sulfoalkylaminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(alkyloxyalkylenediyl) and poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0661	06/16/04	09/13/04	CBI	(G) Polymer admixture for cements	(G) N-sulfoalkylaminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(alkyloxyalkylenediyl) and poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0662	06/16/04	09/13/04	CBI	(G) Polymer admixture for cements	(G) N-sulfoalkylaminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0663	06/16/04	09/13/04	CBI	(G) Polymer admixture for cements	(G) N-sulfoalkylaminocarbonylalkenyl, polymer with alkenyloxyalkylol modified with poly(oxyalkylenediyl) and aminocarbonylalkenyl, sodium salt
P–04–0664	06/17/04	09/14/04	Cognis Corporation	(G) Extraction of food substances from flour and vegetables.	(S) Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), monoacetate, monohexadecanoate
P–04–0665	06/18/04	09/15/04	The Dow Chemical Company	(G) Polymer for bonding textiles	(G) Water dispersable polyurethane polymer

I. 45 PREMANUFACTURE NOTICES RECEIVED FROM: 06/14/04 TO 06/25/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0666	06/18/04	09/15/04	The Dow Chemical Company	(G) Prepolymer for isocyanate polyurethane	(G) Polyurethane prepolymer
P–04–0667	06/21/04	09/18/04	Synplex Chemical Imports llc	(G) Polyester polyurethane anionic resin	(S) Hexanedioic acid, polymer with 1,4-butanediol, 1,3-diisocyanatomethylbenzene, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)]] and piperazine, compound with n,n-diethylethanamine
P–04–0668	06/21/04	09/18/04	DAI Nippon IMS America	(G) Thermal transfer ribbon for imaging	(G) Reactant polymer with the acrylate copolymer of (an isocyanate spices and three spices of acrylate polymer), and the polyurethane acrylate
P–04–0669	06/21/04	09/18/04	CBI	(G) Coating component	(G) Copolymer of mixed alkyl methacrylates and a substituted alkyl methacrylate
P–04–0670	06/21/04	09/18/04	CBI	(G) The polymer will be used to manufacture products with altered electrical properties.	(G) Poly(alkoxy aromatic heterocycle)
P–04–0671	06/22/04	09/19/04	CBI	(G) Inkjet ink	(G) Sodium salt of substituted copper phthalocyanine derivative
P–04–0672	06/22/04	09/19/04	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester urethane polymer
P–04–0673	06/23/04	09/20/04	Degussa Corporation	(G) Molding mass for thermoplastic processing	(G) Alkanedicarboxylic acid, polymer with lauryllactam and poly(oxyalkylene)diamine
P–04–0674	06/23/04	09/20/04	CBI	(S) Floculating agent, textile finishings and paper production	(G) Quatemary ammonium compound
P–04–0675	06/23/04	09/20/04	CBI	(G) Polymer admixture for cements	(G) N,n,n-trialkyl-alkylaminium, n-aminocarbonylalkenyl, chloride, polymer with n-sulfoalkyl-aminocarbonylalkenyl, sodium salt and aminocarbonylalkenyl
P–04–0676	06/23/04	09/20/04	CBI	(G) Polymer admixture for cements	(G) N,n,n-trialkyl-alkylaminium, n-aminocarbonylalkenyl, chloride, polymer with n-sulfoalkyl-aminocarbonylalkenyl, sodium salt and aminocarbonylalkenyl
P–04–0677	06/24/04	09/21/04	CBI	(G) Additive for plastics	(G) Acrylic polymer
P–04–0678	06/24/04	09/21/04	Uniqema	(G) Lubricant	(G) Pentaerythritol ester of mixed fatty acids
P–04–0679	06/23/04	09/20/04	CBI	(G) Industrial coating	(S) 1,3-isobenzofurandione, polymer with 1,3-diisocyanatomethylbenzene and 2,2′-oxybis[ethanol], 2-hydroxyethyl acrylate-blocked
P–04–0680	06/25/04	09/22/04	International Paint, Inc.	(G) Coating component	(G) Polyamine-epoxy adduct
P–04–0681	06/24/04	09/21/04	CBI	(G) Raw material for automobile paint	(G) Acrylic resin
P–04–0682	06/25/04	09/22/04	CIBA Specialty Chemicals Corporation	(S) Pigment for plastics	(G) Substitute aromatic pigment
P–04–0683	06/25/04	09/22/04	CIBA Specialty Chemicals Corporation	(S) Pigment for plastics	(G) Substituted pyridinecarbonitrile pigment
P–04–0684	06/23/04	09/20/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin

I. 45 PREMANUFACTURE NOTICES RECEIVED FROM: 06/14/04 TO 06/25/04—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–04–0685	06/23/04	09/20/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(S) Hexanedioic acid, polymer with butyl 2-methyl-2-propenoate, 1,6-hexanediol, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethandiyl)] 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[isocyanatobenzene], methyl 2-methyl-2-propenoate and 2-methyl-2-propenoic acid
P–04–0686	06/23/04	09/20/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin
P–04–0687	06/23/04	09/20/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin
P–04–0688	06/23/04	09/20/04	Henkel Adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(S) Dodecanedioic acid, polymer with butyl 2-methyl-2-propenoate, hexanedioic acid, 1,6-hexanediol, .alpha.-omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2-hydroxyethyl 2-methyl-2-propenoate, 1,1′-methylenebis[isocyanatobenzene], methyl 2-methyl-2-propenoate and 2-methyl-2-propenoic acid
P–04–0689	06/23/04	09/20/04	Henkel adhesives	(S) Adhesives used for lamination assembly such as panels and walls	(G) Isocyanate terminated polyurethane resin
P–04–0690	06/24/04	09/21/04	CBI	(G) Chemical intermediate	(G) Methyl amino ethyl ether

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of

II. 18 NOTICES OF COMMENCEMENT FROM: 06/14/04 TO 06/25/04

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0364	06/23/04	06/17/04	(G) Halogenated substituted mercaptophenol
P–03–0426	06/22/04	05/07/04	(S) Fatty acids, C_{6-12}, polymers with hexahydro-1,3-isobenzofurandione and trimethylolpropane
P–04–0036	06/23/04	06/16/04	(G) Heterocycle (oxa, thia, aza)
P–04–0142	06/23/04	05/29/04	(G) Modified amidoamine
P–04–0153	06/23/04	05/27/04	(G) Rare earth phosphate
P–04–0185	06/18/04	05/18/04	(G) Sulfonated ketone resin
P–04–0189	06/22/04	06/11/04	(G) Alkyl substituted acid chloride
P–04–0263	06/14/04	06/07/04	(G) Polymer of cycloaliphatic polycarboxylic acid and aliphatic polyol
P–04–0294	06/22/04	05/26/04	(G) Carbodiimide crosslinker, polycarbodiimde crosslinker
P–04–0298	06/15/04	06/10/04	(G) Acrylic block-copolymer
P–04–0329	06/15/04	06/10/04	(G) Polymeric acrylic dispersant
P–04–0330	06/15/04	06/10/04	(G) Polymeric acrylic dispersant
P–04–0332	06/15/04	06/09/04	(G) Epoxy functional styrenated methacrylate polymer
P–04–0337	06/18/04	06/08/04	(S) 5-hexyldihydro-4-methylfuran-2(3h)-one
P–04–0372	06/18/04	06/08/04	(S) 1-pentanol, 2-mercapto-2-methyl-
P–04–0380	06/21/04	06/09/04	(G) Polyether polyol
P–04–0402	06/21/04	06/01/04	(G) Blocked polyurethane prepolymer
P–97–0250	06/15/04	06/04/04	(G) Polyester diol

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 6, 2004.

Vanessa Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 04–15724 Filed 7–9–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of a Currently Approved Information Collection

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 11, 2004.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Greg Case at (202) 357–3442 or *greg.case@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

Title of Information Collection: Performance Progress Reports for Title IV Grantees.

Type of Request: Extension of use of the report, with no revision.

Use: Extension of reporting format for use by Title IV grantees in reporting on activities of their Title IV Discretionary Funds Projects as required under Title IV of the Older Americans Act, as amended.

AoA estimates the burden of this collection of information as follows:

Frequency: Semi-annually.

Respondents: States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations.

Estimated Number of Responses: 300.

Total Estimated Burden Hours: 12,000.

Dated: July 7, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–15706 Filed 7–9–04; 8:45 am]

BILLING CODE 4154–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04269]

Voluntary Counseling, HIV Testing and AIDS Care in Stand-Alone Community Centers and in Health Facilities in Kenya; 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 provide a model program for voluntary counseling and testing (VCT) services, VCT training, and comprehensive AIDS care program in Kenya.

The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to Liverpool VCT and Care Project (LVCT).

LVCT is the only Kenyan organization with adequate hands-on experience in supporting the development of VCT services not only in ministries of health (MOH) facilities, but also in other Government of Kenya sites and with other non governmental organizations (NGOs), community-based organization (CBO), and faith-based organization (FBO). LVCT has been providing VCT services in Kenya since 1998, and is now the nationally recognized leader in VCT in Kenya. LVCT played a key role, along with CDC Kenya, in developing the national VCT Guidelines in Kenya. LVCT has also developed the national VCT training curricula and the national VCT quality assurance manual. LVCT has trained over 600 VCT counselors, including counselors employed by LVCT, other NGOs, the MOH, the Kenya Department of Defense, and others. Most international and national organizations in Kenya contract with LVCT to conduct training in VCT, and all of them use the training and quality assurance materials developed by LVCT. In addition, LVCT has unique and demonstrated experience in providing training, capacity building and services for special populations, including the deaf, soldiers, remote populations, and other marginalized groups. LVCT has already developed mechanisms to support the delivery of VCT services in collaboration with FBO, including the Baptist AIDS Relief Agency in Kenya and the Supreme Council of Kenya Muslims. Because of its long history and experience in providing VCT services and training in Kenya, LVCT is currently the only appropriate and qualified Kenyan organization to conduct the specific activities needed to achieve the goals of this program.

C. Funding

Approximately $5,000,000 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 five 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 technical questions about this program, contact:

Elizabeth Marum, Ph.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: 256–20–271–3008, E-mail: *emarum@cdcnairobi.mimcom.net.*

Dated: July 2, 2004.

William P. Nichols, MPA,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–15694 Filed 7–9–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities 2004 Projects of National Significance; Notice of Corrections for the FY04 Projects of National Significance Program Announcement HHS–2004–ACF–ADD–DN–0003, CFDA# 93.631

AGENCY: Administration on Developmental Disabilities, ACF, DHHS.

ACTION: Notice of corrections.

SUMMARY: This notice is to inform interested parties of corrections to the Projects of National Significance Program Announcement that was published on Thursday, June 17, 2004 (69 FR 33905). The following corrections should be noted:

(1) Under Priority Areas I, II, and III, for 'Submission Dates and Times', Please Delete the following address for applications hand carried by applicants:

"U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington, DC 20447. Attention Lois Hodge."

Please Replace this address with the following:

U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

(2) Under Priority Areas I, II, and III, 'Other Submission Requirements' Please Delete the following address for hand delivered applications:

"U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor, Washington DC 20447. Attention Lois Hodge".

Please Replace this address with the following:

U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mail Center, 2nd Floor Aerospace Center, 901 D Street, SW., Washington, DC 20024, Attention: Lois Hodge.

(3) Under I. Funding Opportunity Description, 'Other General Information', 'Project Periods for Awards', Please Delete the following sentence:

"Three year project periods with twelve month budget periods."

Please Replace this sentence with the following:

"The project period for Priority Area I is a five year project period with twelve month budget periods. The project period for Priority Area II is a one year project period of one twelve month budget period. The project period for Priority Area III is a three year project period with twelve month budget periods."

(4) Under Priority Area I, 'Award Information', 'Project Periods for Awards' Please Delete the following sentence:

"This priority area is inviting applications for project periods up to three years."

Please Replace with the following sentence:

"This priority area is inviting applications for project periods for up to five years."

All information in this Notice of Correction is accurate and replaces information specified in the June 17 Notice. Applications are still due by the deadline date that was published in the June 17 Notice of August 2, 2004.

CONTACT INFO: For further information please contact The Administration on Developmental Disabilities at (202) 690–5985 or *amyers@acf.hhs.gov*.

Dated: July 1, 2004.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 04–15676 Filed 7–9–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0101]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification

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 August 11, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that 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: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

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.

Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification—(OMB Control Number 0910–0472)—Extension

Under sections 351 and 361 of the Public Health Service Act (PHS Act)(42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs (21 U.S.C. 321 *et seq.*), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between States or Possessions or from foreign countries into the States or Possessions. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in donor notification is to prevent the transmission of communicable disease. Section 351 of the PHS Act applies to biological products. Blood and blood components are considered drugs, as that term is defined in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)).

Section 610.40(c)(1)(ii) (21 CFR 610.40(c)(1)(ii) requires each dedicated donation be labeled, as required under § 606.121 (21 CFR 606.121), and with a label entitled "INTENDED RECIPIENT INFORMATION LABEL" containing the name and identifying information of the recipient. (Section 606.121 is approved under OMB control number 0910–0116.) Section 610.40(g)(2) requires an

establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use before completion of testing. Section 610.40(h)(2)(ii)(A) requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of a communicable disease agent(s) or collect from a donor with a record of a reactive screening test. Section 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) requires an establishment to label reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, with a statement indicating the exempted use specifically approved by FDA. Section 610.40(h)(2)(vi) requires each donation of human blood or blood component that tests reactive by a screening test for syphilis and is determined to be a biological false positive be labeled with both test results. Section 610.42(a) requires a warning statement, including the identity of the communicable disease agent, on medical devices containing human blood or blood components found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis. Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41, or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing. Section 606.160(b)(1)(ix) requires a facility to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup.

Respondents to this collection of information are Whole Blood and Source Plasma establishments that collect blood and blood components, including Source Plasma and Source Leukocytes. Based on information from FDA's Center for Biologics and Evaluation Research (CBER) database system, there are approximately 84 licensed Source Plasma collection establishments and 858 registered Whole Blood collection establishments for a total of 942 establishments. Based on information received from industry, we estimate that these establishments collect annually an estimated 30 million donations: 15 million donations of Source Plasma from approximately 2 million donors and 15 million donations of Whole Blood, including 600,000 autologous, from approximately 8 million donors.

Assuming each autologous donor makes an average of two donations, FDA estimates that there are approximately 300,000 autologous donors. FDA estimates that approximately 5 percent (12,000) of the 240,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors testing provisions in § 610.40(c)(1)(ii).

Under § 610.40(g)(2) and (h)(2)(ii)(A), the only product currently shipped prior to completion of testing is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipments of Source Leukocytes are preapproved under a biologics license application and each shipment does not have to be reported to the agency. Based on information from CBER's database system, FDA receives an estimated one application per year from manufacturers of Source Leukocytes.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 human blood or blood components per month (12 per year) that would require 2 labels; 1 as reactive for the appropriate screening test under paragraph (h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under paragraph (h)(2)(ii)(D). According to CBER's database system, there are an estimated 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations annually test reactive by a screening test for syphilis, and are determined to be biological false positives by additional testing (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, e.g., a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, a statement of warning is required to be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

Industry estimates that approximately 13 percent of 10 million donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation before collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of virtually all 942 collecting establishments to notify on site and to explain the reason why the donor is determined not to be suitable for donating. Based on such information as is available to FDA, we estimate that two-thirds of the 942 collecting establishments provided on site additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third or 311 collection establishments would need to provide, under § 630.6(a), additional information and counseling onsite to 433,333 (one-third of 1.3 millions) ineligible donors.

It is estimated that another 4.5 percent of 10 million donors (450,000 donors) are deferred annually based on test results. We estimate that currently 95 percent of the establishments that collect 98 percent of the blood and blood components notify donors who have reactive test results for human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV), human T-Lymphotropic virus(HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent (47) of the industry (942) collecting 2 percent (9,000) of the deferred donors (450,000) would experience burden related to § 630.6(a). As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that 5 percent of the 858 blood collection establishments (43) do not notify the referring physicians of the estimated 2 percent of 300,000 autologous donors with reactive test results (6,000).

FDA has concluded that the use of untested or incompletely tested but

appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or less occurrence per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

Section 606.160(b)(1)(ix) requires that establishment to maintain records of the notification efforts. We estimate the total annual records based on the 1.3 million donors determined not to be eligible to donate and each of the 450,000 (1.3 + 450,000 = 1,750,000) donors deferred based on reactive test results for evidence of infection due to communicable disease agents. Under § 606.160(b)(1)(xi), only the 858 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 300,000 autologous donors (13,500) will be deferred under § 610.41 and thus result in the notification of their referring physicians.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

In the **Federal Register** of March 16, 2004 (69 FR 12334), FDA published a 60-day notice requesting public comment on the information collection provisions. We received one comment from the industry on the proposed information collection. The comment stated that they had no reason to believe FDA's burden estimates were not reasonable. Also, the comment did not believe the estimated times constituted a burden on community blood centers.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
610.40(c)(1)(ii)	942	13	12,000	.08	960
610.40(g)(2)	1	1	1	1	1
610.40(h)(2)(ii)(A)	1	1	1	1	1
610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)	40	12	480	0.2	96
610.40(h)(2)(vi)	942	19	18,000	0.08	1,440
610.42(a)	1	1	1	1	1
630.6(a)[2]	311	1,393	433,333	0.08	34,667
630.6(a)[3]	47	191	9,000	1.5	13,500
630.6(d)(1)	43	140	6,000	1	6,000
Total					56,666

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[3] Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
610.40(g)(1)	858	1	858	0.5	429
606.160(b)(1)(ix)	942	1,858	1,750,000	0.05	87,500
606.160(b)(1)(xi)	858	16	13,500	0.05	675
Total					88,604

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–15711 Filed 7–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999E–5116]

Determination of Regulatory Review Period for Purposes of Patent Extension; XOPENEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XOPENEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product XOPENEX (levalbuterol). XOPENEX is indicated for the treatment or prevention of bronchospasm in adults, adolescents, and children 6 years of age or older with reversible obstructive airway disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for XOPENEX (U.S. Patent No. 5,362,755) from Sepracor, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of XOPENEX represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for XOPENEX is 1,458 days. Of this time, 824 days occurred during the testing phase of the regulatory review period, while 634 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective: March 30, 1995. The applicant claims February 28, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 30, 1995, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: June 30, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for XOPENEX (NDA 20–837) was initially submitted on June 30, 1997.

3. The date the application was approved: March 25, 1999. FDA has verified the applicant's claim that NDA 20–837 was approved on March 25, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 502 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 10, 2004. Furthermore, any interested person may petition FDA, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 10, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 21, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–15712 Filed 7–9–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA Number 93.224; HRSA–05–024]

Fiscal Year 2005 Competitive Application Cycle for Service Area; Competition for the Consolidated Health Center Program (CHCP)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $355,000,000 is available in fiscal year (FY) 2005 funds to promote the continued operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is expected that each application submitted to serve one of these areas will present a clear focus on maintaining access to care and reducing health disparities identified in the target population.

Potential applicants must obtain and respond to the FY 2005 Service Area Competition guidance in order to apply for funding. This announcement does not contain sufficient information in itself to use for developing an application.

Authorizing Legislation: Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b).

DATES: The intended timelines for application submission are as follows:

Project period ending:	Application deadline
October 31, 2004	Aug. 16, 2004.
November 30, 2004	Aug. 16, 2004.
January 31, 2005	Sept. 1, 2004.
February 28, 2005	Sept. 1, 2004.
March 31, 2005	Oct. 25, 2004.
May 31, 2005	Jan. 3, 2005.
June 30, 2005	Jan. 3, 2005.
August 31, 2005	Jan. 3, 2005.

For FY 2005, applications received or postmarked by August 16, 2004, will be reviewed with funding decision announced on or about November 1, 2004. Applications received or postmarked by September 1, 2004, will be reviewed with funding decision announced on or about February 1, 2005. Applications received or postmarked by October 25, 2004, will be reviewed with funding decision announced on or about April 1, 2005. Applications received or postmarked by January 3, 2005, will be reviewed with funding decision announced on or about June 1, 2005.

Applications will be considered as meeting the deadline if they are: (1) Received on or before the established date and received in time for the Independent Committee Review; or (2) postmarked or E marked on or before the deadline date given in the **Federal Register** Notice. Late applications will be returned to the applicant. Applicants should obtain a legibly U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications sent to any address other than that specified below are subject to being returned.

Application Requests: To receive a complete application kit (*i.e.*, application instructions, necessary forms, and application review criteria), contact the HRSA Grants Application Center at: The Legin Group, Inc., The HRSA Grants Application Center, Attn: Service Area Competition, Program Announcement No: HRSA 05–024, CFDA No. 93.224, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, Telephone: 1–877–477–2123, Fax: 1–877–477–2345, E-mail: *hrsagac@hrsa.gov*.

When contacting the HRSA Grants Application Center (GAC), please use the following program announcement when requesting application materials: HRSA 05–024.

Eligible Applicants: Applicants are limited to currently funded Section 330 grantees whose project periods expire during fiscal year 2005 and public and private non-profit organizations, including faith-based and community based organizations, proposing to serve the same areas and populations being served by these existing centers. Listed below are the service areas with project periods that expire during fiscal year 2005.

Community/Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and School Based Health Centers

Organizations interested in these competitive opportunities are encouraged to contact the listed program officials for more information. Contact: Jack Egan 301–594–4339.

City	State	Expiration date
Hyannis	MA	10/31/2004
Portsmouth	NH	10/31/2004
Pascoag	RI	10/31/2004
Newark	NJ	10/31/2004
St. George	WV	10/31/2004
Harrisville	WV	10/31/2004
New York	NY	11/30/2004
White Plains	NY	11/30/2004
Washington	DC	11/30/2004
Camden-on-Gauley.	WV	11/30/2004
Hartford	CT	12/31/2004
Roxbury	MA	12/31/2004
Lubec	ME	12/31/2004
Brockport	NY	12/31/2004
Glens Falls	NY	12/31/2004
Buffalo	NY	12/31/2004
Arrington	VA	12/31/2004
Richmond	VA	12/31/2004
Bridgeport	CT	01/31/2005
Provincetown	MA	01/31/2005
Turner Falls	MA	01/31/2005
Bronx	NY	01/31/2005
Mayaguez	PR	01/31/2005
Chester	PA	01/31/2005
Saltville	VA	01/31/2005
Fairmont	WV	01/31/2005
Gary	WV	01/31/2005
Spencer	WV	01/31/2005
Waterbury	CT	02/28/2005
Asbury Park	NJ	02/28/2005
Egg Harbor	NJ	02/28/2005
New York	NY	02/28/2005
Toa Alto	PR	02/28/2005
Hagerstown	MD	02/28/2005
Pittsburgh	PA	02/28/2005
Franklin	WV	02/28/2005
New Haven	CT	03/31/2005
New Canton	VA	03/31/2005
Beckley	WV	03/31/2005
Worcester	MA	03/31/2005
Mattapan	MA	03/31/2005
Patten	ME	03/31/2005
Harrington	ME	03/31/2005
Brooklyn	NY	03/31/2005
San Juan	PR	03/31/2005
Dover	DE	03/31/2005
Harrisburg	PA	03/31/2005
Coalport	PA	03/31/2005
Boston	MA	05/31/2005
Worthington	MA	05/31/2005
Worcester	MA	05/31/2005
Quincy	MA	05/31/2005
Lawrence	MA	05/31/2005
Schenectady	NY	05/31/2005
Philadelphia	PA	05/31/2005
Onancock	VA	05/31/2005
Dungannon	VA	05/31/2005
Laurel Fork	VA	05/31/2005
Burlington	VT	06/30/2005
Arroyo	PR	06/30/2005
Wilmington	DE	06/30/2005
Baltimore	MD	06/30/2005
Brandywine	MD	06/30/2005
Portsmouth	VA	06/30/2005
Man	WV	06/30/2005

Contact: Jerri Regan, 301–594–4283.

City	State	Expiration date
Port St. Joe	FL	10/31/2004
Talbot	TN	10/31/2004
Pittsburgh	KS	10/31/2004
Mantachie	MS	11/30/2004
Tylertown	MS	11/30/2004
Dade City	FL	11/30/2004
Vancebury	KY	11/30/2004
Boone	NC	11/30/2004
Ft. Myers	FL	12/31/2004
W. Palm Beach	FL	12/31/2004
Junction City	KS	12/31/2004
Cape Girardeau	MO	12/31/2004
Montgomery	AL	01/31/2005
Trenton	GA	01/31/2005
Newport	KY	01/31/2005
Brandon	MS	01/31/2005
Liberty	MS	01/31/2005
Clairfield	TN	01/31/2005
Des Moines	IA	01/31/2005
St. Louis	MO	01/31/2005
Jackson	MS	02/28/2005
Washington	NC	02/28/2005

City	State	Expiration date
Jackson	NC	02/28/2005
Sumter	SC	02/28/2005
Columbus	NE	02/28/2005
Tuskegee	AL	03/31/2005
Troy	AL	03/31/2005
Sumterville	FL	03/31/2005
W. Palm Beach	FL	03/31/2005
Whitesburg	KY	03/31/2005
Meridian	MS	03/31/2005
Hendersonville	NC	03/31/2005
Raleigh	NC	03/31/2005
Charlotte	NC	03/31/2005
Conway	SC	03/31/2005
Maynardville	TN	03/31/2005
New Madrid	MO	03/31/2005
Selma	AL	05/31/2005
Mobile	AL	05/31/2005
Atlanta	GA	05/31/2005
Canton	MS	05/31/2005
Port Gibson	MS	05/31/2005
Shubuta	MS	05/31/2005
Durham	NC	05/31/2005
Greenwood	SC	05/31/2005
Des Moines	IA	05/31/2005
Ellington	MO	05/31/2005
Wrightsville	GA	06/30/2005
Greenville	KY	06/30/2005
Bolivar	TN	06/30/2005
Shawnee	KS	06/30/2005

Contact: Lisa Tonrey, 301–594–1327.

City	State	Expiration date
Battle Creek	MI	10/31/2004
Bismarck	ND	10/31/2004
Cheyenne	WY	10/31/2004
Portland	OR	10/31/2004
Seattle	WA	10/31/2004
Toledo	OH	11/30/2004
Akron	OH	11/30/2004
Chicago	IL	11/30/2004
Anchorage	AK	11/30/2004
Chicago	IL	12/31/2004
E. St. Louis	IL	12/31/2004
Cleveland	OH	12/31/2004
Cincinnati	OH (2)	12/31/2004
Lisbon	OH	12/31/2004
Lamar	CO	12/31/2004
Salt Lake City	UT	12/31/2004
Anna	IL	01/31/2005
Marquette	MI	01/31/2005
Kalamazoo	MI	01/31/2005
Moorehead	MN	01/31/2005
Norwood	CO	01/31/2005
Butte	MT	01/31/2005
Anderson	IN	02/28/2005
Muskegon	MI	02/28/2005
Jackson	MI	02/28/2005
Duluth	MN	02/28/2005
Minneapolis	MN	02/28/2005
Chinook	MT	02/28/2005
Pierre	SD	02/28/2005
Saginaw	MI	03/31/2005
Traverse City	MI	03/31/2005
Sterling	MI	03/31/2005
Temperance	MI	03/31/2005
Freemont	OH	03/31/2005
Wild Rose	WI	03/31/2005
Milwaukee	WI	03/31/2005
Greeley	CO	03/31/2005
Isabel	SD	03/31/2005
Casper	WY	03/31/2005
Cornelius	OR	03/31/2005
Wenatchee	WA	03/31/2005
Seattle	WA	03/31/2005
Kent	WA	03/31/2005
Chicago	IL	05/31/2005
Lincoln	MI	05/31/2005
Grand Marais	MN	05/31/2005
Cook	MN	05/31/2005
Ft. Lupton	CO	05/31/2005
Glenns Ferry	ID	05/31/2005
Medford	OR	05/31/2005
Lafayette	IN	06/30/2005
Ft. Wayne	IN	06/30/2005
Battle Creek	MI	06/30/2005
Minneapolis	MN	06/30/2005
Cashton	WI	06/30/2005
Boulder	CO	06/30/2005
Bicknell	UT	06/30/2005
Sitka	AK	06/30/2005
Fairbanks	AK	06/30/2005
Pocatello	ID	06/30/2005
Plummer	ID	06/30/2005
Cave Junction	OR	06/30/2005
Tillamook	OR	06/30/2005

Contact: Rashad Al Mahdaoui, 301–594–4335.

City	State	Expiration date
Hulbert	OK	10/31/2004
Houston	TX	10/31/2004
Prescott	AZ	10/31/2004
Sacramento	CA	10/31/2004
San Mateo	CA	10/31/2004
Humboldt	CA	10/31/2004
Los Angeles	CA	10/31/2004
Gonzales	TX	11/30/2004
Phoenix	AZ	11/30/2004
San Fernando	CA	11/30/2004
Madera	CA	11/30/2004
San Mateo	CA	11/30/2004
Los Angeles	CA	11/30/2004
Augusta	AR	12/31/2004
Hildalgo	TX	12/31/2004
Houston	TX	12/31/2004
Marana	AZ	12/31/2004
San Francisco	CA	12/31/2004
Union City	CA	12/31/2004
Bloomington	CA	12/31/2004
Pohnpei	FM	12/31/2004
Greenville	TX	01/31/2005
San Antonio	TX	01/31/2005
Pleasanton	TX	01/31/2005
San Francisco	CA	01/31/2005
Porterville	CA	01/31/2005
Luling	LA	02/28/2005
Ft. Sumner	NM	02/28/2005
River Ridge	LA	02/28/2005
Los Angeles	CA (2)	02/28/2005
Ft. Bragg	CA	02/28/2005
Torrance	CA	02/28/2005
Honokaa	HI	02/28/2005
La Marque	TX	03/31/2005
Port Arthur	TX	03/31/2005
Laredo	TX	03/31/2005
Cotulla	TX	03/31/2005
San Antonio	TX	03/31/2005
San Jose	CA	03/31/2005
San Francisco	CA	03/31/2005
Oakland	CA	03/31/2005
Agana	GU	03/31/2005
Honolulu	HI	03/31/2005
New Iberia	LA	05/31/2005
Konawa	OK	05/31/2005
Levelland	TX	05/31/2005
Olivehurst	CA	05/31/2005
Susanville	CA	05/31/2005
El Rito	NM	06/30/2005
Waco	TX	06/30/2005
San Joaquin	CA	06/30/2005
Kahului	HI	06/30/2005
Reno	NV	06/30/2005
Elfrido	AZ	06/30/2005
Monroe	LA	08/31/2005
San Diego	CA	08/31/2005

Application Review and Funding Criteria: The following Review Criteria will be used by the Independent Review Committee (IRC) to evaluate the merits of the proposed plan presented in each SAC application.

The seven (7) Review Criteria for the SAC funding opportunity and maximum points awarded

Criterion 1: Need (10 Points)

1. Applicant describes the service area(s)/community(ies) being served, including:

(a) The service area population, *i.e.* urban, rural, sparsely populated [7 people or less per square mile].

(b) The counties, census tracts, minor civil divisions, schools/school districts, etc., (as appropriate) in the service area.

(c) Any Medically Underserved Areas (MUAs), Medically Underserved Populations (MUPs), High Impact Areas, and Health Professional Shortage Areas (HPSAs), as applicable.

2. Applicant describes the target population(s) (*e.g.*, general community members, migrant/seasonal agricultural workers, residents of public housing, homeless persons, low-income school children, etc.) within the service area/community, including:

(a) The unserved and underserved populations in the community, including any other populations that are in need of access to primary health care (*e.g.*, elderly population, immigrant population, migrant/seasonal farmworkers, homeless populations, residents of public housing, low-income school children/adolescents and their families, etc.).

(b) The unique demographic characteristics of the target population (*e.g.*, age, gender, insurance status, unemployment, poverty level, ethnicity/culture, education, etc.).

(c) The relevant access to care and health status indicators of the target population/community.

3. Applicant identifies how many people are currently being served by the

organization. Applicant also discusses how many will be served and the number of projected encounters that will be generated through the proposed project. This information should be consistent with the information presented on Form 1–A: General Information Worksheet.

4. Applicant identifies and describes the most significant barriers to care, gaps in services, significant health disparities and the major health care problems in the community. This should include a description of:

(a) Any culturally specific characteristics that impact access to and the delivery of health care services.

(b) Any relevant geographic barriers to care and other factors impacting access to care.

(c) Any major and/or unique health care needs of the target population(s). (The Health Care and Business Plans should present goals and measurable, time-framed objectives to address the identified needs.)

5. Applicant demonstrates and understanding of the most common causes of mortality, and the incidence and prevalence of chronic and infectious diseases in the target population.

6. Applicant describes any significant changes over the past year in the service area or population being served (*i.e.*, influx of refugee population, or closing of local factory, etc.) impacting on the need for services. This should include a description of any significant changes for each target population type served (*i.e.*, CHC, MHC, HCH, PHPC, and/or SBHC).

7. Applicant identifies any health care providers of care (including all other FQHCs and section 330 grantees), resources and/or services of other public and private organizations within the proposed service area that are providing care to the target population(s). The applicant should also evaluate the effectiveness of available resources and/or services in providing care to the target community/population.

8. Applicant demonstrates a thorough understanding of the health care environment including:

(a) The impact in the State of the implementation of SCHIP, 1115 and 1915(b) waivers, State Medicaid prospective payment system; Medicaid managed care, State laws, current and proposed welfare reform initiatives, etc.;

(b) The impact that these changes have had on the access to services or demand for services among the target population(s), on the ability to respond to patient demand, and/or on the fiscal stability of the organization;

In addition to the above, applicants requesting funding for one or more types of health centers authorized under the section 330 program, should also address the following:

For MHC Applicants

(a) Applicant describes the major agricultural environment, the crops and growing seasons, including a discussion of any impact on the demand for services among migrant and seasonal farmworkers (*e.g.*, the need for hand labor or the number of temporary workers, etc.).

For HCH Applicants

(a) Applicant describes the availability of housing in the community and the impact of this and other factors on the demand for services among homeless individuals and families.

For PHPC Applicants

(a) Applicant describes any recent changes in the availability of public housing to serve area residents and the impact on the demand for services among residents in the targeted public house communities served.

For SBHC Applicants

(a) Applicant describes any changes to the number or type of students enrolled in the targeted schools and the impact on the demand for services in these locations.

Criterion 2: Response (20 Points)

1. Applicant describes the proposed service delivery model (*e.g.*, freestanding, single or multi-site, migrant voucher, mobile site, school-based location, or combination), and locations/settings where services are provided. Applicant should include a discussion of how services will be provided at each proposed service site (*e.g.* via contract, referral system, etc.) and access problems the model would address and resolve.

2. Applicant demonstrates that the proposed model is most appropriate and responsive to the identified community health care needs (*i.e.*, the service delivery plan addresses the priority health and social problems of the target population(s) for all the major life cycles).

3. Applicant demonstrates that the required primary, preventive and supplemental health services (*e.g.*, enabling services, eligibility assistance, outreach, and transportation) will be available and accessible to all lifecycles of the target population either directly on-site or through established arrangements without regard to ability to pay.

4. Applicant demonstrates a clear and defined plan for providing oral health care that assures availability and accessibility to the target population either directly on-site or through established arrangements (*e.g.*, contract, referral, etc.) without regard to ability to pay.

5. Applicant demonstrates a clear and defined plan for providing mental health care and substance abuse services that assures availability and accessibility to the target population either directly on-site or through established arrangements (*e.g.*, contract, referral, etc.) without regard to ability to pay.

6. Applicant addresses the chronic disease incidences within the target population, and participation in a formal disease/care management and system improvement program, such as the BPHC-supported or sponsored Health Disparities Collaborative.

7. Applicant describes and demonstrates that the services will be culturally and linguistically appropriate.

8. Applicant demonstrates comprehensiveness and continuity of care, including a discussion of the following:

(a) Hours of operation that assure services are available and accessible at times meeting the needs of the population including evenings and weekends as appropriate;

(b) Mechanism to assure professional coverage during the hours when the health center is closed;

(c) Performance improvement system that includes eliminating disparities in health outcomes, reducing patient risk, improving patient satisfaction, credentialing and privileging, incident reporting, etc., that integrates planning, management, leadership and governance into the evaluation processes of program effectiveness; and

(d) Case management system that demonstrates care coordination at all levels of health care, including arrangements for referrals, hospital admissions discharge planning and patient tracking.

9. Applicant demonstrates collaboration and coordination of services with other providers including other existing FQHCs and section 330 grantees in the area (*e.g.* contracts, MOUs, letters of support, etc.)

10. Applicant discusses the extent to which project activities are coordinated and integrated with the activities of other federally-funded, State and local health services delivery projects and programs serving the same

population(s). This should include a description of both formal and informal collaborative and partner arrangements, which assure a seamless continuum of care and access to appropriate specialty care for the target population(s). Applicant should have provided copies of relevant contracts, MOUs, letters of commitment or investment (*e.g.*, from the school board, local hospital, public health department, etc.), as part of the application attachments.

11. Applicant demonstrates that the proposed clinical staffing pattern (*e.g.*, number and mix of primary care physicians and other providers and clinical support staff, language and cultural appropriateness, etc.) is appropriate for the level and mix of services to be provided.

12. Applicant describes a detailed plan for recruiting and retaining appropriate health care providers as appropriate for achieving the proposed staffing pattern.

In addition to the above, applicants requesting funding for one or more types of health centers authorized under the section 330 program, should also address the following:

For MHC Applicants

(a) Applicant describes the response to health care needs associated with the environmental and/or occupational hazards to which farmworkers and their families are exposed, and how these needs will be met.

(b) Applicant describes the setting(s) in which health and enabling services will be provided, *i.e.*, special arrangements to provide services at camps and/or farms; use of mobile teams and or vans; extended hours/ weekend services; etc.

(b) Applicant describes an outreach program that will increase access to primary and preventive health care services and how the outreach program is integrated into the primary care delivery system.

For HCH Applicants

(a) Applicant describes the arrangements for providing required substance abuse services.

(b) Applicant demonstrates the mechanism for informing homeless people of the availability of services and the features of its outreach program.

(c) Applicant describes the coordination of services with providers of housing, job training, and other essential supports for persons who are homeless. The applicant must also describe its relationship with homeless coalitions, advocacy groups, and the existing continuum of care organizations in their community.

(d) Applicant describes the nature and scope of its expanded case management services.

For PHPC Applicants

(a) Applicant provides documentation that the location of the service site(s) is (are) in or directly adjacent to the public housing community(ies) being targeted.

(b) Applicant provides a formal agreement with the local public housing authority that demonstrates access to on-site space, where applicable.

(c)Applicant describes how residents will be involved in the administration of the program.

For SBHC Applicants

(a) Applicant provides evidence of on-site care through established arrangements with the school staff and providers (*e.g.*, school nurse, school psychologist, etc.) when applicable.

(b) Applicant provides documentation of access to health care during the summer and other times when the school is closed (*e.g.* vacations, weekends).

(c) Applicant provides written documentation of an agreement with the school system to permit access to the school facility for the SBHC should be included.

Criterion 3: Evaluative Measures (5 Points)

1. Applicant demonstrates the ability to monitor the quality and outcomes of the services provided (*e.g.*, adequate management information systems, established quality assurance program, patient feedback).

2. Applicant demonstrates the ability to evaluate the quality and outcomes of the services provided including an evaluation plan that includes specific time framed, measurable outcomes and clear methods/action steps.

3. Applicant describes the mechanism(s) by which the organization identifies and responds to the community and its needs (*e.g.*, patient surveys, needs assessments).

4. Applicant demonstrates a performance improvement system that includes eliminating disparities in health outcomes, reducing patient risk, improving patient satisfaction, credentialing and privileging, incident reporting, etc., that integrates planning, management, leadership and governance into the evaluation processes of program effectiveness.

5. Applicant demonstrates through the health care plan that both goals and time-framed, measurable objectives are in place that address the identified needs and disparities of the target population.

6. Applicant demonstrates through the Business Plan that operational issues will be addressed and that the administrative, financial and clinical systems are appropriate for the proposed project.

7. Applicant discusses any issues identified in the Notice of Grant Award (NGA), Primary Care Effectiveness Review (PCER), Office of Performance Review (OPR) or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) reviews, pre-application guidance letter (PAGL) or other findings, as applicable. This should include a discussion of the organization's response to the listed findings.

Criterion 4: Impact (15 Points)

1. Applicant describes the organization's role and relationships within the community including: (a) How the organization fits into the community and its service delivery network; (b) The role of clients, community, staff and Board of Directors in establishing and evaluating the organization's objectives and priorities; and (c) Partnerships and collaborations with other providers in the community.

2. Applicant demonstrates and provides evidence of the community's support for the organization. Letters of support and MOUs and/or a list of additional letters of commitment, MOUs, etc. on file at the health center, as appropriate should be included in the Appendices.

3. Applicant discusses the extent to which the proposed health center will address the priority health care needs, improve access to primary health care services and reduce health disparities for the medically underserved in the community/target population(s).

4. Applicant describes how the proposed project correlates to the goals and objectives of the Healthy People 2010 initiative, specifically to (1) increase the quality and years of a healthy life; and (2) eliminate our country's health disparities.

5. Applicant describes the goals and objectives of the existing project (*i.e.* existing approved "Scope of Project" for existing grantees). This should include a discussion of outcomes, both positive and negative, or unanticipated issues that may be important, and the organization's response.

6. Applicant discusses the short- and long-term strategic planning process including any proposed plans for future activities such as plans to expand into new areas, and how such activities will be integrated into the current service delivery system.

In addition to the above, applicants requesting funding for one or more types of health centers authorized under the section 330 program, should also address the following:

For MHC Applicants

(a) Applicant discusses any network of care for migrant health. This should include a discussion of linkages (*e.g.*, MOAs, MOUs, contracts, etc.) with other migrant health organizations such as Migrant Education, Migrant Head Start, and Migrant WIC programs. Copies of appropriate signed agreements, contracts, etc should have been submitted in the Appendix.

For HCH Applicants

(a) Applicant documents the relationship with housing providers and other local organizations that provide services and support to homeless persons. (b) Applicant documents the degree of participation in community-wide planning on behalf of homeless persons through participation with the local continuum of care or other entities.

For PHPC Applicants

(a) Applicant documents the relationship with the local public housing authority and with public housing resident groups within the community.

Criterion 5: Resources/Capabilities (30 Points)

1. Applicant discusses why it is the appropriate entity to receive funding (*e.g.* staff skills, capacity, clinical outcomes, cultural and linguistic competence, evaluation capabilities, etc.).

2. Applicant discusses the history and status as a designated Federally Qualified Health Center, where applicable, including eligibility for malpractice coverage under the Federal Tort Claims Act, and years of uninterrupted services to the target area and populations.

3. Applicant demonstrates how the structure, management system and lines of authority are appropriate and adequate for the size and scope of the proposed project.

4. Applicant demonstrates that the organization structure (including sponsorship or corporate affiliation, etc.) is in compliance with 330 requirements and appropriate for the proposed project.

5. Applicant demonstrates that the proposed staffing plan is appropriate and adequate given the scope of the proposed project.

6. Applicant demonstrates that the key management staff (*e.g.* CEO, CFO, CMO) of the health center are appropriate and that the process for hiring key management staff is in accordance with Health Center Program Expectations. This should include a description of any specific leadership for each health center type (*i.e.* CHC, MHC, HCH, PHPC or SBHC) as applicable.

7. Applicant describes any key management staff changes during the last year, and/or any long-term vacancy, as applicable.

8. Applicant describes the current facility(ies), and demonstrates that it is appropriate for the proposed service delivery plan.

9. Applicant identifies unique characteristics and significant accomplishments of the organization.

10. Applicant describes prior experiences and expertise in:

(a) Working with the target population(s);

(b) Addressing the identified health care needs; and

(c) Developing and implementing appropriate systems and services to meet the needs of the community.

11. Applicant identifies any section 330 funding received over the last five years, including participation in any special initiatives (*e.g.*, integrated service network, dental pilot, etc.) and urgent supplemental funds and/or funds received from other related Federal programs such as Healthy Start, Housing and Urban Development Homeless resources, etc.

12. Applicant demonstrates financial viability and accounting and internal controls in accord with sound financial management procedures that are appropriate to the size of the organization, funding requirements, and staff skills available.

Criterion 6: Support Requested (10 Points)

1. Applicant demonstrates that the budget presentation (an annualized budget for each 12 month period for which funding is requested of the new project period) is appropriate and reasonable in terms of:

(a) The level of requested Federal grant funds versus total budget for each year;

(b) The total resources required to achieve the goals and objectives of the applicant's proposed service delivery plan (*i.e.*, total project budget);

(c) The maximization of non-grant revenue relative to the proposed plan and other Federal/State/local/in-kind resources applied to the project;

(d) The projected patient income is reasonable based on the patient mix and number of projected users and encounters;

(e) The number of proposed users and encounters;

(f) The total cost per user and encounter;

(g) The total Federal section 330 grant dollars per user.

2. Applicant demonstrates that the Federal grant funds requested are being used to leverage other sources of funding.

3. Applicant demonstrates that the business plan goals and objectives are targeted and demonstrate appropriate financial planning in the development of the proposal and for the long-term success of the project.

4. Applicant describes how the proposed health center is a cost-effective approach to meeting the primary care needs of the target population given the health care needs of the target population and the level of health care resources currently available in the community.

Criteria 7: Governance (10 Points)

Applicants must provide a copy of the signed bylaws demonstrating compliance with and reflecting all functions and responsibilities cited in section 330, as appropriate.

1. Applicant describes the structure of the Board in terms of size, expertise, and representativeness of the communities/populations served (*e.g.* appropriate racial/ethnic, economic status, and gender representation, 51% consumer majority, etc.).

2. Applicant discusses measures for assuring that the Board is compliant with appropriate and applicable regulations and BPHC guidance.

3. Applicant discusses the mechanism of continued Board training, including training new governing board members in appropriate responsibilities and requirements of the Federal grant.

4. Applicant describes the provision for ensuring monthly meetings of the Board or an alternate mechanism if a waiver is requested.

5. Applicant describes the mechanism for quality assurance, including a mechanism to evaluate Board effectiveness.

6. Applicant demonstrates that the Board has appropriate oversight responsibilities, specifically the responsibility to:

(a) Directly employ, select/dismiss and evaluate the CEO/Executive Director;

(b) Adopt policies and procedures for personnel and financial management;

(c) Establish center priorities and activities;

(d) Approve annual budget; and

(e) Schedule hours of operation.

In addition to the above, applicants requesting funding for one or more types of health centers authorized under the section 330 program, should also address the following:

HCH, PHPC, and MHC Applicants

(a) All HCH, PHPC and/or MHC applicants that are also requesting CHC and/or SBHC funding must demonstrate that at least one member of its Board is representative of the special population.

(b) Applicant clearly identifies a request for a waiver of governance requirements, if applicable.

Estimated Amount of Available Funds: Up to $355,000,000 will be available in fiscal year 2005 for this program.

Estimated Project Period: Up to 5 Years.

Estimated Number of Awards: It is estimated that 277 awards will be issued.

For Further Information Contact: Preeti Kanodia, Public Health Analyst, Division of Health Center Development, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 3rd Floor, Bethesda, MD 20814, Telephone: 301.594.4300, Fax: 301.480.7225.

Executive Order 12372

This program has been determined to be subject to provisions of Executive Order 12372, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Application kits made available under this guidance will contain a listing of States that have chosen to set up such a review system, and will provide a State Single Point of Contact (SPOC) for the review. Information on States affected by this program and State Points of Contact may also be obtained from the Grants Management Officer listed in the AGENCY Contact(s) section, as well as from the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* All applicants other than federally recognized Native American Tribal Groups should contact their SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process used under this Executive Order. Letters from the SPOC in response to Executive Order 12372 are due sixty days after the application due date.

Dated: July 2, 2004.

Stephen R. Smith,

Senior Advisor to the Administrator.

[FR Doc. 04–15605 Filed 7–7–04; 2:44 pm]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Psychology; Notice of Competitive Grant Applications for American Indians Into Psychology Program

Funding Opportunity Number: HHS–IHS–PSYCH–2004–0001.

CFDA Number: 93.970.

Key Dates:

Application Deadline: August 13, 2004.

Application Review: August 19, 2004.

Application Notification: August 25, 2004.

Anticipated Award Start Date: September 20, 2004.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces that competitive grant applications are being accepted for the American Indians Into Psychology Program. These grants are established under the authority of section 217 of the Indian Health Care Improvement Act, Pub. L. 94–437, as amended by Pub. L. 102–573. The purpose of the Indians into Psychology program is to augment the number of Indian health professional serving Indians by encouraging Indians to enter the health professions and removing the multiple barriers to their entrance into IHS and private practice among Indians. This program is described at 93.970 in the Catalog of Federal Domestic Assistance. Costs will be determined in accordance with applicable Office of Management and Budget Circulars. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas.

This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of *Healthy People 2010,* summary report in print, Stock No. 017–001–00547–9, or via CD–ROM, Stock No. 107–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may access this information via the Internet at the following Web site: *http://www.health.gov/healthypeople/publication.*

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Award Information

The Indians into Psychology program has been appropriated $686,994 for Fiscal Year (FY) 2004. It is anticipated that approximately $250,000.00 per year will be available for a three year award. The anticipated start date of the grant will be September 20, 2004, in order to begin recruitment for the 2004–2005 academic year. Projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 2004 level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

III. Eligibility Information

1. Eligible Applicants

Public and nonprofit private colleges and universities are eligible to apply for a grant. However, only one grant will be awarded and funded to a college or university per funding cycle.

2. Cost Sharing/Matching

This announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

Required Affiliations—The grant applicant must submit official documentation indicating a Tribe's cooperation with and support of the program within the schools on its reservation and its willingness to have a Tribal representative serving on the program advisory board. Documentation must be in the form prescribed by the Tribes governing body, *i.e.*, letter of support or Tribal resolution. Documentation must be submitted from every Tribe involved in the grant program.

IV. Application and Submission Information

1. Address To Request Application Package

An IHS Grant Application Kit, including the required PHS 5161–1 (Rev. 7/00) (OMB Approval No. 0920–0428) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll-free number.)

2. Content and Form of Application Submission

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8.5 x 11 paper that can be photocopied. The application narrative (not including the appendix) must not exceed 15 typed pages as described above. An additional page may be used for each additional year of funding requested. All applications must include the following in the order presented:

- Standard Form 424, Application for Federal Assistance.
- Standard Form 424A, Budget Information-Non-Construction Programs and instructions (pages 1–4).
- Standard for 424B, Assurances-Non-Construction Programs.
- Project Narrative (not to exceed 15 pages).

1. Introduction and potential Effectiveness of Project.
2. Project Administration.
3. Accessibility to Target Population.
4. Relationship of Objectives to Manpower Deficiencies.
5. Project Budget.

- Brief Multi-Year Narratives and Budgets—Limited to one page for each additional year of funding.
- Appendix.

Abstract—An abstract may not exceed one typewritten page.

The abstract should clearly present the application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

3. Submission Dates and Times

Application Receipt Date—An original and two (2) copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisitions and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, by close of business August 13, 2004. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand-carried applications received by close of business 5 p.m., or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

Maximum award amount is $250,000 per year.

6. Other Submission Requirements

Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (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 it is free of charge.

To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Internet applications for a DUNS number may take up to 30 days to process. Interested parties may wish to obtain one by phone to expedite the process. The following information is needed when requesting a DUNS number:

- Organization name.
- Organization address.
- Organization telephone number.
- Name of CEO, Executive Director, President, etc.
- Legal structure of the organization.
- Year organization started.
- Primary business (activity) line.
- Total number of employees.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses.

1. Criteria

Introduction and Potential Effectiveness of Project (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of section 217.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific workplan (milestone chart) which list each objective, the tasks to be conducted in order to reach the objective, and the time frame needed to accomplish each task. Time frames should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A work plan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

Project Administration (20 pts.)

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director of other individuals responsible for the conduct of the project; the qualifications of the principlal staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, *i.e.*, although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to substantiate need for recruitment.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

Project Budget (10 pts.)

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $250,000 is inclusive of both direct and indirect costs or 8 percent of total direct costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

c. The applicant may include as a direct cost tuition and student support costs related only to the summer preparatory program. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INPSYCH program may apply for funding from the IHS Scholarship Programs.

d. Projects requiring a second and third year must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 15-page narrative).

Multi-Year Project Requirements

Applications must include a narrative, budget, and budget justification for the second and third years of funding.

Appendix to include:

a. Resumes and position descriptions
b. Organizational Chart
c. Work Plan
d. Tribal Resolution (s) / letters of support
e. Application Receipt Card, IHS–815–1A (Rev. 2/04)

2. Review and Selection Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40 or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewer will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

The results of the review are forwarded to the Director, Office of Management Support (OMS), for final review and approval. The Director, OMS, will also consider the recommendations from the Division of Health Professions Support and Grants Management Branch.

Each proposal must address the following five objectives to be considered for funding:

a. Provides outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on Indian reservations which will be served by the program.

b. Incorporates a program advisory board comprised of representatives from the Tribes and communities which will be served by the program.

c. Provides summer preparatory programs for Indian students, who need enrichment in the subjects of math and science in order to pursue training in the health professions.

d. Provides stipends to undergraduate and graduate students to pursue a career in clinical psychology. Stipends for individuals will not be funded during the first year of the project because the first year will involve recruiting individuals. Stipends must be included in the budget and narrative for the second and third years of the project.

e. Develops affiliation agreements with Tribal community colleges, the IHS, university affiliated programs, and other appropriate entities to enhance the education of Indian students.

f. To the maximum extent feasible, utilizes existing university tutoring, counseling and student support services.

g. To the maximum extent feasible, employs qualified Indians in the program.

3. Anticipated Award Dates

The IHS anticipates an awards start date of September 20, 2004.

VI. Award Administration Information

1. Award Notices

Applicants are notified in writing on or about August 25, 2004. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- 45 CFR 92, Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments including Indian Tribes or 45 CFR Part 74, Uniform Administration Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals other Nonprofit Organizations, and Commercial Organizations;
- PHS Grants Policy Statement; and
- OMB Circular A–21, Cost Principles for Educational Institutions

3. Reporting

- Progress Report—Program progress reports may be required quarterly or semi-annually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period,

reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

• Financial Status Report—Quarterly or semiannually financial status reports will be submitted 30 days after the end of the quarter or half year. Final financial status reports are due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be issued for financial reporting.

VII. Agency Contacts

For program information, contact Marlene Echohawk, Ph.D., Office of Public Health, Division of Clinical and Preventive Services, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, (301) 443–2038, or Mr. Michael Berryhill, Office of Management Support, Division of Health Professions Support, 801 Thompson Avenue, Suite 120, Rockville, Maryland, 20852 (301) 443–6197. For grant application and business management information, contact Ms. Martha Redhouse, Grants Management Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852 (301) 443–3396.

Dated: July 2, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–15715 Filed 7–9–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indians Into Medicine Program

CFDA Number: 93.970.

Key Dates: August 13, 2004; August 19, 2004; August 25, 2004; September 20, 2004.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces that competitive grant applications are being accepted for the Indians Into Medicine (INMED) Program established by section 114 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Pub. L. 102–573. There will be only one funding cycle during Fiscal Year (FY) 2004. This program is described at 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 *et seq.* Costs will be determined in accordance with applicable OMB Circulars.

II. Award Information

It is anticipated that approximately $215,000 will be available for one award. The anticipated start date of the grant will be September 20, 2004, in order to begin recruitment for the 2004–2005 academic year. Projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 2004 level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

III. Eligibility Information

1. Eligible Applicants

Public and nonprofit private colleges and universities with medical and other allied health programs are eligible. Nursing programs are not eligible under this announcement since the IHS currently funds the Nursing Recruitment grant program. The existing INMED grant program at the University of North Dakota has as its target population Indian tribes primarily within the States of North Dakota, South Dakota, Nebraska, Wyoming and Montana. A college or university applying under this announcement must propose to conduct its program among Indian Tribes in States not currently served by the University of North Dakota INMED program.

2. Cost Sharing or Matching

Not applicable.

3. Other Requirements

A. Program Objectives

Each proposal must address the following five objectives to be considered for funding:

• Provides outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on Indian reservations which will be served by the program.

• Incorporates a program advisory board comprised of representatives from the Tribes and communities which will be served by the program.

• Provides summer preparatory programs for Indian students, who need enrichment in the subjects of math and science in order to pursue training in the health professions.

• Provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university.

• To the maximum extent feasible, employs qualified Indians into the program.

B. Fields of Health Care Considered for Support

The grant program must be developed to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS Nursing Recruitment grant program.

C. Required Affiliations

The grant applicant must submit official documentation indicating a Tribe's cooperation with and support of the program within the schools on its reservation and its willingness to have a Tribal representative serving on the program advisory board. Documentation must be in the form prescribed by the Tribes governing body, *i.e.,* letter of support or tribal resolution. Documentation must be submitted from every Tribe involved in the grant program.

IV. Application and Submission Review

1. Address To Request Application Package

An IHS Grant Application Kit, including the required PHS 5161–1 (Rev. 7/00) (OMB Approval No. 0348–0043) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll-free number.)

An original and two (2) copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, by close of business August 13, 2004.

2. Content and Form of Application Submission

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8.5 x 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the

appendix) must not exceed 15 typed pages as described above.

All applications must include the following in the order presented:

- Standard Form 424, Application for Federal Assistance
- Standard Form 424A, Budget Information-Non-Construction Programs (Pages 1 and 2)
- Standard Form 424B, Assurances-Non-Construction Programs (front and back)
- Certifications, PHS 5161–1 (pages 17–19)
- Checklist, PHS 5161–1 (pages 25–26)
- Project Abstract (one page)
- Table of Contents Program Narrative to include:
- Introduction and Potential Effectiveness of Project
- Project Administration
- Accessibility to Target Population
- Relationship of Objectives to Manpower Deficiencies
- Project Budget
- Appendix to include:
- Tribal Resolution(s) or Letters of Support
- Resumes (Curriculum Vitae) of Key Staff
- Position Descriptions for Key Staff
- Organizational Chart
- Workplan Format
- Completed IRS Application Checklist
- Application Receipt Card, #2180

Applications shall be considered as meeting the deadline if they are either: (1) received on or before the deadline date with hand-carried applications received by close of business 5 p.m.; or, (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding.

3. Submission Dates & Times

Additional Dates:

A. Application Review: August 19, 2004.

B. Applicants Notified of Results (approved, approved unfunded, or disapproved): August 25, 2004.

C. Anticipated Start Due: September 20, 2004.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review does not apply to this program.

5. Funding Restrictions

Maximum Award is $215,000 per year.

6. Other Submission Requirements

Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (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 it is free of charge.

To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Internet applications for a DUNS number may take up to 30 days to process. Interested parties may wish to obtain one by phone to expedite the process. The following information is needed when requesting a DUNS number:

- Organization name
- Organization address
- Organization telephone number
- Name of CEO, Executive Director, President, etc.
- Legal structure of the organization
- Year organization started
- Primary business (activity) line
- Total number of employees

V. Application Review Information

1. Criteria

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page. The abstract should clearly present the application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

Narrative

1. Introduction and Potential Effectiveness of Project (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 114.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific workplan (milestone chart) which list each objective, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A workplan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. Project Administration (20 pts.)

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principle staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, *i.e.*, although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space materials or facilities or other contributions.

3. Accessibility to Target Population (20 pts.)

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. Relationship of Objectives to Manpower Deficiencies (20 pts.)

a. Provide data and supporting documentation to substantiate need for recruitment.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. Project Budget (10 pts.)

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $215,000 is inclusive of both direct and indirect costs or 8 percent of total direct costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

c. The applicant may include as a direct cost tuition and student support costs related only to the summer preparatory program. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INMED program may apply for funding from the IHS Scholarship Programs.

d. Projects requiring a second and third year must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 15-page narrative).

Appendix to include:

a. Tribal Resolution(s) or Letters of Support

b. Resumes (Curriculum Vitae) of Key Staff

c. Position Descriptions for Key Staff

d. Organizational Chart

e. Workplan Format

f. Completed IRS Application Checklist

g. Application Receipt Card, #2180

2. Review and Selection Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IRS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewer will assign a numerical score to each application, which will be used in making the final decision. Approved applications scoring less than 60 points will not be considered for funding.

VI. Award Administration Information

1. Award Notices

The results of the review are forwarded to the Director, Office of Management Support (OMS), for final review and approval. The Director, OMS, will also consider the recommendations from the Division of Health Professions Support and Grants Management Branch. Applicants are notified in writing on or about August 25, 2004. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of the IHS official to contact if more information is desired.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- 45 CFR 92, Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or 45 CFR Part 74, Administration of Grants;
- PHS Grants Policy Statement; and
- OMB Circular A–21, Cost Principles for Educational Institutions

3. Reporting

A. Progress Reporting

Program progress reports may be required quarterly or semi-annually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

B. Financial Status Report

Quarterly or semiannually financial status reports will be submitted 30 days after the end of the quarter or half year. Final financial status reports are due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be issued for financial reporting.

VII. Agency Contacts

For program information, contact Ms. Jacqueline Santiago, Chief, Loan Repayment Program, Division of Health Professions Support, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, (301) 443–3396. For grants application and business management information, contact Ms. Martha Redhouse, Grants Management Specialist, Division of Acquisition and Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

VIII. Other Information

This announcement provides information on the general program purpose, eligibility and priority, fields of health care considered for support, required affiliation, fund availability and period of support, and application procedure for FY 2004.

The purpose of the INMED program is to augment the number of Indian health professional serving Indians by encouraging Indians to enter the health professions and removing the multiple barriers to their entrance into the IHS and private practice among Indians.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas.

This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of *Healthy People 2010,* summary report in print, Stock No. 017–001–00579–9, or via CD–ROM, Stock No. 107–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may access this information via the Internet at the following Web site: *http://*

www.heatlh.gov/healthypeople/publication.

Smoke-Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Dated: July 2, 2004.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 04–15714 Filed 7–9–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HUMAN AND HEALTH SERVICES

Indian Health Service

Partners Invited To Participate in Indian Health Service: Health Promotion and Disease Prevention Health Summit and Other American Indian/Alaska Native Tribe, Tribal Entity Activities

AGENCY: Indian Health Service, Department of Health and Human Service (HHS).

ACTION: Notice of invitation to participate in Health Promotion and Disease Prevention (HP/DP) Health Summit.

SUMMARY: The Indian Health Service (IHS), in an ongoing partnership with American Indian and Alaska native (AI/AN) people in order to elevate the health status of this population to its highest level, is seeking to collaborate with other public and private organizations to support its many programs and initiatives. Despite concerted and sustained efforts by the IHS and Tribal programs, substantial disparities in health persist for AI/AN people, compared to the overall United States (U.S.) population. For this reason, the IHS has planned an ambitious initiative on HP/DP, the "Healthier Indian Communities through Partnership and Prevention Summit," to be held on September 21–24, 2004 in Washington, DC. A pre-summit IHS/HHS/tribal leaders meeting will be held on September 21, 2004.

At the HP/DP Summit, the IHS will explore with interested public and private organizations, the risk behaviors that contribute to the chronic lifestyle diseases that impact many AI/AN communities. Included topics will be preventing diabetes among at-risk populations, increasing the likelihood that persons with undiagnosed diabetes are diagnosed, reducing complications of diabetes, preventing and reducing overweight and obesity, and reducing the complications of asthma. The HP/DP Summit will provide an opportunity to meet with organizations and entities that have achieved these outcomes by improving nutrition, increasing physical activity, preventing tobacco use and exposure, increasing tobacco cessation, increasing the use of appropriate health care services, improving the quality of health care, and increasing effective self-management of chronic diseases and associated risk factors.

At the HP/DP Summit, the IHS goal is to meet with potential partners in Tribal and community-focused programs that include the full engagement of schools, businesses, faith-communities, health care purchasers, health plans, health care providers, academic institutions, senior centers, and many other community sectors working together to promote health and prevent chronic disease. At the HP/DP Summit, the IHS will present partnership opportunities such as: (1) Healthy Native Communities Fellowship Program; (2) Building Alliances for Communities in Action for Wellness (Resource Roundtable Conferences); (3) Community Wellness Champion Forums; and (4) the Just Move It campaign. In the future, the IHS plans to work together with partners to promote health and prevent disease throughout Indian country. It is intended that these partnerships will create opportunities for businesses and other organizations to participate in shaping a healthier U.S. More information about the Summit is available at *http://www.ihs.gov/hpdp.*

DATES: Comments expressing or affirming an interest in co-sponsoring of the HP/DP Summit—"Healthier Indian Communities through Partnership and Prevention"—and/or partnerships with the IHS should be received within 45 days of publication of this notice. The Summit, "Healthier Indian Communities through Partnership and Prevention," will take place September 21–24, 2004, in Washington, DC. Contact information to permit further discussion and consideration of ideas of mutual interest may be sent to the e-mail address set out in the next paragraph.

ADDRESSES: Expressions of interest, comments and questions may be sent to the following e-mail address, *abecenti@hqe.ihs.gov* or by regular mail with contact information, as appropriate, to: Alberta Becenti, Office of Public Health, Reyes Building, 801 Thompson Avenue, Suite 320, Rockville, MD 20852–1627. Organization representatives may also call an information line at (301) 443–4305. Callers will be directed to appropriate agency officials or to other collaborating partners with similar or complementary interests for further discussions.

SUPPLEMENTARY INFORMATION: The IHS is the Federal agency responsible for delivering direct health care services to more than 560 Federally-recognized AI/AN tribes. Meeting the health needs of Indian communities requires effective partnerships and collaborations so that all components of a healthy community can be addressed. The IHS is focusing on the importance of partnerships, community and prevention. The IHS HP/DP Summit will focus on the present and future directions of HP/DP for AI/AN.

The conference will increase opportunities to share information, present the health status and challenges of Indian country today, and create and expand opportunities to partner and share HP/DP best and promising practices.

Partnership With Private Sector Organizations

The IHS has limited resources with which to achieve implementation of such large-scale nationwide changes. Moreover, to achieve numerous behavioral changes, the involvement of both public and private organizations is necessary. For efforts of this magnitude, the Agency periodically invites outside organizations to join in carrying out activities of mutual interest to achieve shared objectives. These partnerships are voluntary. The parties work together to carry out their respective, consistent missions for the common good. In accordance with each entity's particular strengths and abilities, partnerships will be established; each partner will be responsible for providing the resources necessary to carry out specified activities of mutual interest. As partners with the IHS, both public and private sector organizations can bring their respective ideas and expertise, administrative capabilities, and production and material resources. Examples include sharing in the development of educational health information and its distribution to employees or to the public to promote healthy lifestyles in order to prevent chronic diseases, developing programs aimed at improving consumers' understanding of how proper dietary

choices and physical activity can improve health and prevent obesity and other chronic diseases, or providing practical guidance and information on how to obtain diagnostic and treatment services.

Partnership agreements will make clear that there will be no Federal endorsement of commercial products or of particular companies.

The IHS has a right to review the use of IHS HP/DP Summit logos and statements related to the HP/DP Summit on such materials and products to ensure that they are suitable and that Government neutrality with respect to commercial products is maintained. Partnership agreements will make clear that potential partners are carrying out their own program in conjunction with the IHS goals. When the HP/DP Summit logo is approved for use on commercial materials or products that promote health and prevent disease, a disclaimer will be required to be printed on, or affixed to commercial partner materials and products indicating that the use of the logo does not imply any Federal endorsement or warranty of a particular commercial product or of other products of a particular company.

Evaluation Criteria

After engaging in exploratory discussions of potential partnerships and partnership activities with respondents, the following considerations will be used by the IHS officials, as appropriate and relevant, to ensure the partnership activities with particular entities and the scope of those activities achieve the mission of the IHS.

1. Has the outside entity demonstrated a willingness to work collaboratively with other public and private sector organizations to achieve the stated goals of the IHS goals or to advance related efforts, activities, or initiatives?

2. Are the activities proposed by the offering entity likely to provide a substantial public health benefit that is consistent with the IHS and HHS goals?

3. Does the proposed partnership's potential for public health benefit outweigh any appearance of conflict that may potentially have a negative impact on the Agency and its ability to accomplish its missions?

4. What adjustments, if any, would make the proposal acceptable?

5. Does the outside entity have the expertise and capacity to carry out its proposed activities?

Given the IHS HP/DP Summit goals and consistent interests, entities that wish to partner with the IHS and Tribal governments to support its efforts are encouraged to reply to this notice. Working together, it is intended that these partnerships will provide innovative opportunities to support and honor AI/AN communities at the IHS HP/DP Summit. The HP/DP Summit is funded by the IHS.

Dated: July 2, 2004.

Charles W. Grim,

Assistant Surgeon General, Director.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority

Part G Indian Health Service

Part G, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), as amended at 52 FR 47053–67, December 11, 1987, as amended at 60 FR 56606, November 9, 1995, and most recently amended at 61 FR 67048, December 19, 1996, is hereby amended to reflect a reorganization of the Indian Health Service (IHS) Headquarters (HQ). The goal of the reorganization is to demonstrate increased leadership and advocacy, while improving the Agency's responsibilities for oversight and accountability. We have considered the President's Management Agenda, the Secretary's Workforce Restructuring Plan and recommendations from the Indian Health Design Team and the IHS Restructuring Initiatives Workgroup. Delete the functional statements for the IHS Headquarters in their entirety and replace with the following:

Chapter GA—Office of the Director

Section GA–10, Indian Health Service—Organization. The IHS is an Operating Division within the Department of Health and Human Services (HHS) and is under the leadership and direction of a Director who is directly responsible to the Secretary of Health and Human Services. The IHS Headquarters consists of the following major components:

Office of the Director (GA)
Policy Formulation and Communications Group (GA–1)
Office of Tribal Programs (GA–2)
Office of Tribal Self-Governance (GA–3)
Office of Urban Indian Health Programs (GA–4)
Office of Finance and Accounting (GAA)
Office of Information Technology (GAB)
Office of Management Services (GAC)
Office of Clinical and Preventive Services (GAD)
Office of Environmental Health and Engineering (GAE)
Office of Public Health Support (GAF)
Office of Resource Access and Partnerships (GAG)

Section GA–20, Functions.

Office of the Director (OD) (GA)

Provides overall direction and leadership for the IHS: (1) Establishes goals and objectives for the IHS consistent with the mission of the IHS; (2) provides for the full participation of Indian Tribes in the programs and services provided by the Federal Government; (3) develops health care policy; (4) ensures the delivery of quality comprehensive health services; (5) advocates for the health needs and concerns of American Indians/Alaska Natives (AI/AN); (6) promotes the IHS programs at the local, state, national, and international levels; (7) develops and demonstrating alternative methods and techniques of health services management and delivery with maximum participation by Indian Tribes and Indian organizations; (8) supports the development of individual and Tribal capacities to participate in Indian health programs through means and modalities that they deem appropriate to their needs and circumstances; (9) ensures the responsibilities of the United States are not waived, modified, or diminished, in any way with respect to Indian Tribes and individual Indians, by any grant, contract, compact, or funding agreement awarded by the IHS under the Indian Self-Determination and Education Assistance Act, as amended; (10) affords Indian people an opportunity to enter a career in the IHS by applying Indian preference; and (11) ensures full application of the principles of Equal Employment Opportunity laws and the Civil Rights Act in managing the human resources of the IHS.

Policy Formulation and Communications Group (PFCG) (GA–1)

(1) Coordinates the review and analysis of policy-related issues, and provides recommendations for resolving policy conflicts; (2) evaluates policy options and forecasts their costs, benefits, and long-term results; (3) ensures consistency between and within public Agency statements, external correspondence, legislative and regulatory positions and internal policy development; (4) disseminates information to IHS consumers, stakeholders, and the general public

regarding the activities of the IHS and the health status of AI/AN people and communities; and (5) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Policy Support Staff (PSS)

(1) Organizes, facilitates, and support stakeholder task teams to advise the Director on major policy issues; (2) represents the Director in meetings with IHS employees and high-level management officials within the IHS, the HHS, or other Federal agencies, Tribes, and other organizations; (3) provides staff support to the Director, including preparation of presentations and briefings; (4) provides staff support to senior managers, councils and groups; (5) completes special assignments for the Director that may require coordination with other IHS offices or other Federal agencies, Tribes, or Tribal organizations; and (6) serves as the IHS liaison for inter-governmental and private sector initiatives that impact health care services and management of the IHS, and participates on the inter-Governmental task forces.

Public Affairs Staff (PAS)

(1) Principal advisor for strategic planning on communications, media relations, and public affairs policy formulation and implementation; (2) ensures IHS policy is consistent with directives from the Assistant Secretary for Public Affairs; (3) provides leadership and advocacy to establish and implement policy for internal and external dissemination of Agency information intended for public release or employee and stakeholder information; (4) is the central office for technical guidance and assistance to IHS staff for the development of internal and external communications and public affairs activities with other public and private sector organizations; (5) coordinates the clearance of IHS public relations activities, campaigns and communications materials; (6) represents the IHS in discussions regarding policy, public affairs initiatives/implementation and provides technical assistance and advice relative to the effect public affairs initiatives/implementation would have on the IHS; (7) collaborates with the Division of Regulatory and Legal Affairs for review and response to media request received under the Freedom of Information Act (FOIA) or the Privacy Act, and ensures the security of IHS documents used in such responses that contain sensitive and/or confidential information; and (8) serves as the IHS liaison office for press and public affairs with HHS, IHS Area Offices, and media and other external organizations and representatives.

Congressional and Legislative Affairs Staff (CLAS)

(1) Principal advisor to the Director, IHS, on all legislative and Congressional relations matters; (2) advises the Director and other IHS officials on the need for changes in legislation and manages the development of IHS legislative initiatives; (3) serves as the IHS liaison office for Congressional and legislative affairs with Congressional offices, the HHS, the Office of Management and Budget (OMB), other Federal agencies, and the White House; (4) tracks all major legislative proposals in the Congress that would impact on Indian health and ensures that the Director and appropriate IHS and HHS officials are briefed on potential impact of proposed legislation; (5) represents the IHS in discussions regarding policy, legislative initiatives/implementation and provides technical assistance and advice relative to the effect initiatives/implementation would have on the IHS; (6) establishes collaborations with Headquarters Offices on programmatic and financial issues related to budget formulation; (7) conducts the legislative analysis, and provides support and liaison to the Director relative to IHS appropriations efforts; (8) directs the development of IHS briefing materials for Congressional hearings, testimony, and bill reports; (9) analyzes legislation for necessary action within the IHS, and develops appropriate Legislative Implementation Plans; and (10) coordinates with IHS offices as appropriate to provide leadership, advocacy, and technical support to respond to requests from the public, including Tribal governments, Tribal organizations, and Indian community organizations regarding IHS legislative issues.

Management Policy and Internal Control Staff (MPICS)

(1) Formulates, administers, and supports IHS-wide policies, delegations of authority, and organizations and functions development; (2) provides leadership, on behalf of the IHS Director, to functional area managers at IHS Headquarters in developing or modifying and overseeing the implementation of IHS policies and procedures; (3) provides analysis, advisory, and assistance services to IHS managers and staff for the development, clearance, and filing of IHS directives and delegations of authority; (4) serves as principal advisor and source for technical assistance for establishment or modification of organizational infrastructures, functions, and Standard Administrative Code configurations; (5) administers the IHS Management Control Program for assuring IHS' compliance with management control requirements in the Federal Managers' Financial Integrity Act; (6) coordinates the development, clearance, and transmittal of IHS responses and follow-up to reports issued by the Office of Inspector General (OIG), the General Accounting Office (GAO), and other Federal internal and external authorities; (7) provides assistance and support to special assigned task groups, and conducts special program or management integrity reviews as required; and (8) oversees and coordinates the annual development and submission to the Department of the Agency's Federal Activities Inventory Reform Act inventory.

Executive Secretariat Staff (ESS)

(1) Serves as the Agency's liaison with the Office of the Secretary's Executive Secretariat on IHS program, policy, and special matters; (2) reviews correspondence received by the IHS Director and assigns reply or follow-up action to appropriate IHS Headquarters program offices and IHS Area Offices; (3) ensures the quality (responsiveness, clarity, and substance) of IHS-generated correspondence prepared for the IHS Director's signature by coordinating the review of integrity and policy issues, and performing standard edits and revisions; (4) reviews and coordinates clearance of decision documents for the IHS Director's approval to ensure successful operations and policy making within the Agency; (5) assists IHS officials as they prepare documents for the HHS Secretary's review, decision, and/or signature; (6) performs special writing assignments for the Director; (7) manages the flow of executive correspondence and related information to Tribes, Tribal organizations, heads of Federal departments and agencies, Congressional Staff offices, and members of Congress; (8) maintains official records for the IHS Director's correspondence and conducts topic research of files, as needed; (9) maintains an automated document tracking and reporting (ATS) system to assist in managing the timely processing of internal and external executive correspondence; (10) conducts training to promote conformance by IHS Headquarters and Area staff to the IHS Executive Correspondence Guidelines

and the ATS system; and (11) tracks reports required by Congress.

Equal Employment Opportunity and Civil Rights Staff (EEO)

(1) Administers the IHS equal employment opportunity, civil rights, and affirmative action programs, in accordance with applicable laws, regulations, and HHS policies; (2) plans and oversees the implementation of IHS affirmative employment and special emphasis programs; (3) reviews data on IHS employee personnel actions and advises IHS managers of possible discriminatory trends; (4) ensures immediate implementation of required actions on complaints of alleged sexual harassment or discrimination; (5) decides on accepting, for investigation, or dismissing discrimination complaints and evaluates accepted complaints for procedural sufficiency and investigates, adjudicates, and resolves such complaints; and (6) develops EEO education and training programs for IHS managers, supervisors, counselors, and employees.

Office of Tribal Programs (OTP) (GA–2)

(1) Assures that Indian Tribes and Tribal organizations are informed regarding pertinent health policy and program management issues and assures that consultation and participation by Indian Tribes and organizations occurs during the development of IHS policy and decision making; (2) provides overall Agency leadership concerning functions and responsibilities associated with Self-Determination contracting (Title I of the Indian Self-Determination Act); (3) advises the Director, IHS, and senior Agency managers on activities and issues related to Self-Determination contracting and monitors Agency compliance with Self-Determination policies, administrative procedures and guidelines; (4) administers a national grant program designed to assist Tribes and Tribal organizations in beginning and/or expanding Self-Determination activities; (5) provides Agency leadership in the development of policy, and discharges operational responsibilities, with respect to the contract support cost (CSC) program administered by IHS; (6) provides advice to the Director and senior management on Tribal issues and concerns by maintaining liaison with Tribal leaders, national Tribal organizations, inter-Tribal consortiums and Area health boards; (7) provides leadership in the management process of receiving visiting delegations of Tribal leaders and representatives to IHS Headquarters and provides staff assistance to the Office of the Director with respect to Tribal meetings at locations outside of Headquarters; (8) provides overall Agency leadership with respect to policy development and issues concerning the Federal recognition of new Tribes; (9) supports Tribes in managing health programs, (10) coordinates available support from other public and private agencies and organizations; (11) maintains central data base on relevant information to contact Tribal leaders, health programs, etc.; and (12) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Office of Tribal Self-Governance (OTSG) (GA–3)

(1) Develops and oversees the implementation of Tribal Self-Governance legislation and authorities in the IHS, under Title III of the Indian Self-Determination and Education Assistance Act, as amended; (2) develops and recommends policies, administrative procedures, and guidelines for Self-Governance Tribal activities, with maximum input from IHS staff and workgroups, Tribes and Tribal organizations, and the Tribal Self-Governance Advisory Committee; (3) advises the Director on Agency compliance with Self-Governance policies, administrative procedures and guidelines and coordinates activities for resolution of problems with appropriate IHS and HHS staff; (4) provides resource and technical assistance to Tribes and Tribal Organizations for the implementation of Tribal Self-Governance Program (TSGP); (5) participates in the reviewing of proposals from Tribes for Self-Governance planning and negotiation grants and recommends approvals to the Director, IHS; (6) determines eligibility for Tribes and Tribal Organizations desiring to participate in the TSGP; (7) oversees the negotiation of Self-Governance compacts and annual funding agreements with participating Tribal governments; (8) identifies the amount of Area office and Headquarters managed funds necessary to implement the annual funding agreements and prepares annual budgets for available Tribal shares in conjunction with IHS Area and Headquarters components; (9) coordinates semi-annual reconciliation of funding agreements with IHS Headquarters components, Area offices, and participating Tribes; (10) serves as the principal IHS office for developing, releasing, and presenting information on behalf of the IHS Director related to the IHS Tribal Self-Governance activities to Tribes, Tribal Organizations, HHS officials, IHS officials, and officials from other Federal agencies, state and local governmental agencies, and other agencies and organizations; (11) arranges national Self-Governance meetings to promote the participation by all AI/AN Tribes in IHS Self-Governance activities and program direction; (12) participates in meetings for Self-Governance Tribal delegations visiting IHS Headquarters; and (13) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Office of Urban Indian Health Programs (OUIHP) (GA–4)

(1) Advises the Director, IHS, on the activities and issues related to the IHS" implementation of Title V, "Indian Health Care Improvement Act", as amended; (2) develops and recommends policies, administrative procedures and guidelines for IHS services and activities for Urban Indian health programs and organizations; (3) assures that Urban Indian health programs and organizations are informed of pertinent health policy and that consultation with Urban Indian health programs and organizations occurs during the development of IHS policy; (4) supports Urban Indian health programs and organizations in managing health programs; (5) coordinates support available from other public and private agencies and organizations; (6) advises the Director, IHS, on agency compliance to Urban Indian health program policies, administrative procedures and guidelines; (7) maintains relevant information on Urban Indian health programs and organizations; (8) coordinates meetings and other communications with Urban Indian health program representatives; and (9) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Office of Finance and Accounting (OFA) (GAA)

(1) Develops and prepares the budget submission for the HHS, OMB, and the President's budget for the Indian Health Service and Facilities Appropriation; (2) participates with HHS officials in budget briefings for the OMB and the

Congress; (3) distributes, coordinates, and monitors resource allocations; (4) develops and implements budget, fiscal, and accounting procedures and conducts reviews and analyses to ensure compliance in budget activities in collaboration with the Headquarters officials and the Tribes; (5) provides cost advisory and audit resolution services in accordance with applicable statutes and regulations; and (6) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Division of Audit (DA) (GAA1)

(1) Develops and recommends policies and procedures for Chief Financial Officer (CFO) audits; (2) develops and recommends policies and procedures for Tribal/Tribal organization audit resolution within IHS; (3) provides advice, technical consultation, and training to IHS Headquarters, Area Offices, Tribal, and Urban organizations for Title I, Title V, and Agency CFO audits; (4) provides audit resolution services in accordance with applicable statutes and regulations; (5) advises the Director, OFA of proposed legislation, regulations, and directives, and timelines that will affect audits within IHS as well as how current legislation affects handling of audit-related issues; (6) manages the IHS Audit Information Management System and conducts analysis of data for reports and/or responses to internal and external inquiries; (7) IHS contact point to the HHS for the Audit Information Management System (AIMS) Report and the Accountability Report; (8) coordinates the collection of disallowed costs cited in Tribal/Tribal organization audits; (9) coordinates the correction of non-monetary findings coded by the HHS in Tribal/Tribal organization audits; (10) coordinates receipt of audits from all organizations funded by IHS; and (11) formulates Corrective Action Plans for CFO audit deficiencies; (12) coordinates resolutions of deficiencies with IHS Headquarters senior managers and Area Directors; and (13) reports status of corrective actions to the IHS Headquarters senior staff and to the Department.

Division of Budget Formulation (DBF) (GAA2)

(1) Interprets policies, guidelines, manual issuances, OMB circulars, and instructions of Congress, OMB, HHS, and IHS on formulation of preliminary, Departmental, and Congressional budget requests for the IHS and Indian Health Facilities appropriation requests; (2) directs the collection, review, and analysis of program and financial data from Headquarters, Area Offices, Tribes, Tribal and Urban Indian organizations used in determining resource requirements; (3) coordinates the preparation of the IHS preliminary, Departmental and Congressional budget justifications for the Indian Health Services and Facilities appropriations; (4) prepares witness information for hearings before the House and Senate Appropriation Committees, House Resource Committee on Interior and Insular Affairs, the Senate Committee on Indian Affairs, and other Congressional committees as requested; (5) coordinates development of responses and inserts to be used for the record by and for Congressional appropriations hearings; (6) coordinates development of briefing materials in response to Congressional concerns and hearings; and (7) develops, implements, and maintains IHS policies and procedures for Congressional budget liaison activities.

Division of Budget Execution (DBE) (GAA3)

(1) Interprets policies, guidelines, and directives from the Congress, OMB, GAO, Treasury, the Department on Tribal shares and execution; (2) recommends and coordinates IHS Area Budget Execution; (3) prepares apportionment requests for the Indian Health Service and Indian Health Facilities appropriations; (4) consults with the Headquarters officials on Area funding allocations; (5) maintains fund control; (6) establishes and maintains IHS Headquarters memorandum-accounts-of-obligations; (7) prepares reprogramming requests; (8) coordinates and maintains relevant information on IHS Area and Headquarters Tribal shares; (9) consults with the Area and Headquarters components on Tribal share allocations; (10) advises the Director, OFA on Agency compliance with Self-Determination policies, administrative procedures and guidelines; (11) and coordinates activities for resolution of problems with appropriate IHS and Area staff; (12) participates in the review and reconciliation of Tribal funding agreements and certifies IHS Headquarters funding of proposals from Tribal governments in conjunction with the Office of Tribal Self-Governance and the Office of Tribal Programs; (13) manages the financial review of Tribal agreements to identify sources of funds necessary to implement the Tribal funding agreements; and (14) participates in meetings with Tribal delegations as requested.

Division of Systems Review and Procedures (DSRP) (GAA4)

(1) Reviews, interprets and comments on policies, guidelines, and manual issuances of Congress, Treasury, GAO, the Department and IHS on systems of fiscal management including Unified Financial Management System (UFMS), Common Accounting Numbers/Budget and Accounting Classification Structure Crosswalk and Core; (2) plans, directs, and implements fiscal policies and procedures on Headquarters and field accounting; (3) coordinates the cost accounting system in IHS; (4) reviews and analyzes accounting and financial management systems and related system interfaces; (5) supports the conversion of financial information from Core to UFMS; (6) provides and assists Area accounting staff with accounting system transactions, errors and system related emergencies; (7) serves as the agency liaison between agency components concerning the interface of administrative and other feeder application with Oracle/UFMS; (8) serves as the liaison between IHS, the Program Support Center (PSC) and the Department for reporting the prompt payment, debt management, and cash reconciliation; (9) coordinates, regulates and manages the issuance of financial codes in IHS; and (10) coordinates year-end "roll-over" activities with PSC and IHS Headquarters and Area staffs.

Division of Financial Operations (DFO) (GAA5)

(1) Manages the IHS travel program, provides training, interprets travel regulations, conducts reviews and reviews and updates travel policy and procedures; (2) processes Headquarters travel orders and vouchers, including PCS and international travel; (3) coordinates Area Directors' travel orders and vouchers; (4) responsible for the Conference Management function for the agency; (5) processes all Memoranda of Understanding (or Agreement) to verify accounting data and ensure proper payment/collection; (6) prepares reports and analyzes third-party collection data for management; (7) analyzes various operating costs and provides PSC with Area breakouts; (8) monitors PSC disbursements to assure proper accounting; (9) participates in the development of Medicare cost reports with contractor, Area Offices, Headquarters and Service Units; (10) and provides contractor with data from various data systems; (11) provides support and technical assistance to Headquarters operational components

in the development of Headquarters operations budgets; (12) provides fund certification and maintains commitment registers for Headquarters components; (13) performs fund reconciliations and assists in coordination of discrepancies with financial officials; (14) maintains Headquarters staffing status reports; and (15) serves as coordinator and conducts training for Headquarters administrative resources management systems.

Office of Information Technology (OIT) (GAB)

(1) Provides Chief Information Officer services and advises the Director, IHS, on all aspects of information resource management and technology ensuring Agency compliance with related Federal laws, regulations and policies; (2) directs the development, implementation, and maintenance of policies, procedures, standards, and architecture for information resource management, technology activities, and services in the IHS; (3) directs strategic planning and budgeting processes for information resources and technology; (4) leads IHS efforts in the development and implementation of information resource and technology management initiatives in IHS; (5) directs the design, development, acquisition, implementation, and support of information systems and services used in the IHS; (6) directs the activities of the IHS Information Technology Investment Review Board in assessing, implementing, and reviewing the Agency's information systems; (7) contracts for information resource and technology-related software, equipment and support services in collaboration with appropriate acquisition authorities; (8) provides project management support for information resource and technology initiatives; (9) directs the development, implementation and management of the IHS Information Technology Security program to protect the information resources of the IHS; (10) provides information technology services and support to IHS, Tribal, and Urban Indian health programs; (11) ensures accessibility to information technology services; (12) represents the IHS to, and enters into information technology agreements with, Federal, Tribal, state, and other organizations; and (13) participates in cross-cutting issues and processes including, but not limited to, emergency preparedness/security, budget formulation, Self-Determination issues, Tribal shares computations, and resolution of audit findings as may be needed and appropriate.

Division of Information Technology (DIT) (GAB1)

(1) Provides Chief Technology Officer services and advises the CIO on all aspects of information technology; (2) develops, implements, and maintains policies, procedures and standards for information resource management and technology products and services in the IHS; (3) develops and maintains information technology strategic planning documents; (4) develops and maintains the IHS enterprise architecture; (5) develops and implements information technology management initiatives in IHS; (6) ensures IHS information technology infrastructure resource consolidation and standardization efforts support IHS healthcare delivery and program administration; (7) represents the IHS to Federal, Tribal, state, and other organizations; and (8) participates in cross-cutting issues and processes that involve information technology.

Division of Information Resources Management (DIRM) (GAB2)

(1) Advises the CIO on all aspects of information resources management; (2) develops information resource policies and procedures; (3) develops the IHS information technology budget and related documents; (4) provides budget analyses and reports to the CIO; (5) develops strategies for presenting the IHS information technology budget to IHS, Tribal, and Urban Indian health programs; (6) provides technical analyses, guidance, and support for IHS capital planning and investment control activities; (7) manages the IHS portfolio management tool; (8) manages the activities of the IHS Information Technology Investment Review Board in assessing, implementing, and reviewing the Agency's information systems; (9) represents the IHS to Federal, Tribal, state, and other organizations; and (10) participates in cross-cutting issues and processes that involve information resources management.

Division of Enterprise Project Management (DEPM) (GAB3)

(1) Advises the CIO on all aspects of information technology project management; (2) develops project management policies and procedures; (3) identifies alternatives among internal and external sources and recommends the best sources to supply information resource and technology products and services to IHS; (4) develops information resource and technology project governance structures, management plans, evaluation protocols, documentation guides and related materials to support effective project management; (5) provides project management and related support for IHS developed and acquired information resource and technology products and services; (6) provides customer relationship management support to project stakeholders; (7) provides quality assurance and risk management support; (8) provides contract management support for information technology initiatives; (9) provides contract liaison services to appropriate acquisition authorities; (10) represents the IHS to Federal, Tribal, state, and other organizations; and (11) participates in cross-cutting issues and processes that involve information resources and technology project management.

Division of Information Security (DIS) (GAB4)

(1) Advises the CIO on all aspects of information security; (2) develops, implements and monitors the IHS Information Technology Security program to protect the information resources of the IHS; (3) develops and maintains cyber security policies and guidance for hardware, software, and telecommunications within the IHS; (4) reviews IHS security plans for sensitive systems; (5) evaluates safeguards to protect major information systems and the information technology infrastructure; (6) monitors all IHS systems development and operations for security and privacy compliance; (7) establishes and leads IHS teams to conduct reviews of agency programs to protect IHS' cyber and personnel security programs; (8) conducts vulnerability assessments of IHS' information technology infrastructure; (9) coordinates activities with internal and external organizations reviewing the IHS' information resources for fraud, waste, and abuse; (10) develops, implements, and evaluates an employee cyber security awareness and training program; and (11) establishes and leads the IHS Computer Security Incident Response Capability team; (12) represents the IHS to Federal, Tribal, state, and other organizations; and (13) participates in cross-cutting issues and processes that involve information security.

Office of Management Services (OMS) (GAC)

(1) Provides IHS-wide leadership, guidance, and support for the management of human resources, grants, acquisitions and records management, personal property and supply, and the regulations program; (2) advises the Director on statutory and

regulatory issues related to the IHS and coordinates resolution of IHS legal issues with the Office of the General Counsel (OGC), IHS staff, and other Federal Agencies; (3) assures that IHS appeal systems meet legal standards; (4) provides leadership and direction of activities for continuous improvement of management accountability and administrative systems for effective and efficient program support services IHS-wide; (5) ensures the accountability and integrity of grants and acquisition management, records management, personal property utilization and disposition of IHS resources; (6) assures that the IHS management services, policies, procedures, and practices support IHS Indian Self-Determination policies; (7) assists in the assurance of Indian access to state, local, and private health programs; (8) provides leadership and advocacy of the IHS mission and goals with the Department, Administration, Congress, and other external authorities; and (9) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Program Integrity and Ethics Staff (PIES) (GAC–1)

(1) Directs the fact-finding and resolution of allegations of impropriety such as mismanagement of resources, fraud, waste, and abuse, violations of the Standard of Ethical Conduct, Hatch Act and political activity and other forms of waste and advises the Director and IHS management of appropriate corrective and remedial actions to correct improprieties; (2) directs and provides leadership in the formulation of plans, guidance and evaluation of the IHS Personnel Security and Drug Testing Programs; (3) administers the IHS-wide management of the agency hotline reports of allegations and serves as the agency coordinator for HHS Office of the Inspector General (OIG), Office of Investigations; (4) manages and directs the IHS "Ethics Program" including the implementation of all requirements, providing advice to the Director and IHS agency liaison with all outside investigative organizations such as the Office of Special Counsel, the General Accounting Office and the OIG; and (5) develops and implements IHS directives and training for Standards of Ethical Conduct, Hatch Act and political activity, allegations and investigations of administrative fraud, waste and abuse, drug testing, and personnel security.

Division of Commissioned Personnel Support (DCPS) (GAC1)

(1) Acts as the liaison between IHS and the Program Support Center, Division of Commissioned Personnel, HHS; (2) advises the Director, IHS supervisors, administrators and managers, officers and dependents on commissioned personnel benefits, policies, procedures, regulations, as the IHS primary point of contact for commissioned personnel management; (3) develops policies, procedures, and recommendations to the Division of Commissioned Personnel; and (4) provides direct support to the Director, IHS and/or the Agency Representative to the Office of the Surgeon General; and (5) produces resource materials and conducts training sessions on commissioned personnel issues for officers, supervisors, and commissioned personnel specialists in IHS Area Offices.

Division of Administrative Services (DAS) (GAC2)

(1) Plans, develops and directs program support and general services programs; (2) develops and disseminates policy and procedural guidelines for uniform administrative services and practices; (3) provides guidance and support in the development, planning, and implementation of administrative functions; (4) maintains liaison with Department and General Services Administration (GSA) on logistics issues affecting the IHS; (5) monitors, evaluates, and reports on administrative programs and services; (6) provides advice and technical assistance on design, layout, inventories, and print order tracking for IHS publications; and (7) manages a variety of special projects.

Office Services Branch (OSB) (1) Administers physical security, supply, and space management services for Headquarters; (2) develops and disseminates policy and procedural guidelines for uniform office service programs; (3) provides leadership and coordination in planning, development, operation, and evaluation of special office support programs in small purchase acquisitions, facilities management, office relocations, lease acquisition, GSA supplies, equipment, furniture, telecommunications, transportation, mail management, forms management, photocopying, and printing; (4) manages Headquarters facilities program, physical security, motor vehicles, personal property, special projects and interagency activities; (5) develops and recommends policies and procedures for the protection and disposition of IHS records and oversees the evaluation of Records Management activities in the IHS; (6) provides leadership for special projects and interagency activities; (7) develops and recommends policies and procedures for the protection and disposition of IHS records; (8) oversees the evaluation of Records Management activities in the IHS; (9) provides leadership and guidance for the Agency Records Management Program; and (10) develops and implements a management control system for evaluation of records management functions agency wide.

Property and Supply Management Branch (PSMB) (1) Plans, develops, and administers the IHS policies on personal property management in conformance with Federal personal property management laws, regulations, policies, procedures, practices, and standards; (2) interprets regulations and provides advice on execution and coordination of personal property management policies and programs; (3) administers management systems and methods for planning, utilizing, and reporting on administrative personal property management programs, including the IHS personal property accountability and controls systems; (4) provides guidance and serves as principal administrative authority on Federal personal property management laws, regulations, policies, procedures, practices, and standards; (5) conducts surveys and studies involving evaluation and analysis of the personal property management activities IHS-wide; (6) maintains liaison with the Department and the GSA on personal property management issues and programs affecting the IHS; (7) prepares reports on IHS personal property; and (8) develops statements for annual budget formulation and presentation.

Division of Acquisitions Policy (DAP) (GAC3)

(1) Develops, recommends, and oversees the implementation of policies and procedures and delegations of authority for the acquisition management activities in the IHS, consistent with applicable regulations, directives, and guidance from higher echelons in the Department and Federal oversight agencies; (2) advises the Director, Office of Management Services, of proposed legislation, regulations, and directives that affect contracts in the IHS; (3) provides leadership for compliance reviews of all IHS procurement operations and oversees completion of necessary corrective actions; (4) manages the Department acquisition training and certification and the project officer

training programs in the IHS; (5) supports and maintains the IHS Contract Information System and controls entry of data into the HHS Contract Information System; (6) is the IHS contact point for contract protests, and the Department contact for contract-related issues; (7) reviews and makes recommendations for approval/disapproval of contract-related documents such as: pre- and post-award documents, unauthorized commitments, procurement planning documents, Justification for Other Than Full and Open Competition, waivers, deviations, and determinations and findings that require action by the Agency Principal Official Responsible for Acquisition, the Agency Head of Contracting, or the Office of the Secretary; (8) processes unsolicited proposals for the IHS; (9) coordinates the IHS Small, Disadvantaged, and Women-Owned Business programs; (10) oversees compliance with the Buy Indian Act; and (11) provides advice to the Agency officials negotiating inter and intra-agency agreements, in accordance with the IHS agreements program.

Division of Grants Policy (DGP) (GAC4)

(1) Directs Grants management and operations for the IHS; (2) develops, recommends, and oversees the implementation of policies, procedures and delegations of authority for IHS grants management activities, including grants added to Self-Governance compacts; (3) ensures that Agency policies and practices are consistent with applicable regulations, directives, and guidance from higher echelon in the Department and Federal oversight agencies; (4) awards and administers grants and cooperative agreements for IHS financial assistance programs; (5) provides leadership for the resolution of audit findings for grant programs; (6) manages the Department Grants Training and Certification programs for IHS; (7) conducts oversight compliance reviews of IHS grants operations, and recommends and oversees completion of necessary corrective actions; (8) reviews and makes recommendations for improvements in grantee and potential grantee management systems; (9) is the IHS liaison with Congress, the Department, and the public for grants and other financial assistance programs within the IHS; (10) maintains the Catalog of Federal Domestic Assistance for IHS financial assistance programs; (11) conducts grants-related training for IHS staff, grantees, and potential grantees; (12) coordinates payment to grantees including scholarship recipients; and (13) establishes and maintains the IHS automated Grants Information System and controls data entry into the HHS Grants Management Information System.

Division of Regulatory and Legal Affairs (DRLA) (GAC5)

Manages the IHS' overall regulations program and responsibilities, including determining the need for and developing plans for changes in regulations, developing or assuring the development of needed regulations, and maintaining the various regulatory planning processes; (2) provides all IHS liaison with the Office of the Federal Register on matters relating to the submission and clearance of documents for publication in the **Federal Register**; (3) assures proper agency clearance and processing of **Federal Register** documents; (4) informs management and program officials of regulatory activities of other Federal agencies; (5) manages the IHS review of non-IHS regulatory documents that impact the delivery of health services to Indians; (6) advises the Director and serves as liaison with the Office of the General Counsel (OGC) on such matters as litigation, regulations, and related policy issues and administrative support issues; (7) determines need for and obtains legal clearance of IHS directives and other issuances; (8) coordinates legal issues with the OGC, IHS, HHS components, and other Federal agencies, including the identification and formulation of legal questions, and advising on the implementation of OGC opinions; (9) assures that IHS' appeals processes meet legal standards; (10) advises on and participates in Indian Self-Determination and Education Assistance Act appeals and hearings; (11) provides guidance and assistance on state and Federal health reform efforts, including access and civil rights aspects and state Medicaid waiver applications; (12) advises on the administration of the contract health services (CHS) appeals system and is a participant in the Director's CHS appeal decisions; (13) in collaboration with the Public Affairs Staff, manages the retrieval and transmittal of information in response to requests received under the FOIA or the Privacy Act; (14) ensures the security of sensitive and/or confidential information when responding to FOIA or Privacy Act ; and (15) advises the Director, IHS regarding requests for IHS employees to serve as expert witnesses when IHS is not a party to the suit.

Regulations and Records Access Branch (RRAB) (1) Manages the Agency's regulation program and responsibilities; (2) provides liaison with the Office of the Federal Register; (3) advises on the need for or changes in current regulations; (4) develops or assures the development of IHS regulations; (5) keeps IHS officials informed on relevant regulatory activities of other agencies of the Government; (6) coordinates regulations activities with agencies within the Department that impact on the delivery of health services to Indians; (7) maintains and updates the various regulatory agendas; (8) assures that all IHS materials for publication in the **Federal Register** are properly cleared, processed, and in proper format; (9) manages the retrieval, review, and appropriate transmittal of information in response to FOIA requests including ensuring the appropriate security of such documents; (10) manages, administers, implements and monitors the agency's Paperwork Reduction Act (PRA) and OMB information collection/activities; (11) provides guidance and technical assistance to IHS regarding information collection requirements and procedures and in obtaining OMB approvals and extensions for IHS information collections; and (12) coordinates the implementation and the application of Privacy Act requirements, including but not limited to Health Insurance Portability and Accountability Act implementation, and compliance.

Legal Affairs Branch (LAB) (1) Coordinates the resolution of and the development of legal advice to the Director on IHS legal issues with the OGC, IHS senior staff, and other Federal agencies; (2) provides liaison with the OGC in such matters as litigation, regulations, legislation, policy review, civil rights, and administrative appeals; (3) provides advice on the development and implementation of non-personnel appeals processes to assure they meet legal standards; (4) maintains and distributes the Compendium of Legal Opinions; (5) reviews IHS directives and other issuances for needed legal clearances; (6) advises on the impact on IHS and the Indian community of state and Federal health reforms; and (7) provides policy review and advice on the need for or application of legal opinions.

Division of Human Resources (DHR) (GAC6)

(1) Advises the Director, IHS, on personnel management issues, programs and policies for Civil Service and Commissioned Corps personnel programs; (2) assures implementation of the Indian Preference policy in all personnel practices; (3) develops personnel management policies,

programs, and reports in accordance with applicable laws, regulations, and policies; (4) provides personnel management and services throughout IHS, to include, but not limited to, manpower planning and utilization, staffing, recruitment, compensation and classification, human resource development, pay administration, labor, and employee relations; (5) provides advice, consultation, and assistance to IHS management and Tribal officials on Tribal health program personnel policy issues; (6) provides technical support, guidance, and assistance on all personnel programs to IHS Headquarters operations and other organizations as necessary; and (7) represents IHS in all personnel management matters.

Human Resources Advisory Branch (HRAB) (1) Plans, conducts, and evaluates personnel functional programs; (2) develops IHS personnel policies, programs, and reports; (3) provides personnel program and policy advice and assistance throughout IHS; (4) provides advice and assistance to IHS management and Tribal officials on Tribal health program personnel policies; and (5) develops and implements Indian Preference policies and procedures.

Human Resources Operations Branch (HROB) (1) Plans and implements personnel servicing responsibilities for IHS programs covered by the headquarters appointing authority, including staffing, recruitment, classification, pay administration, and employee relations; (2) provides staff support for the establishment and recruitment of Senior Executive Service positions including performance management, compensation and award nominations; (3) processes personnel actions and appoints all civil service employees; and (4) provides advice and training on timekeeping and pay administration.

Office of Clinical and Preventive Services (OCPS) (GAD)

(1) Serves as the primary source of national advocacy,.policy development, budget development and allocation for clinical, preventive, and public health programs for the IHS, Area Offices, and Service Units; (2) provides leadership in articulating the clinical, preventive, and public health needs of AI/AN including consultation and technical support to clinical and public health programs; (3) develops, manages, and administers program functions that include, but are not limited to, alcohol and substance abuse, behavioral health, chronic diseases such as diabetes, asthma, etc., dental services, medical services, domestic violence, pharmacy and pharmaceutical acquisition, community health representatives, emergency medical services, health records, disabilities, Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS), maternal and child health, clinical nursing, professional credentialing, public health nursing, women's health, nutrition and dietetics, and elder care; (4) investigates service delivery and community prevention evidence-based and best practice models for dissemination to community service locations; (5) expands the availability of resources available for AI/AN health by working with public and private entities as well as Federal agencies within and outside DHHS; (6) in collaboration with the Office of Environmental Health and Engineering, coordinates development of staffing requirements for new or replacement health care facilities and approves Congressional budget requests for staffing; (7) provides program oversight and direction for the facilities planning and construction process; (8) develops and coordinates various Health Initiative and Nursing grant programs; (9) provides the national focus for recruitment and retention of health professionals and coordinates with the scholarship and loan repayment programs; (10) works with the Contract Health Services (CHS) program on CHS denial appeals to the Director and in determining CHS medical priorities; (11) manages the clinical (medical, nursing, pharmacy, dental) features of medical tort claims against the IHS; (12) works with OMS in managing the clinical aspects of IHS workman's compensation claims; (13) oversees IHS efforts in a variety of quality assurance and improvement activities including patient safety; (14) responsible for approximately one half of the IHS' Government Performance and Results Act (GPRA) indicators, overseeing indicator development, data collection, and reporting results; and (15) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, border health initiatives, Tribal delegation meetings, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Emergency Preparedness and Emergency Medical Services Staff (EPEMSS) (1) Provides overall direction and leadership for the IHS in regard to establishing IHS goals and objectives consistent with those of the Department of Homeland Security and DHHS, addressing the mission critical elements of emergency preparedness; (2) provides leadership for the development of emergency preparedness plans, policies and services, including the continuity of operations plans, deployment, public health infrastructure, and emergency medical services; (3) coordinates IHS activities and resources with the activities and available resources of other government and non-government programs for essential services related to homeland security and emergency preparedness; and (4) advocates for the emergency preparedness needs and concerns of AI/AN and promotes these program activities at the local, state, national, and international levels; and (5) advocates and coordinates support for tribal emergency medical services programs, including training and equipment.

Division of Behavioral Health (DBH) (GAD1)

(1) Applies identified profession and program standards, monitors and evaluates community and Area-wide services provided through grants or contracts with AI/AN Tribes, Villages, organizations, and direct IHS operations for mental health, social services, and alcohol/substance abuse; (2) coordinates AI/AN community behavioral health programs including alcohol/substance abuse prevention and treatment, mental health, and social work with program directors, division staff, Area staff, and other agencies and institutions; (3) coordinates contracts and grants for behavioral health services and monitors services provided; (4) makes program and policy changes using data analysis, recommendations from operational levels, research results, and coordinates resource allocation from program policies; (5) provides behavioral health program consultation to AI/AN groups and IHS staff; (6) provides leadership in the identification of behavioral change interventions and supports implementation at the community level; (7) coordinates with state, Federal, professional, private, and community organizations on alternate health care resources; (8) works with other Federal agencies and departments to provide additional Federal resources for AI/AN behavioral health programs; (9) provide financial resources and programmatic oversight for complying with the Americans With Disabilities Act through programs such as the Indian Children's Program and for elders through partnerships with the Administration on Aging and the National Indian Council on Aging; (10) measures and evaluates the quality of behavioral health care services; and (11) prepares information on behavioral

health and budgetary hearings, and program evaluation results for the IHS Director, the Congress, and the Administration.

Division of Clinical and Community Services (DCCS) (GAD2)

(1) Manages, develops, and coordinates a comprehensive clinical, preventive and public health approach to clinical and community programs focusing on maternal and child health, Indian children services including Head Start and Early Head Start Health Programs, medicine, nutrition, HIV/AIDS, pharmacy, laboratory, health records, health education, and health promotion and disease prevention; (2) develops objectives, priorities and methodologies for the conduct and evaluation of clinical, preventive and public health and community health-based programs; (3) provides, develops, and implements IHS guidelines, standards, policies, and procedures on clinical, preventive and public health and community based programs and initiatives; (4) monitors, evaluates, and provides consultation to clinical and community programs; (5) plans jointly with other programs and divisions of the IHS and other agencies on research and coordination of services; (6) coordinates professional staff recruitment and training needs, and scholarship recipient assignments and development to meet Service Unit, Area, and Tribal health professional human resource needs; (7) in collaboration with the Division of Acquisitions Policy and the Division of Grants Policy, coordinates and monitors contracts and grants with IHS programs and other entities; (8) develops and disseminates information and materials to IHS facilities and to Tribes and Urban Indian health programs; (9) responsible for resource management, program data collection, administrative system integrity and accountability by developing program budget materials and responding to Congressional and Departmental inquiries; and (10) manages the Veteran's Administration Pharmaceutical Prime Vendor Contract and IHS National Core Formulary.

Division of Nursing Services (DNS) (GAD3)

(1) Plans, develops, coordinates, evaluates, manages and advocates for the IHS Nursing Services, Women's Health, and Community Health Representative Program; (2) identifies and establishes standards for these programs; (3) provides leadership, professional guidance, and staff development; (4) plans, develops, coordinates, manages, and evaluates nursing education; (5) coordinates professional staff, including nursing recruitment, scholarship recipients, assignment and development to meet Service Unit, Area, and Tribal needs in accordance with IHS policies and procedures; (6) provides guidance in planning, developing, and maintaining management information systems; and (7) prepares budgetary data, analysis and program evaluations and prepares information for program and budget presentations and Congressional hearings.

Division of Oral Health (DOH) (GAD4)

(1) Plans, develops, coordinates, and evaluates dental health programs; (2) establishes staffing, procedural, facility, and dental contract standards; (3) coordinates professional recruitment, assignment, and staff development; (4) represents dental staff and Area Dental Programs in personnel matters, including the monitoring of personnel orders for both appointments and transfers, establishing promotion priority lists, processing special pay and retention bonus contracts, and being the HQ representative on adverse action cases; (5) improves effectiveness and efficiency of dental programs; (6) develops resource opportunities and monitors utilization of resources for dental health programs; (7) formulates, allocates and analyzes dental program budget and prepares information for program and budget presentations and Congressional inquiries; (8) advocates for oral health needs of AI/AN population; (9) coordinates health promotion and disease prevention activities for the dental program; (10) monitors oral health status and treatment needs of the AI/AN population; (11) provide clinical and technical support to field staff by way of oral health surveys, provision of clinical trials, consultation on treatment cases, publication of quarterly newsletter and serving as liaison with public and private institutions and major universities to evaluate new and existing strategies to address oral health problems in AI/AN; (12) serves as the liaison for the IHS Division of Oral Health with other agencies in the USPHS and other Federal agencies; (13) serves as main source of information transfer to field staff via mediums including, but not limited to, teleconference hookups, electronics (email/listservs), conventional mail and meeting attendance; and (14) maintain and distribute information from the IHS centralized dental database, including workload, program resource directories and exploring the applicability of new health informatics technologies and systems.

Division of Diabetes Prevention and Control (DDPC) (GAD5)

(1) Plans, manages, develops, coordinates, and evaluates a comprehensive clinical and community program focusing on type 2 diabetes in AI/AN communities; (2) plans, manages, develops, coordinates, and evaluates the Congressionally-mandated Special Diabetes Program for Indians, a large grant program focused on the prevention and treatment of diabetes; (3) coordinates and monitors contracts and grants with IHS, Tribal, and Urban Indian health programs and other entities; (4) develops objectives, priorities and methodologies for the conduct of clinical and community diabetes programs; (5) monitors, evaluates, and provides consultation to clinical and community diabetes grant programs and other new initiatives; (6) provides leadership, professional guidance, and staff development to Area Diabetes Consultants, Model Diabetes Programs and Diabetes Field Coordinators; (7) coordinates diabetes training needs for Service Units, Areas, and Tribes; (8) develops and implements IHS standards of care, clinical guidelines and policies and procedures for diabetes and diabetes-related conditions; (9) coordinates model diabetes program sites; (10) develops and disseminates diabetes-related information and materials to IHS, Tribes and Urban Indian health programs; and (11) responsible for preparing budgetary data, analysis and program evaluations for budget presentations and Congressional hearings.

Office of Environmental Health and Engineering (OEHE) (GAE)

(1) Advises and supports the Director, IHS on policy, budget formulation, and resource allocation regarding environmental health and engineering activities of IHS and Tribal facilities programs; (2) provides agency-wide leadership and consultation to IHS direct, Tribal, and Urban public health programs on IHS goals, objectives, policies, standards, and priorities; (3) represents the IHS within the HHS and external organizations for purposes of liaison, professional collaboration, cooperative ventures, and advocacy; (4) serves as the primary source of technical advice for the IHS Director, Headquarters, Area offices, Tribal, and Urban public health programs on the full scope of health care facilities construction and operations, sanitation facilities construction (SFC) and

management, environmental health services, environmental engineering, clinical engineering, and realty services management; (5) develops and recommends policies, administrative procedures and guidelines for Pub. L. 93–638 construction activities; (6) develops objectives, priorities, standards, and methodologies to conduct and evaluate environmental health, environmental engineering, and facilities engineering and management activities; (7) coordinates the formulation of the IHS Facilities Appropriation budget request and responds to all inquiries about the budget request and programs funded by the IHS Facilities Appropriation; (8) maintains needs-based and workload-based methodologies for equitable resource distribution for all funds appropriated under the IHS Facilities Appropriation; (9) provides leadership, consultation, and staff development to assure functional, safe, and well-maintained health care facilities, a comprehensive environmental health program, and the availability of water, sewer, and solid waste facilities for Indian homes and communities; (10) in collaboration with the Office of Clinical and Preventive Services, coordinates the IHS OEHE responsibilities in responding to disasters and other emergency situations; and (11) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Division of Sanitation Facilities Construction (DSFC) (GAE1)

(1) Develops, implements, and manages the environmental engineering programs, including the Sanitation Facilities Construction (SFC) program, and compliance activities associated with environmental protection and historic preservation legislation; (2) provides agency-wide management assistance and special support/consultation to address special environmental public health problems for environmental engineering/construction activities, and for compliance with environmental legislation; (3) works closely with other Federal agencies to resolve environmental issues and maximize benefits to Tribes by coordinating program efforts; (4) develops, implements, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for SFC activities; (5) consults with Tribal groups/organizations in the development and implementation of SFC policies and initiatives, and in the identification of sanitation needs; (6) maintains a national inventory of current Tribal sanitation facilities needs, and past and present projects to address those needs; and (7) in collaboration with the OFA, allocates financial resources nationwide based on need and workload using the national data inventories.

Division of Facilities Operations (DFO) (GAE2)

(1) Develops, implements, and manages the programs affecting health care facilities operations, including the routine maintenance and improvement, real property asset management, quarters, and clinical engineering programs; (2) develops, implements, monitors and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities operations; (3) serves as principal resource for coordination of facilities operations and provides consultation to IHS and the Tribes on health care facilities operations; (4) maintains real property asset and quarters management systems; (5) maintains clinical engineering management systems; (6) formulates financial resources allocation methodologies nation-wide based on need and workload data; (7) maintains nation-wide data on Federal and Tribal facilities for program budget justification; (8) develops and evaluates technical standards and guidelines for health care facilities operations; and (9) monitors construction activities and the improvement, alteration, and repair of health care facilities.

Division of Facilities Planning and Construction (DFPC) (GAE3)

(1) Develops, implements, and manages IHS Health Care Facilities Planning and Construction program, including the facilities planning process, facilities design process, facilities acquisition, and construction project management; (2) develops, implements, monitors, and evaluates agency program activities, objectives, policies, plans, guidelines, and standardized data systems for health care facilities planning and construction; (3) develops and maintains construction priority systems and with the Division of Engineering Services develops project budget documents for the health care facilities construction program; (4) serves as the principal resource in providing leadership, guidance, and coordination of health care facilities engineering activities for the IHS Headquarters and Area offices, and Tribal and Urban health programs; (5) evaluates justifications for major improvement and alteration projects and other large scale construction activities; and (6) develops and evaluates technical standards and guidelines for health care facilities construction.

Division of Environmental Health Services (DEHS) (GAE4)

(1) Develops, implements, and manages IHS Environmental Health Services programs including the Injury Prevention and Institutional Environmental Health programs, and serves as the primary source of technical and policy advice for IHS Headquarters and Area offices on the full scope of environmental health issues and activities; (2) maintains interagency relationships with other Federal agencies and Tribes to maximize interagency and inter-Tribal responses to environmental health issues and maximize benefits to Tribes by coordinating program efforts; (3) provides leadership in identifying and articulating environmental health needs of AI/AN populations and support efforts to build Tribal capacity; (4) provides personnel support services and advocates for environmental health providers; (5) maintains, analyzes, makes accessible, and publishes results from national data bases; (6) manages resource allocation activities in accordance with established criteria based on workload; (7) develops and evaluates standards and guidelines for environmental health programs and activities; and (8) performs functions related to environmental health programs such as injury prevention, emergency response, water quality, food sanitation, occupational health and safety, solid and hazardous waste management, environmental health issues in health care and non-health care institutions, and vector control.

Division of Engineering Services (Dallas/Seattle) (DES) (GAE5)

(1) Administers health care facilities engineering and construction projects for specified Area offices and administers the engineering and construction of certain projects for other Federal agencies through interagency agreements; (2) carries out management activities relating to IHS-owned and utilized health care facilities, including construction, contracting, realty, and leasing services; (3) serves as the source of engineering and contracting expertise for assigned programs/projects and other technical programmatic areas affecting the planning, design, alteration, leasing, and construction of

IHS health care and sanitation facilities for Indian homes and communities; and (4) assists in the development of Area office annual work plans, studies, investigations, surveys, audits, facilities planning, and technical standards development, for IHS owned and Tribal health care facilities.

Office of Public Health Support (OPHS) (GAF)

(1) Advises and supports the Director, IHS on policy, budget formulation, and resource allocation regarding the operation and management of IHS direct, Tribal, and Urban public health programs; (2) provides IHS-wide leadership, guidance and support for public health program and activities including strategic planning, evaluation, GPRA, research, epidemiology, statistics, and health professions; (3) provides agency-wide leadership and consultation to IHS direct, Tribal, and Urban public health programs on IHS goals, objectives, policies, standards, and priorities; (4) advocates for the public health needs and concerns of AI/AN and promotes quality health care; (5) manages and provides national leadership and consultation for IHS on assessments, public health and medical services, research agendas, special pay and public health initiatives for the agency; and (6) provides national leadership for the IHS scholarship and loan repayment programs, including physician recruitment; (7) supports and advocates for AI/AN to access state and local public health programs; (8) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and Tribal shares computations and resolution of audit findings as may be needed and appropriate.

Division of Epidemiology (GAF1)

(1) Prevents and controls chronic and communicable disease through epidemiology and applied public health practice; (2) builds capacity in Tribal communities through a network of Tribal Epidemiology Centers; (3) collaborates with the Centers for Disease Control and Prevention (CDC) staff detailed to the Division from the CDC; (4) describes causes, patterns, and risk factors for disease and death, and develops public health policy; (5) serves IHS and Tribal communities through: Disease surveillance, health data management, analysis and reporting, community surveys, emergency response, training in public health practice and epidemiology, consultation to clinicians and technical support for public health activities and assessment of public health system performance; (6) supports epidemiology, disease control, and prevention programs for chronic diseases, including cancer, tobacco control, cardiovascular disease, diabetes, kidney disease, environmental health, maternal and child health, and others; and (7) supports epidemiology, disease control, and prevention programs for communicable diseases, including tuberculosis, HIV/AIDS, other sexually-transmitted diseases, hepatitis, hantavirus, antibiotic-resistant infections, immunizations, bioterrorism preparedness and others.

Chronic Disease Branch (CDB) (1) Supports epidemiology, disease control, and prevention programs for chronic diseases, including cancer, tobacco control, cardiovascular disease, diabetes, kidney disease, environmental health, maternal and child health, and others.

Infectious Disease Branch (IDB) (1) Supports epidemiology, disease control, and prevention programs for communicable diseases, including tuberculosis, HIV/AIDS, other sexually-transmitted diseases, hepatitis, Hantavirus, antibiotic-resistant infections, immunizations, bioterrorism preparedness, and others.

Division of Program Statistics (DPS) (GAF2)

(1) Plans, develops, directs, and coordinates an analytical statistical reporting program to provide data for measuring the health status and unmet health needs of AI/AN; (2) develops and coordinates the collection, processing, and analysis of demographic, patient care, and clinical data for the agency; (3) maintains, analyzes, makes accessible, and publishes results from national demographic and clinical analyses; and (4) provides statistical and analytical consultation to other divisions and agencies.

Demographics Staff (DS) (1) Plans, develops and executes a major nationwide statistical program for the collection, processing, analysis and dissemination of demographic characteristics of AI/AN population located throughout the United States; (2) coordinates with the National Center for Health Statistics the analysis and reporting of vital event information for AI/AN population; and (3) provides statistical and analytical consultation to other divisions and agencies.

Patient Care Statistics Staff (PCSS) (1) Plans, develops and executes a major nationwide statistical program for the collection, processing, analysis and dissemination of demographic data and special studies with emphasis on health and demographic characteristics of AI/AN population located throughout the United States; (2) evaluates facility workload trends and participates in the development of methodologies for constructing long-range estimates of impatient and ambulatory care workloads for use in facility construction and planning; and (3) coordinates with the IHS National Data Repositories the analysis and reporting of program, patient care and clinical data for the agency.

Division of Planning, Evaluation and Research (DPER) (GAF3)

(1) Develops and coordinates agency strategic planning and performance measurement efforts (including GPRA and PART) with budgeting requirements in consultation with IHS program staff; (2) provides consultation and coordination on the IHS budget formulation activity for planning and data purposes; (3) conducts, facilitates, solicits, coordinates, and evaluates community-oriented practice-based research related to health problems and the delivery of care to AI/AN people and communities with a major focus on improving the health status and systems of care; and (4) provides guidance and support for IHS-wide program evaluation projects.

Division of Health Professions Support (DHPS) (GAF4)

(1) Develops and implements IHS programs to recruit, select, assign, and retain health care professionals and coordinates these activities with the respective disciplines; (2) assesses professionals staffing needs and coordinates the development of strategies and systems to satisfy these needs; (3) coordinates the planning and development of IHS strategies and systems to improve the morale and retention of all professionals; (4) coordinates Headquarters activities for physician residency and training programs; (5) coordinates the IHS National Health Service Corps (NHSC) program, including liaison and assignment of NHSC scholarship recipients to IHS; (6) develops priority sites for the loan repayment program; (7) responsible for coordinating placement of professionals with loan repayment; (8) serves as IHS coordinator for pre-medical and medical school IHS scholarship recipients; (9) retrieves, establishes, and manages information and data on the IHS work force; and (10) conducts work force data analyses, including trends and projections, identifying work force needs by major personnel systems, categories, and disciplines.

Health Professions Support Branch (HPSB) (1) Develops the IHS program to recruit, select, assign, and retain health care professionals, in accordance with policies and guidance provided the Division of Human Resources; (2) assesses IHS professional staffing needs; (3) provides research and analysis functions for Chief Medical Officers, Clinical Directors, and senior clinicians; (4) manages and supports health professions education programs and activities; and (5) develops and administers Indian Health Professions programs authorized by the Indian Health Care Improvement Act (IHCIA), as amended.

Loan Repayment Branch (LRB) (1) Awards, monitors, places (in IHS, Tribal, and Urban sites), and processes waivers and defaults of participants in the Loan Repayment Program (LRP) as mandated by Section 108 of the IHCIA; (2) coordinates the LRP payment and debt management function with the Program Support Center; and (3) coordinates program administration with the IHS Area office and Service Unit personnel, particularly placement activities, including Clinical Directors, Chief Medical Officers, and professional recruiters.

Scholarships Branch (SB) (1) Develops, administers, and evaluates programs in the IHS Scholarship Program authorized under the IHCIA: Section 102 (Health Professions Recruitment Program for Indians), Section 103 (Health Professions Preparatory Scholarship Program for Indians), Section 104 (Indian Health Professions Scholarship Program), Section 105 (IHS Externs Program), Section 120 (Matching Grants to Tribes for Scholarship Programs), Section 217 (Indians Into Psychology Program), and other funded programs authorized under the IHCIA.

Office of Resource Access and Partnerships (ORAP) (GAG)

(1) Provides agency-wide leadership and consultation to the IHS direct operations and Tribal programs on IHS goals, objectives, policies, standards and priorities regarding the operations and management of the Business Office Services (BOS) and the Contract Health Services (CHS) programs; (2) develops and implements objectives, priorities, standards, measures and methodologies for BOS and CHS services; (3) manages and provides leadership, advocacy, consultation and technical support to Headquarters, IHS Areas and local levels on the full scope of BOS and CHS activities; (4) represents the IHS at meetings and in discussions regarding policy, legislation and other national issues; (5) provides oversight and monitors the BOS and CHS programs regarding compliance requirements, utilization reviews and revenue measures and reports; (6) formulates and analyzes BOS and CHS budgets and prepares information for program budget presentations; (7) collaborates and coordinates with IHS information technology staff and external organizations on new technologies, applications and business practices; (8) develops resource opportunities and coordinates the BOS and CHS activities with other governmental and non-governmental programs, promoting optimum utilization of all available health resources; (9) maintains a database of all Agency memoranda of agreement and memoranda of understanding with external organizations; and (10) participates in cross-cutting issues and processes including but not limited to emergency preparedness/security, budget formulation, Self-Determination issues, and resolution of audit findings as may be needed and appropriate.

Division of Business Office Enhancement (DBOE) (GAG1)

(1) Serves as the primary focal point for Business Office Services (BOS) program operations and policy issues and represents BOS in national forums; (2) provides consultation to Headquarters and Area offices and is liaison to Tribal organizations, HHS and OMB regarding BOS issues; (3) reviews and improves the efficiency of access to resources and provides support for local capacity building through technical assistance, training, consultation and information systems support; (4) develops, disseminates, and maintains BOS policy and procedures manual; (5) provides national leadership for Medicare, Medicaid, and private insurance reimbursement policy and procedures; (6) serves as the primary liaison with the Center for Medicaid/Medicare Services for rate setting; (7) serves as the focal point regarding Medicare and Medicaid managed care activities, including the review, evaluation, and monitoring of Sections 1115 and 1915(b) Medicaid waiver proposals and other state and Federal health care reform activities; (8) provides programmatic management, review and analysis of information systems for patient registration and billing and collections systems; (9) assures training on operations, various regulatory issues and negotiated managed care provider agreements; and (10) responsible for developing third-party budget materials and responding to Tribal, Congressional and Departmental inquiries relating to third-party issues.

Division of Contract Care (DCC) (GAG2)

(1) Plans, develops, and coordinates the Contract Health Service (CHS) program and required business practices; (2) develops, disseminates, and maintains CHS policy and procedures manual; (3) formulates and monitors the CHS budget and distribution methodologies; (4) administers the Catastrophic Health Emergency Fund; (5) administers the CHS Quality Assurance Fund; (6) administers the CHS claims adjudication activity for the IHS Headquarters; (7) monitors the implementation of the IHS payment policy and reports the status to the Director, ORAP; (8) administers the IHS Fiscal Intermediary contract; (9) conducts data analysis and national utilization review and utilization management of CHS services rendered by private sector providers; and (10) provides consultation to Headquarters and Area offices, and responds to inquiries from the Congress, Tribes, and other Federal agencies.

Section GA–30, Indian Health Service—Order of Succession. During my absence or disability of the Director, IHS, or in the event of a vacancy in that office, the following IHS Headquarters officials, in the order listed below, shall act as Director, IHS. In the event of a planned extended period of absence the IHS Director may specify a different order of succession. The order of succession will be:

(1) Deputy Director
(2) Deputy Director for Indian Health Policy
(3) Deputy Director for Management Operations
(4) Chief Medical Officer

Section GA–40, Indian Health Service—Delegations of Authority. All delegations of authority and re-delegations of authority made to IHS officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

Chapter GF—IHS Area Offices

Section GF–00, IHS Area Offices—Mission. The IHS Area Offices carry out the mission of the IHS by providing a system of health care unique to the Area population.

Section GF–10, IHS Area Offices—Organization. An Area Office is a bureau-level organization under the direction of an Area Director, who reports to the Director, IHS. The

following are the Area Offices of the IHS:

- Aberdeen Area Office (GFA)
- Alaska Area Office (GFB)
- Albuquerque Area Office (GFC)
- Bemidji Area Office (GFE)
- Billings Area Office (GFF)
- California Area Office (GFG)
- Nashville Area Office(GFH)
- Navajo Area Office (GHJ)
- Oklahoma City Area Office (GFK)
- Phoenix Area Office (GFL)
- Portland Area Office (GFM)
- Tucson Area Office (GFN)

Section GF–20, IHS Area Offices—Functions. The specific functions of the IHS Area Offices vary, however, each Area Office includes functions organized to support major categories of administrative management and clinical activities. Examples include:

Administration and Management—Financial management, administrative and office services, contract/grant administration, procurement, personnel management, facilities management, management information systems, contract health services, and equal employment opportunity;

Program Planning, Analysis and Evaluation Programs—Program planning, statistical analysis, legislative initiatives, research and evaluation, health records, management information systems, and patient registration/third party collection;

Tribal Activity Programs—Provision of Public Law 93–638, Indian Self-Determination and Educational Assistance Act, health services delivery, community health representatives services, urban Indian health, alcoholism and substance abuse, and health education;

Health Programs—Primary care, clinical activities, mental health, nursing services, health promotion and disease prevention, professional recruitment and community services, and the Joint Commission on Accreditation of Healthcare Organizations;

Environmental Health/Sanitation Facilities Programs—Environmental health and engineering/sanitation facilities construction programs for IHS Area Office, and

Information Resources Management Programs—Automated data processing (ADP), ADP planning and operations, management information systems, office automation systems, voice and data telecommunications management.

Section GF–30, IHS Area Offices—Order of Succession. The order of succession for Area Directors at the IHS Area Offices is determined by each Area Director and continues in effect until changed.

Section GF–40, IHS Area Offices—Delegations of Authority. All delegations and re-delegations of authority made to officials in the IHS Area Offices that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization shall be effective on August 23, 2004.

Dated: July 2, 2004.

Charles W. Grim,

Director, Indian Health Service, Assistant Surgeon General.

[FR Doc. 04–15716 Filed 7–9–04; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2004, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2004–56, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2004, and ending September 30, 2004. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2004, and ending December 31, 2004.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3

Dated: July 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 04–15681 Filed 7–9–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fish and Wildlife Service and Council of Athabascan Tribal Governments Sign Annual Funding Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On April 30, 2004, the U.S. Fish and Wildlife Service (Service or we) signed an annual funding agreement (AFA or Agreement) with the Council of Athabascan Tribal Governments (CATG) under the Tribal Self-Governance Act of 1994. The action was taken at the discretion of the Service. The decision reflects review and consideration of concerns, issues, and comments received during a 60-day public comment period. The Agreement was re-negotiated and slightly re-worded following the public comment period. The Agreement provides for the CATG to perform certain programs, services, functions, and activities (Activities) for the Yukon Flats National Wildlife Refuge (Yukon Flats Refuge) during a one-year period for $59,000. The regional director for the Service in Alaska signed a decision document on this action on Monday, April 26, 2004. The Agreement was endorsed by the Secretary of the Interior on April 30, 2004, and forwarded to the U.S. Congress for a 90-day review period.

DATES: The agreement period is proposed for August 1, 2004, through July 31, 2005.

ADDRESSES: The final agreement and supporting documentation can be obtained at:

1. Fairbanks—Yukon Flats National Wildlife Refuge Headquarters, 101 12th Avenue, Room 264, Fairbanks, Alaska 99701.

2. Anchorage—U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System—Alaska, 1011 East Tudor Road, Anchorage, Alaska 99503.

3. Internet—*http://www.r7.fws.gov/media/catg/index.htm*

FOR FURTHER INFORMATION CONTACT: Ted Heuer, Refuge Manager, (907) 456–0407.

SUPPLEMENTARY INFORMATION:

Authority: 16 U.S.C. 668dd *et seq.*, Pub. L. 103–413, Pub. L. 93–638, 25 CFR 1000.

What Is the Yukon Flats National Wildlife Refuge? The Yukon Flats Refuge is the third largest refuge within the National Wildlife Refuge System, administered by the Service in accordance with the National Wildlife Refuge Administration Act, as amended, 16 U.S.C. 668dd. Established by the Alaska National Interest Lands Conservation Act of 1980, the Refuge boundary encompasses 11 million acres. Village corporations and the Doyon, Ltd. regional Native Corporation for the area, established under the Alaska Native Claims Settlement Act (ANCSA, Pub. L.

92–203), own over 2 million acres within the boundary. A 300-mile reach of the Yukon River flows through the heart of the Refuge. There are over 20,000 shallow lakes, ponds, and wetlands in the Refuge, which is internationally recognized as a primary breeding area for North American waterfowl and water birds.

What Is the CATG? The CATG is a qualified tribal consortium composed of Arctic Village, Beaver, Birch Creek, Canyon Village, Chalkyitsik, Circle, Gwichyaa Zhee Gwich'in Tribal Government of Fort Yukon, Rampart, Stevens Village, and Venetie. These are predominantly Athabascan Indian villages within the boundary or very near the Yukon Flats Refuge. The offices of the CATG are located in Fort Yukon, Alaska, within the refuge boundary.

How Did the Service Develop the Agreement? The negotiations between the Service and the CATG were carried out in accordance with regulations in 25 CFR part 1000.

What Events Led to This Action? On June 16, 2003, the Service received a proposal, dated May 30, 2003, from CATG to assume some Activities at the Yukon Flats Refuge under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended by the Tribal Self-Governance Act, Public Law 103–413. The proposal asserted that in accordance with section 403(c) of Public Law 93–638, as amended, the Activities were of geographic, historical, and cultural significance to CATG and its member tribes. The parties first met on August 19, 2003, in a pre-negotiation meeting. Because of that meeting, CATG modified the proposal. The two parties agreed at the August 19 meeting that the federally mandated 10-day Service response time would begin following receipt of the modified proposal. According to the regulations implementing Public Law 93–638, the agency must provide a reply within 10 days of the pre-negotiation meeting, explaining whether an Activity is available for negotiation. The Service received the modified proposal on August 29, 2003. On September 5, 2003, the Service sent a response to CATG indicating that eight listed Activities were available to be included in an AFA because they were not inherently Federal functions, and they were of geographic and cultural significance to the tribes that make up CATG. The parties agreed to begin official negotiations on September 28, 2003. After this first meeting, the two parties continued to negotiate specifics of the AFA and reached this Agreement in late December 2003. The regulations allow for a public consultation process. The public was officially notified of a tentative Agreement in a public notice on February 13, 2004. The Service called the Agreement tentative because it declined to sign the Agreement until after the public consultation process. The notice was published in newspapers and posted on the Service's Alaska Region Web site. The notice stated that we would accept public comments for 45 days. Subsequently, we extended the comment period for an additional 15 days, which placed the last day to postmark comments on April 13, 2004. We extended the comment period for two reasons. First, on March 15, 2004, the Service's Internet and e-mail capabilities were disconnected due to a court order affecting several bureaus within the Department of the Interior (DOI). The public had been invited to submit comments to the Service via e-mail, and to read the tentative Agreement on the Service Web site. Nine days later, on March 24, 2004, our Internet and e-mail capabilities were re-established as allowed by a subsequent court order. The second reason to extend the comment period was based upon requests by numerous members of the public who requested an extension of the public comment period to 90 days.

What Is the Tribal Self-Governance Act? The Tribal Self-Governance Act of 1994 was enacted as an amendment to Public Law 93–638 and incorporated as Title IV of that Act. The Self-Governance Act allows identified self-governance tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA agencies within DOI. When dealing with non-BIA agencies, including the Service, identified tribes may enter into funding agreements that would allow them to conduct certain Activities of such non-BIA agencies. Eligible Activities include Indian programs (programs created for the benefit of Indians because of their status as Indians); Activities otherwise available to Indian tribes (any Activity that a Federal agency might otherwise contract to outside entities); and Activities that have a special geographic, historical, or cultural significance to an Indian tribe.

Public Law 93–638 and the regulations that implement the law (25 CFR part 1000.129) prohibit the inclusion of Activities in an AFA that are inherently Federal functions. The Refuge has no special Indian programs. All Activities of the Service on national wildlife refuges are for the benefit of the fish and wildlife resources, their habitats, and the American public. Activities that may have a special relationship with a tribe are the most promising for inclusion in an AFA. Whether to enter into an agreement with a tribe for these Activities is discretionary on the part of the Service. The Service recognizes that most members of CATG that live within the boundary of the Yukon Flats Refuge or very close to it, have used the lands and resources of the Yukon Flats Refuge for most of their lives, as did their ancestors, and therefore feel very much a part of these lands.

What Happens Now? The Service's regional director for Alaska signed a decision document on April 26, 2004. The Service and CATG signed the Agreement on April 30, 2004. The Secretary of the Interior accepted and endorsed the Agreement the same day. In accordance with 25 CFR 1000.177, the Secretary then forwarded the Agreement to the House Resources Committee, Office of Native American and Insular Affairs, and the Senate Committee on Indian Affairs. If there are no objections to the Agreement, it will go into effect 90 days after it was submitted to Congress.

Summary of Public Involvement

The Service announced the public comment period on February 13, 2004, by placing public notices in the principle daily newspapers in Anchorage, Fairbanks, and Juneau, Alaska. A joint Service-CATG news release was sent to Alaska media offices. The public notice, the news release, the Agreement with project work descriptions, and a series of questions and answers were posted on the Service's Alaska Web site, *http://www.r7.fws.gov/media/catg/index.htm.* When the Service's access to the internet and e-mail was stopped by court order, we placed announcements in the above newspapers and mailed an announcement to 77 parties who had commented earlier or who we knew were interested in the draft Agreement. The announcements stated that we could no longer receive comments by e-mail and requested that comments be sent by mail or facsimile. This announcement also discussed the extension of the public comment period to 60 days. We held public meetings in Fairbanks and Anchorage on March 15 and 18, 2004, respectively. Separate newspaper advertisements announced these meetings.

Nature of Public Comments

We received 147 public comments in a variety of ways. Several individuals submitted more than one comment. We received 63 letters by either mail or facsimile (or both), addressed to

President George W. Bush, Secretary of the Interior Gale A. Norton, Regional Director Rowan W. Gould, Refuge Manager Ted Heuer, Assistant Refuge Manager Jimmy Fox, Refuge Supervisor Jerry Stroebele, or other government officials. We received 66 different e-mail messages (often addressed to several recipients), including over 40 e-mail messages from one individual. At the Fairbanks public meeting, eight people made public statements. Seven people made statements at the Anchorage public meeting. All statements at the public meetings were recorded. Two individuals called Refuge Manager Ted Heuer during the official comment period and made statements over the telephone. One individual visited Refuge Headquarters to discuss the tentative Agreement and convey his concerns. Verbal comments were documented and added to the public record. Some comments were received before the formal notice of a public comment period, and a few were received following the public comment period. All comments were reviewed and placed in the public record. We received one letter of comment from the Alaska State Legislature. We received two comments from the Alaska Department of Fish and Game. We received 18 comments from organizations. We received 11 comments from Indian tribes, tribal entities, or other Native American organizations, groups, or corporations. We received 115 comments from individuals. The preponderance of comments recommended against the Service signing the Agreement; 126 comments did not support the Agreement as written. These comments ranged from outright opposition to support with specific modifications. We received 21 comments supporting the Agreement unconditionally. The section below summarizes and/or characterizes comments and attempts to respond collectively.

Response to Public Comments

Issue 1: Length of the public comment period and number of public meetings. Twenty-one responses urged that we extend the public comment period to 90 days and/or also hold public meetings in Juneau, Washington DC, and Missoula, Montana.

Response: The Service initially planned a 30-day public comment period, consistent with most other Service public comment periods for actions on national wildlife refuges in Alaska. However, we decided to provide for a 45-day public comment period because we were aware of the public interest in and controversy over, negotiations between the Service and the Confederated Salish-Kootenai Tribes in Montana. After we announced the 45-day public comment period, we later extended the public comment period to 60 days, based on:

(1) Public comments that recommended an extension of the public comment period; and (2) a court-ordered shutdown of DOI internet access which lasted for nine days, disrupting the Service's ability to receive comments by e-mail, and the ability of the public to review the Agreement on the Service's Web site. If it had not been for the interruption of our e-mail and internet, we would have waited longer in the 45-day comment period to decide whether to extend the comment period, and if so, for how long.

We placed public notices in newspapers in Anchorage, Fairbanks, and Juneau announcing the extension of the public comment period, and providing information on where, when, and how additional information could be obtained and public comments could be submitted. As we neared the end of the 60-day public comment period, we had received comments from all of the conservation groups and other organizations that had expressed interest in this issue or had previously contacted us with questions. Given the brevity of the Agreement and supporting documents, the limited funding amount involved, the small number of public comments received, and the relatively low turnout for the public meetings in Fairbanks and Anchorage, the Service did not believe that another extension of the public comment period and additional public meetings were necessary or would be beneficial.

Many of the comments we received addressed both the Agreement with CATG and the current negotiations between the Service and the Confederated Salish-Kootenai Tribes, concerning Activities at the National Bison Range in Montana. The National Bison Range is also a unit of the National Wildlife Refuge System, administered by the Service's Region 6 Headquarters in Denver, Colorado. We provided copies of all of these comments to Service officials in Montana and Denver. We decided that a public meeting to discuss the Agreement for Activities at the Yukon Flats Refuge in Alaska, if held in Missoula, Montana, would generate public interest and questions more specifically applicable to the National Bison Range, but of little applicability to the Yukon Flats Refuge Agreement.

Issue 2: Preparation of an environmental impact statement. Twenty-six responses requested that the Service prepare an environmental impact statement (EIS) on the Agreement.

Response: In response to these comments, we once more reviewed DOI policy on compliance with the National Environmental Policy Act. The determination to proceed or not to proceed with this Agreement is an administrative decision. The Service does not believe the Agreement is a major federal action that will result in significant environmental impacts. The Service considers the work that is identified in the Agreement to be part of the routine operations, maintenance, and management of the Yukon Flats Refuge (whether done by Service employees, CATG employees, or another contractor). The Service has found that routine operation, maintenance, and management activities do not (individually or cumulatively) have a significant effect on the human environment and are, therefore, categorically excluded from National Environmental Policy Act compliance (part 516 of the Departmental Manual, chapter 6).

The Service did complete a comprehensive conservation plan/environmental impact statement/wilderness review of the Yukon Flats National Wildlife Refuge in October 1987. This CCP and EIS provide overall management direction and guidance for the Refuge. The Activities identified in the Agreement with CATG are not different from the management activities addressed in the Refuge CCP. Management of 17(b) easements, environmental education, data collection and research, wildlife management, and subsistence management and monitoring are all addressed in the 1987 CCP/EIS. Departmental Policy, 516 DM 2, does require NEPA documentation if the proposed action:

> * * * establishes a precedent for future action or represents a decision in principle about future actions with potentially significant environmental effects.

Because the Service is retaining all responsibility and authority for managing the Refuge, and the refuge manager is responsible for following existing laws, regulations, Service policies, and plans for management of the Refuge, we do not envision any adverse environmental impacts will result from this proposed action.

Issue 3: Support more cooperation with local residents. A number of responses supported the Service's efforts to work more cooperatively with Yukon Flats residents. Several people

stated that local residents would have a better understanding and appreciation for the work of the Service if they were involved in the day-to-day activities of the Refuge.

Response: The Agreement is the result of months of discussions with one main goal in mind: Adhere to our responsibilities as mandated in various laws, regulations, and policies. For instance, Public Law 93–638 obligates a Department of the Interior agency to recognize a tribe's right to negotiate for an annual funding agreement. The Compact of Self-Governance between CATG and the United States of America (Compact) and the Service's Native American Policy dictate that the Service is to cooperate in a government-to-government relationship with Indian tribes. We are also legally bound by the purposes of the Yukon Flats Refuge and other management requirements set forth in the Alaska National Interest Lands Conservation Act (Pub. L. 96–487), which established the Refuge. We administer and manage the Refuge for all Americans in accordance with the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd *et seq.*), as amended, and the implementing regulations and policies of that Act.

Issue 4: Support for the Agreement. Twenty-one comments expressed unconditional support for the Agreement. An additional 12 comments were supportive of the Agreement in concept, but believed the language should be modified to clarify certain issues.

Response: We negotiated an agreement that follows three key documents: Public Law 93–638, the Compact, and the National Wildlife Refuge System Administration Act (as amended). This is the first AFA in the history of the Service, and we had no Service examples to follow; however, we did utilize the framework of an existing AFA that we obtained from the National Park Service. After careful review of public comments, we re-negotiated with CATG and modified the Agreement to clarify several issues. This document notes those changes.

Issue 5: This Agreement will set a bad precedent for national wildlife refuges and national parks. Thirty-seven comments, while sometimes applauding the Service and CATG for their efforts to work together more cooperatively, were very concerned about the precedent this Agreement would set for other national wildlife refuges, national parks, national monuments, national historic sites, Federal water projects, etc. (Several comments were unconditionally opposed to the Agreement because of this precedent.)

Response: We are very aware that this Agreement will set an example for the National Wildlife Refuge System. We believe this Agreement, as currently amended to address some of the concerns raised by the public, sets a good standard for the National Wildlife Refuge System and is consistent with all applicable laws and regulations regarding Tribal Self-Governance and the National Wildlife Refuge System. It should also be noted that this is not the first non-BIA annual funding agreement for DOI programs of special geographic, historical, or cultural significance to participating Tribes (*see* 25 CFR subpart F). The National Park Service has had an annual funding agreement with the Grand Portage Band of Lake Superior Chippewa, for maintenance work at the Grand Portage National Monument in Minnesota, for several years. We recognize that, particularly in Alaska where Native Americans are still largely dependent on fish, wildlife, and plants on national wildlife refuges, a strong and continuing cooperative effort must be nurtured and maintained between Service employees and tribal members. This Agreement is one of many tools available to us to further cooperation. We very carefully exercised our discretion in entering this Agreement and would be equally careful in negotiating any future agreements with tribes.

Issue 6: Competitive contracting would be better. Many comments suggested that competitive contracts would make more efficient use of limited refuge budgets and would be a more equitable way of doing business.

Response: The Service has, and will continue to use, competitive contracts where appropriate. However, the law and DOI regulations (25 CFR 1000.122–126) implementing Tribal Self-Governance, allow tribes to formally request negotiations for AFAs for programs, functions, services, and activities of special geographic, historical, or cultural significance to the tribe. The ten tribes which compose CATG have a special geographical and cultural relationship to the lands and resources within the refuge boundaries. The law and regulations provide a preference for these types of programs, and provide the agency discretion to award the AFAs on a non-competitive basis. It would not have been appropriate for the Service to enter good faith negotiations with CATG (as was required by the regulations), reach this Agreement, and then decide to award the same work through a competitive process.

We believe that the dollar amounts awarded to CATG through this annual funding agreement are fair and reasonable for the work being performed, whether being done by CATG or another contractor. Because: (1) CATG's office and employees are located within the boundaries of the refuge; and (2) logistical costs would be very high for any individual or business outside of the Yukon Flats, it is unlikely that another contractor could do this same work as cost effectively as CATG.

Federal conservation agency budgets, including the Service's budget, are forecast to decline in the next several years. For this reason, successor AFAs with CATG in future years, and any agreements requested by other tribes for national wildlife refuges, will continue to be subject to a high bar test for efficiency and cost-effectiveness.

Issue 7: Request that we not use Public Law 93–638 authority to contract. One comment emphasized that the Service has the discretion to enter an AFA and urged us to enter a different contracting arrangement.

Response: We agree that the Service has complete discretion to enter into this Agreement. We have received requests and formal proposals from CATG and other tribes, for several years, to negotiate agreements under provisions of Public Law 93–638. Until 2003, we declined to enter AFAs for several reasons. During this same period, however, the Service has contracted with CATG for work under other contract authorities. We have seen CATG build their capacity for this type of work and increase their expertise. Because CATG has agreed to perform the Activities under the terms that were mutually agreed upon, we choose to enter this Public Law 93–638 AFA with the hope and expectation that increased cooperation and coordination with the tribes will follow.

Issue 8: Question about the Service's authority to enter this Agreement. One comment questioned whether the Service has the authority to enter into this Agreement and cited Section 5 of the National Wildlife Refuge System Improvement Act of 1997.

Response: Section 5 of the Act does provide for the Service:

> * * * to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

However, the Act does not limit the authority of the Service to enter into other contracts or agreements for work on national wildlife refuges, as allowed by other Federal laws. It is also important to note that we did not enter into a cooperative agreement (or AFA)

for CATG to manage programs of the Refuge. We retained all of our refuge management responsibilities and authorities.

Issue 9: Concerns about tribes' sovereign immunity. Ten comments expressed concern that if CATG has sovereign immunity there would be no way for the government to get money back if the work is not completed satisfactorily. Two comments were concerning legal recourse should a member of the public be accidentally injured by a CATG employee working under this Agreement.

Response: The CATG does not have sovereign immunity. While the member tribes of CATG are federally recognized Indian tribes with sovereign immunity, CATG has no governmental status. The CATG is a nonprofit tribal organization as defined in Public Law 93–638, but it is not immune to legal action. Members of the public who might be injured because of actions by a CATG employee have legal recourse against CATG, and to the U.S. Government under the Federal Tort Claims Act.

Issue 10: The Service should not pay CATG at the beginning of the contract. Several comments stated it was a bad business practice to give a contractor all of the money up-front.

Response: The Compact of Self-Governance entered into by the Secretary of the Interior and the Council of Athabascan Tribal Governments on October 1, 1999, specifically states:

> For each fiscal year covered by an AFA negotiated under this Compact, the Secretary shall pay the funds specified for that fiscal year under the AFA by paying the total amount provided for in the AFA in one advance lump sum payment to the extent applicable.

The Service is working with the member tribes of CATG in a government-to-government relationship under Public Law 93–638. Normal government contracting regulations do not apply to that Act. If the Federal government "reassumes" programs from a tribe (or consortium like CATG), based on a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety, then under 25 CFR 100.315:

> * * * the Tribe/Consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

Issue 11: Concerns that the Agreement could limit visitor access. A few comments expressed concern about the potential of this Agreement to have an adverse impact on their ability to access or use Refuge lands.

Response: This Agreement will not affect whom, when, or where the public can use the Refuge for hunting, fishing, wildlife observation and photography, environmental education and interpretation, or other uses. It will not affect the management direction for the Refuge, which was defined with substantial public input through the refuge comprehensive conservation planning process. The Refuge CCP was approved and adopted in 1987.

We do hope that the Agreement will improve the public's ability to access Refuge lands through the identification and marking of public access easements across Native corporation lands within the Refuge boundary. It is a federal responsibility to mark these easements. Similar programs have been underway on other national wildlife refuges in Alaska for several years.

Issue 12: Waiver of regulations. Several comments objected to provisions in the Compact [Section 14 (b)] and the Agreement [Section 8. C.] that allow CATG to request a waiver of any DOI regulation that CATG believes will present an obstacle to carrying out the Agreement. There was also concern expressed about the wording in the Compact, which states that a request for a waiver of regulations can be denied:

> * * * only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by federal law.

Response: The regulation waiver provision in the Compact [Section 14(b)(ii)] is qualified with the clause:

> * * * Until such time as regulations are promulgated * * *

The Compact was signed on October 19, 1999. The regulations currently in effect at 25 CFR part 1000 became effective on January 16, 2001, and codified the waiver provisions, which are now different and more comprehensive than in the Compact. In 25 CFR 1000.225, for a non-Title I eligible Activity (such as those covered by this Agreement) the Secretary may deny a waiver request if it is:

> (b) (1) Prohibited by Federal law; or (b) (2) Inconsistent with the express provisions of the AFA.

In 25 CFR 1000.222, the tribe must submit a written request for a waiver from the appropriate bureau director for non-BIA programs. Therefore, the tribe would have to address the request to the Director of the Service. The Director would consult with the Alaska Region in reviewing this request. The request could not be granted if it is prohibited by Federal law or is inconsistent with the Agreement.

Issue 13: Federal management responsibility. Many comments were concerned about the Service turning over management responsibilities to a tribe. One comment said the Agreement is suggestive of co-management. Another said the Agreement would let CATG set priorities on the Refuge. They suggested that Sections 7(B) and 8(B) be revised. Some said all programs, functions, services, and activities of the National Wildlife Refuge System are inherently Federal.

Response: The National Wildlife Refuge System Administration Act, as amended, is quite clear that the responsibility and authority for the administration and management of the National Wildlife Refuge System lies with the Service. We thought this was clear in the Agreement, but in response to this concern, and after re-negotiation with CATG, we changed the wording under Section 7A. (FWS Direction and Control) as follows: (Italics are added to the sentences below in this document to highlight the change.)

From:

> *A. Refuge Manager.* Under this AFA, the Refuge Manager will retain ultimate responsibility and authority for directing and controlling the *operation* at the Yukon Flats NWR.

To:

> *A. Refuge Manager.* Under this AFA, the Refuge Manager will retain all responsibility and authority for directing and controlling the *administration, management, and operations* at the Yukon Flats NWR.

The Service did not give away any management responsibilities or authorities under this Agreement. We are aware of our public and resource management responsibilities. In this Agreement, we have included only Activities that we believe will benefit the Refuge, the public, and CATG. We agree that there are inherently Federal functions involved in managing a national wildlife refuge. However, we do not claim that all work that takes place on a national wildlife refuge is inherently federal and needs to be performed by Service employees. We often rely on contractors, universities, other agencies, and volunteers to provide some of our aircraft and/or logistical support, data collection (including harvest data) and analysis, education and outreach, maintenance of equipment, printing, fire suppression, *etc.*

This Agreement does not establish co-management. The negotiation process set the priorities and the standards of the work to be done under the Agreement. If we decide that priorities or standards must be revised during the execution of the Agreement, we will re-

negotiate for those revisions, in order to include them in a cost-effective manner.

Issue 14: Reference to laws affecting national wildlife refuges. One comment noted that the Agreement did not refer to the National Wildlife Refuge System Improvement Act or the Alaska National Interest Lands Conservation Act.

Response: The Agreement does refer to the Alaska National Interest Lands Conservation Act in Section 4 under the definition of the Yukon Flats National Wildlife Refuge. We agree that there should be a reference to the National Wildlife Refuge System Improvement Act in the Agreement, and have included it and the National Wildlife Refuge Administration Act in Section 4. (**Note**—the Improvement Act of 1997 amended the Administration Act of 1966.)

Issue 15: Replacing qualified Service personnel. Several comments expressed concern that this Agreement, and others that may follow, will replace our current dedicated, well-trained refuge staff with less qualified individuals.

Response: This Agreement will not lead to the loss of existing Service employees. Employees will neither be replaced nor will their duties be diminished under this Agreement. We view this Agreement as an expansion of the Refuge's existing programs and services to the public. However, we have said during negotiations with CATG that whenever there is a vacancy in an existing Refuge position in Fairbanks (due to retirement, voluntary reassignment, or merit promotion), we will look at the duties performed by that position to see if some of the work could be efficiently performed by CATG. If feasible and cost efficient, we may then restructure the duties of the vacant position. This would likely be complex, because other personnel management issues are often at play in position management, and because in Fairbanks the headquarters of the Yukon Flats, Kanuti, and Arctic National Wildlife Refuges share some staff for some duties. While we have encouraged CATG to build natural resource management capacity, we have also made it clear that we will not reassign existing Refuge employees to free up new work for CATG.

The Service also maintains a Student Career Experience Program where graduating student employees are reassigned to vacant refuge positions. These students have career-conditional employment status and have priority for placement. Most of them have advanced degrees in biology or natural resource management. The Service in Alaska has successfully used this program to recruit, train, and permanently hire several Alaska Natives and will continue to place a priority on this training program.

Issue 16: The CATG personnel should meet certified wildlife biologist standards. One comment stated that CATG personnel performing biological investigations should be certified wildlife biologists under a program established by The Wildlife Society.

Response: The Office of Personnel Management (OPM) sets standards of required college or other training coursework for specialized professional job series. The OPM does not require applicants to meet the standards set by The Wildlife Society for an individual to meet their Certified Wildlife Biologist classification. The CATG Liaison for the project, Eastern Yukon Flats Moose Population Estimation Survey, included in the Agreement, is a wildlife biologist and former employee of the Alaska Department of Fish and Game. Work to be performed under this project requires knowledge of wildlife management practices in general and of moose management specifically. The CATG Liaison has that knowledge and experience. Some of the work requires exceptional low-level piloting skills and a good safety record. There are some charter pilots available in Alaska that meet these requirements who are also routinely contracted by the Service and the Alaska Department of Fish and Game.

Some of this work only requires the skill to spot moose out of an airplane, to determine individual characteristics of the moose observed from a turning airplane, and to keep good records. This particular project grew out of earlier programs where local residents with good game spotting skills were employed as volunteer aerial observers to: (1) Utilize their skills, and (2) provide credibility with local people for the results of the agencies' moose surveys and census.

Issue 17: The Service should hire Alaska Natives. One comment suggested we use the local hire authority granted under provisions of Section 1308 of the Alaska National Interest Lands Conservation Act. The Act provides for hiring of any individual, who because of having lived or worked in or near a conservation system unit, has special knowledge or expertise concerning the natural or cultural resources of such unit. The law provides that individuals with these attributes shall be considered for any position within the unit, without regard to any provision of the civil service laws or regulations that require minimum periods of formal training or experience (and other provisions).

Response: The Service routinely reviews new or vacant positions on refuges in Alaska for consideration of recruitment under the local hire provisions of ANILCA. However, recruiting Alaska Natives under other hiring authorities can often be more advantageous to the individual by allowing better career mobility options. Currently the Refuge employs two Alaska Natives hired under the ANILCA local hire program, and one other Alaska Native hired through the Student Career Experience Program. The Service aggressively seeks to diversify its workforce through recruitment outreach efforts and the use of all available hiring regulations and programs. The Activities included in this Agreement require various skills that any one individual may not have. Under the Agreement, the CATG can assign the work to the appropriate existing employee.

Issue 18: Concern about a conflict of interest. Two comments expressed concern that the Agreement creates an appearance of, or the potential for, conflict of interest because CATG members have actively pursued wildlife harvest allocation decisions that benefit their interests.

Response: The wildlife harvest information will be collected according to protocols developed by the Federal Office of Subsistence Management, the Service's Migratory Bird Management Office, and by the Subsistence Division of the Alaska Department of Fish and Game. These offices have found that engaging local people to collect this information leads to better information than can be obtained by agency personnel. The harvest reporting is done by household, rather than by individual hunters and is more accurate. The information reported can not be traced back to the individual hunter. This encourages honest reporting.

The moose population survey in this Agreement is a continuation of an existing program that has been, and will continue to be, well coordinated with the Service and the Alaska Department of Fish and Game. Usually these agencies are conducting similar surveys in adjacent areas at the same time. Information obtained from these surveys will be used in making management decisions—that is the purpose of the surveys. The CATG, or members of CATG, will likely comment on proposals affecting seasons, bag limits, and harvest allocations for the moose population of the surveyed area. However, due to the open, collaborative public processes used by the Federal Subsistence Board and the Alaska Board of Game in making management

decisions, and the collaborative and cooperative manner in which the moose surveys are conducted, we are not concerned that CATG's participation in surveys would result in either inaccurate information before the Boards or in undue influence on their decisions. We do not believe the issue would constitute a conflict of interest. Moreover, a positive result will be providing more credibility to agency information and the Boards' actions to the local residents.

Issue 19: Concern about study design and approval. This comment from the Alaska Department of Fish and Game expressed concern that the survey designs lack sufficient detail and the proper involvement of the Department in management of resident wildlife in Alaska.

Response: Upon receipt of this letter from the Alaska Department of Fish and Game, we discussed this issue with the Department and believe we resolved their concerns. The Service acknowledges that both the Alaska Department of Fish and Game and the Service share a mutual concern for fish and wildlife resources and their habitats, and both are engaged in extensive fish and wildlife conservation, management, and protection programs in Alaska. We desire to develop and maintain a cooperative relationship that will be in the best interests of both agencies, the concerned fish and wildlife resources and their habitats, and produce the best public benefits.

We would not enter this Agreement with CATG, or negotiate future agreements, where specific wildlife management work was not accomplished by qualified individuals or according to recognized wildlife management techniques and procedures acceptable to both the Service and the Alaska Department of Fish and Game. The work to be performed in the projects, Eastern Yukon Flats Moose Population Estimation Survey and Wildlife Harvest Data Collection, has been, and will continue to be, extensively coordinated with the Alaska Department of Fish and Game. These projects are designed and will be conducted according to established and acceptable procedures. The results of Activities performed by CATG must be acceptable to, and useable in, management and allocation decisions by the Service, the Alaska Department of Fish and Game, the State Board of Game, and the Federal Subsistence Board. Because the information obtained from these projects will be subject to close scrutiny by these entities and by the general public, both the Service and CATG are aware that unacceptable results could jeopardize inclusion of this work in future agreements.

Issue 20: Public review of amendments to the Agreement. A number of comments expressed belief that the public should be able to review all proposed changes to an active agreement.

Response: We are strongly encouraged by the National Wildlife Refuge System Administration Act, as amended, to notify the public of our refuge management actions. The regulations implementing Pub. L. 93–638 provide for an optional public consultation process in the negotiation of an AFA. (*See* 25 CFR subpart I—Public Consultation Process, part 1000.210–.214.) Because of our commitment to public involvement, the Service's Alaska region will be guided by the following operational standards for public notice when negotiating amendments or successor agreements. If during the course of this Agreement, the Service and CATG negotiate an amendment to the 2004–2005 Agreement which does not materially change the type of work to be done, or does not increase the funding level by more than 25 percent, we will not notify the public until after the fact. If we propose to amend the 2004–2005 Agreement by more than 25 percent of the funding level or materially change the work, we will first notify the public with a minimum 15-day public comment period. If we negotiate a successor agreement for 2005–2006 that materially changes the work to be done and/or exceeds the 2004–2005 Agreement amount by more than 25 percent, we will notify the public and have a minimum 30-day public comment period. If, over time or through negotiation, we have substantially increased the cost of successor agreements, we would consider changing the percentages discussed here. We are hopeful of a long-term, successful relationship with CATG and fully expect to negotiate successor agreements.

Issue 21: Moose harvest information should be reported monthly. One comment suggested that the specifications for the Wildlife Harvest Data Collection include a requirement for monthly reporting of moose harvests in the deliverables section.

Response: Originally, this was addressed in the timeline section of the proposal. We have moved the requirement to the deliverables section, and it now reads:

> A monthly report will be prepared that summarizes the moose harvested in each village. In addition, a summary will be prepared annually for all species on which harvest data has been collected. The summary will be reported to the FWS Liaison via phone, fax, or e-mail. The February 28th report will also include a summary of the moose harvested from August 25, 2004, to February 28, 2005. The report formats will follow CATG Technical Document 03–02.

Issue 22: Random surveys may be required. One comment also suggested that random sampling of a subset of larger communities should be considered as a cost savings measure to ensure success of the survey.

Response: To address this comment we have inserted the following two sentences in the second paragraph of the procedures section:

> If budget constraints limit the ability to survey 100% of Yukon Flats village households, for the Village of Fort Yukon only, a subset of households may be sampled. In this instance, 50–75% of the households would be randomly selected for survey and the results will be extrapolated to represent the Fort Yukon harvest.

Issue 23: Concern that the Refuge would be managed for Native Americans. Three comments expressed their concern that the Agreement would subordinate the purposes of refuge management to the benefit of the tribes.

Response: The Yukon Flats National Wildlife Refuge and other national wildlife refuges have always been, and will continue to be, managed for all Americans—present and future generations. The Agreement would allow some of the work of the Service on the Refuge to be accomplished by CATG. However, the refuge manager will retain all responsibility and authority for management and decision-making. The rights of the American public to use the Refuge will not be diminished in any manner.

Issue 24: Section 403(k) precludes this Agreement. One comment suggested that the Service and the Department have downplayed Section 403(k) of the Tribal Self-Governance Act.

Response: We reviewed the applicable sections of the law and consulted with our attorney to ensure that our actions were correct. Here are the applicable sections of the law:

> Section 403(k): Disclaimer.—Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be

included in a compact under section 403(b)(2).

Section 403(b)(2) states: (b) Contents.—Each funding agreement shall—(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 405(c), except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law.

Section 405(c) states: Report on Non-BIA Programs.—(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreement with tribes participating in Self-Governance under this title, the Secretary shall—

(A) Review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or offense concerned; and

(B) Not later than 90 days after the date of enactment of this title, provide to the appropriate committees of Congress a list of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with concurrence of tribes participating in Self-Governance under this title, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

The list of eligible programs, services, functions, and activities required by Section 405(c) was last published in the **Federal Register**, Volume 67, No. 66, Friday, April 5, 2002, page 16434:

Some elements of the following programs may be eligible for inclusion in a self-governance annual funding agreement. * * * This listing is not all-inclusive but is representative of the types of programs, which may be eligible for tribal participation through an annual funding agreement.

For purposes of this review, we list below only those programs or elements listed in the **Federal Register** which are similar to those included in this Agreement.

1. Subsistence Programs within Alaska
2. Fish & Wildlife Technical Assistance, Restoration, & Conservation:
   a. Fish & wildlife population surveys
   b. Habitat surveys
   e. Fish & wildlife program planning
4. Education Programs:
   a. Interpretation
   b. Outdoor classrooms
9. National Wildlife Refuge Operations & Maintenance
   a. Construction
   d. Maintenance
   f. Biological program efforts

The Agreement covers the following Activities only: (1) Wildlife harvest data collection; (2) moose surveys; (3) environmental education and outreach; (4) maintenance of equipment and facilities at Fort Yukon; and (5) locating and marking trails on private lands within the refuge boundary where the government retained an easement under provisions of section 17(b) of the Alaska Native Claims Settlement Act of 1971. [The lands on which these easements are located are privately owned by Native village corporations and Native regional corporations. The easements provide for legal access by the public across (and limited camping on) the private lands in order to access public lands beyond.] The Agreement does not give up any inherently federal responsibilities for budget allocation, planning, decisionmaking, assignment of priorities, or any other over-arching government responsibility for these Activities. The Service has retained the management responsibility for these Activities.

Dated: May 18, 2004.

Rowan W. Gould,

Regional Director, Alaska Region, Fish and Wildlife Service.

[FR Doc. 04–15704 Filed 7–9–04; 8:45 am]

BILLING CODE 4310–JK–U

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The United States International Trade Commission (USITC) has submitted a request for emergency processing to the Office of Management and Budget for review and clearance of questionnaires, in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The USITC has requested OMB approval of this submission by COB July 14, 2004.

Purpose of Information Collection: The forms are for use by the Commission in connection with investigation No. 332–460, Foundry Products: Competitive Conditions in the U.S. Market, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the House Committee on Ways and Means. The Commission expects to deliver the results of its investigation to the Committee by May 4, 2005.

Summary of Proposal:

(1) Number of forms submitted: One.

(2) Title of forms: Producer Questionnaire, Foundry Products.

(3) Type of request: New.

(4) Frequency of use: Single data gathering, scheduled for 2004.

(5) Description of respondents: U.S. firms which produce foundry products.

(6) Estimated number of respondents: 400.

(7) Estimated total number of hours to complete the forms: 16,000.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Judith-Anne Webster (project leader) (USITC, telephone No. (202) 205–3489) or Deborah McNay (deputy project leader) (USITC, telephone No. (202) 205–3425). Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: July 6, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15674 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of 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 Jimray Technology, Inc. on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: 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 Jimray Technology, 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 four respondents on the basis of consent orders.

On June 7, 2004, the ALJ issued an ID (Order No. 30) terminating the investigation as to respondent Jimray Technology, Inc. d/b/a Progauges Co., Ltd. ("Jimray") on the basis of a settlement agreement and consent order. The ALJ observed that respondent Jimray and complainant Auto Meter filed a joint motion to terminate based on a settlement agreement between them, and a proposed consent order. The Commission investigative attorney filed a response supporting the motion to terminate the investigation. 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 section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: July 2, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15675 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–491 Inv. No. 337–TA–481 (consolidated)]

In the Matter of: Certain Display Controllers and Products Containing Same and Certain Display Controllers With Upscaling Functionality and Products Containing Same; Notice of Commission Determinations to Review Portions of an Initial Determination Finding a Violation of Section 337 of the Tariff Act of 1930 With Respect to one Respondent and Portions of an Initial Determination on Remand Finding a Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's ("ALJ's") initial determination ("ID") issued on May 20, 2004, on remand in Inv. No. 337–TA–481, Certain Display Controllers With Upscaling Functionality and Products Containing Same ("Display Controllers I" or "481 investigation"), and the ALJ's final ID issued on April 14, 2004, in Inv. No. 337–TA–491, Certain Display Controllers and Products Containing Same ("Display Controllers II" or "491 investigation"). The Commission has also determined to grant the motion for leave to file a reply, which motion was filed on May 13, 2004, by a respondent in the 491 investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., or Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3061. Copies of all 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. 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/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Display Controllers I on October 18, 2002, based on a complaint filed by Genesis Microchip (Delaware) Inc. of Alviso, Calif, naming Media Reality Technologies, Inc. of Sunnyvale, Calif. ("MRT"); Trumpion Microelectronics, Inc. ("Trumpion") of Taipei City, Taiwan; and SmartASIC, Inc. of San Jose, Calif. as respondents. 67 FR 64411. On January 14, 2003, the then presiding ALJ issued an ID terminating respondent SmartASIC from the investigation on the basis of a settlement agreement. That ID was not reviewed by the Commission. The final ID in Display Controllers I ("the 481 Final ID") issued on October 20, 2003. 68 FR 69719. The ALJ found no violation of section 337 based on his findings that respondents' accused products do not infringe claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, or 39 of the '867 patent, claims 1 and 9 of the '867 patent are invalid, and that complainant Genesis has not satisfied the domestic industry requirement of section 337.

On December 5, 2003, the Commission determined to review the 481 Final ID in part. Id. The Commission determined to review portions of the ALJ's claim construction, all of the ALJ's non-infringement findings, the ALJ's finding that complainant Genesis does not practice any claims of the '867 patent, and the ALJ's findings that neither the Spartan reference nor the ACUITY Application Note anticipate the asserted claims of the '867 patent. On review of the 481 Final ID, the Commission determined to reverse portions of the ALJ's claim construction and to remand the investigation to the ALJ. On January 20, 2004, the Commission ordered that the ALJ conduct further proceedings and make any findings necessary in order to determine whether, in light of the claim construction determinations made by the Commission: (a) the accused products in the 481 investigation infringe the asserted claims of the '867 patent; (b) complainant Genesis satisfies the technical prong of the domestic industry requirement; (c) the Spartan Zoom Engine constitutes prior art to the '867 patent and whether it anticipates the asserted claims of the '867 patent; and (d) the Acuity Application Note constitutes an enabling prior art reference that anticipates the asserted claims of the '867 patent. 69 FR 3602 (Jan. 26, 2004). On review of the 481 Final ID, the Commission remanded Display Controllers I to the ALJ. 69 FR 3602 (Jan. 26, 2004). The remand order directed that the ALJ issue his findings by May 20, 2004, and set a schedule for the filing by the parties of comments on the ALJ's findings and response comments. The remand order also extended the target date for completion of the 481 investigation to August 20, 2004.

The Commission instituted Display Controllers II on April 14, 2003, based on a complaint filed on behalf of Genesis. 68 FR 17,964 (Apr. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361 ("the '361 patent"); certain claims of the U.S. Patent No. 5,953,074 ("the '074 patent"); and certain claims of the U.S. Patent No. 6,177,922 ("the '922 patent"). The notice of investigation named three respondents: Media Reality Technologies, Inc. of Taipei, Taiwan; MRT; and Trumpion. Id. Both Trumpion and MRT were also named respondents in Display Controllers I.

On June 20, 2003, the ALJ issued an ID (Order No. 5) amending the complaint and notice of investigation in Display Controllers II to add MStar Semiconductor, Inc. ("MStar") as a respondent, additional claims of the '074 patent, and claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, and 39 of the '867 patent, the same patent at issue in the 481 investigation. That ID was not reviewed by the Commission. 68 FR 44,967 (July 31, 2003).

On November 10, 2003, the ALJ issued an ID (Order No. 38) granting complainant's motion to terminate the Display Controllers II investigation with respect to Trumpion, the '922 patent, and the '074 patent. That ID was not reviewed by the Commission.

On January 6, 2004, a tutorial session was held in Display Controllers II. An evidentiary hearing was held on January 6–15, 20, and February 2–3, 2004. On April 14, 2004, the ALJ issued his final ID ("the 491 Final ID") and recommended determination on remedy and bonding in Display Controllers II. In the 491 Final ID, the ALJ found a violation of section 337 with respect to respondent MStar, but no violation with respect to respondent MRT.

Complainant Genesis, respondents MRT and MStar, and the Commission investigative attorney each petitioned for review of portions of the 491 Final ID, and filed responses to the petitions for review. On May 13, 2004, respondent MStar filed a motion for leave to reply and with an attached reply.

On May 20, 2004, the ALJ issued an ID in Display Controllers I ("the 481 Remand ID") on remand. In the 481 Remand ID, the ALJ found a violation of section 337 with respect to both respondents in Display Controllers I, MRT and Trumpion.

On May 21, 2004, the Commission issued an order consolidating the 481 and 491 investigations and set the target date for completion of the consolidated investigation as August 20, 2004.

On June 2, 2004, respondent Trumpion filed a petition for review of the 481 Remand ID. On the same day, the IA filed comments on issues decided in the 481 Remand ID. On June 7, 2004, respondent MRT filed a petition for review of the 481 Remand ID. The IA and complainant Genesis filed timely responses to the petitions.

Having reviewed the record in this consolidated investigation, including the parties' written submissions, the Commission determined to grant respondent MStar's May 13, 2004, motion for leave to file a reply, to review-in-part the 481 Remand ID, and to review-in-part the 491 Final ID.

With respect to the 481 Remand ID, the Commission determined to review: (1) the ALJ's infringement analysis with regard to the wherein clause of claims 1 and 12 (Issues I.A and I.B in the 481 Remand ID); (2) the ALJ's infringement and domestic industry analysis and findings with regard to the "receiving means" limitation in claim 12 and claims 13, 16, 17, 38, and 39 which depend from claim 12 (Issues I.A, I.B, and II.A in the 481 Remand ID); and (3) the ALJ's infringement finding with respect to Trumpion's t–0944 and t–0947 products (Issue I.B in the 481 Remand ID).

With respect to the 491 Final ID, the Commission determined to review the ALJ's construction of the following claim language in the '361 patent: "according to" (claims 13(b), 13(c), 13(e), 15(b), 15(c), and 15(e))(Issues II.A.5, II.A.8, II.A.11, II.B.5, II.B.8, and II.B.10 in the 491 Final ID); "address generation circuit coupled to the panel control logic" (claims 13(c) and 15(c)) (Issues II.A.6 and II.B.6 in the 491 Final ID); and "wherein the address generation logic circuit selectively repeats an address for expanding the image vertically" (claim 15) (Issue II.B.11 in the 491 Final ID). The Commission also determined to review the ALJ's findings of fact and conclusions of law with respect to infringement, domestic industry, and invalidity to the extent that those findings and conclusions depend upon the ALJ's construction of the claim limitations of the '361 patent under review. The Commission further determined to review the ALJ's findings in the 491 Final ID (ID at 208–09, Issue VI.B.2.b) that claims 1 and 9 of the '867 patent are not anticipated by the '071 patent, and the ALJ's ultimate finding that the priority date for the '867 patent is February 24, 1997 (*i.e.*, the filing date for the application that matured into the '867 patent). The Commission determined to review the ALJ's findings in the 491 Final ID (ID at 208–09, Issue VI.B.2.b) that claims 2, 33, 34, 35, and 36 of the '867 patent are not anticipated by the '071 patent. The Commission determined to review the ALJ's findings of fact and conclusions of law set forth in the 491 Final ID at 211–13 under the headings Issue VI.B.3.c and VI.B.3.d, and consequently, the ALJ's conclusions that claim 36 of the '867 patent is not invalid as obvious over the '071 patent in view of either U.S. Patent No. 5,227,882 to Kato or U.S. Patent No. 5,838,381 to Kasahara. Finally, the Commission determined to review the

ALJ's infringement findings concerning claims 1, 2, 9, 33, 34, 35, and 36 of the '867 patent with respect to the timing equality limitation of the wherein clause of the '867 patent.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The Commission is particularly interested in receiving written submissions that address the following issues:

The 481 Remand ID.

1. Do the MRT accused products literally infringe the "receiving means" limitation of claim 12 of the '867 patent (Issue I.A in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the MRT accused products performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the MRT accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) Provided the MRT accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the MRT accused products performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

2. Do the Trumpion accused products literally infringe the "receiving means" limitation of claim 12 of the '867 patent (Issue I.B in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the Trumpion accused products performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the Trumpion accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) provided the Trumpion accused products contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the Trumpion accused products performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

3. Do the Genesis products at issue practice the "receiving means" limitation of claim 12 of the '867 patent (Issue II.A in the 481 Remand ID)? Please explain your position applying the requirements for establishing literal infringement of a § 112 ¶ 6 limitation in accordance with the teachings of the Court of Appeals for the Federal Circuit and citing the relevant authority and record evidence that support your position. In particular, please address the following:

(a) Whether any structure in the Genesis products at issue performs a function identical to the claimed function of the "receiving means" in claim 12;

(b) Provided the Genesis products at issue contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is identical to the corresponding structure in the '867 patent specification;

(c) Provided the Genesis products at issue contain a structure that performs a function identical to the claimed function of the "receiving means" in claim 12, whether such a structure is equivalent to the corresponding structure in the '867 patent specification, *i.e.*, whether any structure in the Genesis products at issue performs a function identical to the claimed function of the "receiving means" in claim 12 in substantially the same way to achieve substantially the same result as compared to the structure specified in the '867 patent that performs the claimed function of the "receiving means" in claim 12.

The 491 Final ID.

1. Please address (a) whether the '071 patent is prior art to the '867 patent, and (b) whether either claim 1 or 9 of the '867 patent is anticipated by the '071 patent under the Commission's claim construction, in view of the consolidated record in the 481 and 491 investigations.

2. (a) As to the ALJ's infringement findings with respect to claims 1, 2, 9, 33, 34, 35, and 36 of the '867 patent that are under review, please address whether any of MStar's accused products satisfy the timing equality limitation ("maintain an equality of equal source and destination image frame periods" (ID at 148)) of the wherein clause of claim 1 under the Commission's claim construction. Cite supporting exhibits and testimony of record relevant to this issue, and identify where this specific argument and supporting evidence regarding infringement was presented to the ALJ with citations to previous briefing. (b) Are the ALJ's findings of fact FF 129, 130, and 132 sufficient to support a finding that any of MStar's accused products satisfy the timing equality limitation of the wherein clause of claim 1 under the Commission's claim construction, and infringe claims 1, 2, 9, 33, 34, 35, or 36 of the '867 patent? Cite supporting exhibits and testimony of record, and identify where this evidence and argument was presented to the ALJ with citations to previous briefing.

3. How should the language of claims 13 and 15 of the '361 patent that is under review be construed?

(a) In light of the expert testimony of Ferraro (Trans. at 1423, 1445–51; RDX–102 at 12–15), is it legally permissible to construe "according to" to mean "based upon" in claims 13 and 15 and to mean "consistent with" in claim 5? Please cite to any relevant case law. May the same phrase appearing in two claims of the same patent be construed differently in the two claims by using different definitions for the phrase in question?

(b) Assuming that the '361 patent teaches only "front-end," and not "back-end," vertical expansion (ID at 102–04), is it legally permissible to narrow the meaning of the broad term "an address" to mean "addresses other than the memory read addresses," based on the lack of disclosure of such an embodiment in the specification? Please cite to any relevant case law.

(c) Identify any finding of fact or conclusion of law with respect to infringement, domestic industry, or invalidity in the 491 Final ID rendered clearly erroneous or legally erroneous under the proposed interpretation of the claim limitations under review. Provide supporting citations to the record.

The written submissions should be concise and thoroughly referenced to the consolidated record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's April 14, 2004, recommended determination on remedy and bonding issued in Display Controllers II, and the ALJ's October 20, 2003, recommended determination on remedy and bonding issued in Display Controllers I. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on July 16, 2004. Reply submissions must be filed no later than the close of business on July 23, 2004. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfindential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Issued: July 7, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15737 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–501]

In the Matter of: Certain Encapsulated Integrated Circuit Devices and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Motion for Summary Determination That the Importation Requirements of 19 U.S.C. 1337(A)(1)(B) Have Been Met

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") of the presiding administrative law judge ("ALJ") in the above-captioned investigation granting a motion for summary determination that the importation requirements of 19 U.S.C. 1337(A)(1)(B) have been met.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all 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 instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain encapsulated integrated circuit devices and products containing same thereof on December, 19, 2003, based on a complaint filed by Amkor Technology, Inc, ("Amkor") of West Chester, Pennsylvania. The respondents named in the notice of investigation are Carsem (M) Sdn Bhp, and Carsem

Semiconductor Sdh Bhd of Malaysia; Carsem, Inc., of City of Industry, CA (collectively "Carsem"). Amkor's complaint alleged that Carsem's products infringe claims of three different patents held by Amkor.

On June 1, 2004, complainant Amkor moved for a summary determination that the importation requirement of 19 U.S.C. 1337(A)(1)(B) has been satisfied in this investigation. Carsem filed a response in opposition and the Commission investigative attorney filed a response in support of Amkor's motion.

On June 1, 2004, the ALJ issued the subject ID (Order No. 61) granting complainant Amkor's motion for summary determination that the importation requirements of 19 U.S.C. 1337(A)(1)(B) have been met.

No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of Commission's Rules of Practice and Procedure, 19 CFR 210.42.

By order of the Commission.

Issued: July 6, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15756 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–787 (Review)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in April 2004 to determine whether revocation of the antidumping duty order on extruded rubber thread from Indonesia would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On June 29, 2004, the Department of Commerce published notice that it was revoking the order effective May 21, 2004 because "the domestic interested parties did not participate in this sunset review." (69 FR 38879). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: Effective Date: May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 6, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15673 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–373 (Review)]

Stainless Steel Wire Rod From Italy

AGENCY: United States International Trade Commission.

ACTION: Termination of review.

SUMMARY: On June 29, 2004, the Department of Commerce ("Commerce") notified the Commission of its negative final determination of the likelihood of continuation or recurrence of a countervailable subsidy in connection with the subject five-year review on stainless steel wire rod from Italy. On July 2, 2004, Commerce published notice in the FR of its determination (69 FR 40354). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the five-year review of the countervailing duty order concerning stainless steel wire rod from Italy (investigation No. 701–TA–373 (review)) is terminated.

EFFECTIVE DATE: June 29, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: July 7, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–15736 Filed 7–9–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Office of Small Business Programs Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Small Business Programs (OSBP) is soliciting comments concerning the proposed continuation of the information collections contained in the Small Business Programs Information Management System. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 10, 2004.

ADDRESSEES: Send comments to Elaine B. Murrell, Small Business Advisor, U.S. Department of Labor, Office of Small Business Programs, Room C–

2318, 200 Constitution Avenue, NW., Washington, DC 20210; E–Mail: *murrell.elaine@dol.gov;* Telephone: 202–693–6467; Fax: 202–693–6485 (these are not a toll free numbers).

FOR FURTHER INFORMATION CONTACT: The employee listed above in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies are required to promote procurement opportunities for small, small disadvantaged, and 8(a) businesses by the Small Business Act, as amended, (Pub. L. 95–507, Sections 8 and 15) and Pub. L. 100–656 (Sections 502 and 503). The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) mandates similar efforts for small women-owned businesses. Pub. L. 106–50 created the program for service-disabled veteran-owned small businesses. Pub. L. 105–135 established the HubZone program. The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) requires Federal agencies to make available to small businesses compliance guides and assistance on the implementation of regulations and directives of enforcement laws they administer. Executive Orders 12876, 12900, and 13021 direct Federal agencies to implement programs, respectively, regarding Historically Black Colleges and Universities, Educational Excellence for Hispanic Americans, and Tribal Colleges and Universities that are administered by the respective White House Initiative offices (in the U.S. Department of Education). Executive Order 13125 directs Federal agencies to ensure that Asian Americans and Pacific Islanders are afforded opportunity to fully participate in Federal Programs. Further, Executive Order 13170 requires that Departments take a number of actions to increase outreach and maximize participation of small disadvantaged businesses in their procurements. Executive Order 13157 strengthens the executive branch's commitment to increased opportunities for women-owned small businesses. Accordingly, the Small Business Programs Information Management System is needed to gather, document, and manage identifying information for four Office of Small Business Programs constituency groups: Small Businesses; Trade Associations; Minority Colleges and Universities; and Tribal Governments. Via this system, the constituent groups will have the opportunity to voluntarily provide to OSBP information about their organizations. The information will be used by OSBP and DOL agencies to maximize communication with the respective constituency groups regarding relevant OSBP and DOL programs, initiatives, and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for OSBP-sponsored activities.

II. Review Focus

The Office of Small Business Programs is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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.

III. Current Actions

Currently, the Office of Small Business Programs (OSBP) is soliciting comments concerning the proposed continuation of the information collections contained in the Small Business Programs Information Management System. The estimated public burden associated with this collection of information is summarized below:

Type of Review: Extension of a currently approved collection.

Agency: Office of Small Business Programs.

Title: Small Business Program Information Management System.

OMB Number: 1290–0002.

Agency Form Number: None.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local, or tribal governments.

Total Respondents: 4,000.

Total Responses: 6,000.

Frequency: On Occasion.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 700 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Signed at Washington, DC, this 6th day of July, 2004.

Fredrick H. Trakowski,

Small Business Procurement Program Officer.

[FR Doc. 04–15695 Filed 7–9–04; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. C–08]

Nationwide Site-Specific Targeting (SST) Inspection Program

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for comments; extension of comment period.

SUMMARY: OSHA is extending the deadline for receipt of public comments on its Request for Comments for its nationwide site-specific targeting (SST) inspection program to August 11, 2004. This action is in response to interested parties who have requested additional time.

DATES: Comments and data must be submitted by August 11, 2004. Comments submitted by mail must be postmarked no later than August 11, 2004.

ADDRESSES: Send two copies of your comments to the OSHA Docket Office, Docket No. C–08, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor. 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EDT. Comments of 10 pages or fewer may be faxed to the OSHA Docket Office at the following FAX number; (202) 693–1648, provided that the original and one copy are sent to the Docket Office immediately thereafter.

You may also submit comments electronically to *http://ecomments.osha.gov.* Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the docket office address listed above. Such

attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

FOR FURTHER INFORMATION CONTACT: Richard E. Fairfax, Occupational Safety and Health Administration, Directorate of Enforcement Programs, Room N–3119, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–693–2100. For electronic copies of this **Federal Register** notice, contact OSHA's Web page on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: OSHA published a request for comments on its nationwide site-specific targeting (SST) inspection program on May 6, 2004 (69 FR 25445). In that notice, OSHA provided a 60-day period for the public to submit comments, extending through July 6, 2004. OSHA received a request from the United States Chamber of Commerce to extend the comment period for submitting comments. OSHA is interested in obtaining the best possible information that it can from the public. Accordingly, written comments must now be submitted by August 11, 2004.

Authority: This document is issued under sec. 8(a) and 8(b), Pub. L. 91–596, 84 Stat. 1599 (29 U.S.C. 656).

Signed At Washington, DC this 6th day of July, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–15670 Filed 7–9–04; 8:45 am]

BILLING CODE 4510–26–M

MILLENNIUM CHALLENGE CORPORATION

[FR 04–07]

Notice of July 20, 2004 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10–12 p.m., July 20, 2004.

PLACE: Department of State, C Street Entrance, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Adaisha Garrison at (202) 521–3881.

STATUS: Meeting will be open to the public from 10 a.m. until conclusion of the administrative session; a closed session will commence immediately following the conclusion of the open session, at approximately 10:20 a.m.

MATTERS TO BE CONSIDERED: The Board of Directors (the "Board") of the Millennium Challenge Corporation ("MCC") intends to hold a quarterly meeting of the Board to: Initiate the FY 2005 country selection process by identifying countries that will be candidates for Millennium Challenge Account ("MCA") assistance in FY 2005 based on the per capita income and other requirements of Section 606(a) of the Millennium Challenge Act of 2003 (Pub. L. 108–199 (Division D)) (the "Act") and considering the FY 2005 selection criteria and methodology that will be used to determine which of these candidate countries will be eligible for MCA assistance under the requirements of Section 607 of the Act; and discuss and take action on certain administrative and personnel-related matters. The majority of the meeting will be devoted to a discussion of the FY 2005 country selection process, including a discussion of the candidate countries and the selection criteria and methodology, which is likely to involve the discussion of classified information related to U.S. foreign policy and will be closed to the public. Any personnel-related matters would also be conducted during this session. A brief open session relating to certain administrative matters and an update for the Board on MCC operations will precede the closed session.

Due to the quorum requirement in Section 604(c)(6) of the Act, an official meeting of the Board will require the presence of at least one Board member nominated by the President and confirmed by the Senate pursuant to Section 604(c)(3)(B) of the Act. If at least one of these members has not been confirmed by the Senate and formally appointed by the President as of the time of the meeting, the Board will not be in a position to take official Board action and the meeting may be cancelled. In the event of cancellation, MCC will notify the MCA mailing list and post a notice of cancellation on the MCC Web site (*www.mcc.gov*) at least 24 hours prior to the Board meeting. Interested members of the public may join the MCA mailing list on the MCC Web site at *http://www.mcc.gov/contact_maillist.html*.

Due to security requirements at the meeting location, all individuals wishing to attend the open portion of the meeting must notify Adaisha Garrison at (202) 521–3881 (*garrisonam@mcc.gov*) of their intention to attend the meeting by noon on Friday, July 17, 2004, and must comply with all relevant security requirements of the Department of State, including providing the necessary information to obtain any required clearance. Seating for the brief open session will be available on a first come, first served basis.

Dated: July 8, 2004.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 04–15856 Filed 7–8–04; 2:38 pm]

BILLING CODE 9210–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, et al., Catawba Nuclear Station, Units 1 and 2; Notice of Opportunity To Comment and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is reviewing an application for amendment to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, *et al.* (the licensee), for operation of the Catawba Nuclear Station (Catawba), Units 1 and 2, located in York County, South Carolina. A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing was published in the **Federal Register** on July 25, 2003.

The proposed amendments, requested by the licensee in a letter dated February 27, 2003, as supplemented by letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3 and 4, December 10, 2003, February 2, 2004, (two letters), March 1 (two letters), March 9 (two letters), and March 16, (two letters), March 26, March 31, April 13, April 16, May 13 and June 17, 2004, would revise the Technical Specifications to allow the use of four mixed oxide (MOX) fuel lead test assemblies (LTAs). The term "MOX" arises from the following: the low enriched uranium (LEU) fuel used in U.S. reactors heretofore consists mostly of uranium oxides wherein the concentration of U–235 is increased during manufacture, such that U–235 constitutes up to four to five percent of the uranium by weight. In fresh unirradiated LEU fuel, U–235 is the fissionable component and it has no significant plutonium concentration. During irradiation, however, U–238 absorbs neutrons produced by the fission of U–235 and transmutes to the various isotopes of plutonium. Some of these plutonium isotopes are fissionable

and add to the power output of the LEU fuel such that with the irradiation of LEU fuel to medium to high burnup levels, a significant fraction of that fuel's power is produced by the fissioning of plutonium. As a part of a joint United States-Russian surplus weapons-grade plutonium disposition program supported by the Department of Energy (DOE) to reduce the threat of nuclear weapons proliferation worldwide by conducting disposition of surplus plutonium in the United States, the licensee proposes that plutonium oxide powder supplied by DOE will be processed, blended with depleted uranium dioxide powder, and fabricated into MOX fuel LTAs that will then be used at Catawba. The blending of the uranium oxide and plutonium oxide materials is the basis for the term "mixed oxide" or "MOX" fuel.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, parts of which are presented below.

I. Probability and Consequences Evaluation

The proposed license amendment to allow the use of MOX fuel lead assemblies does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The "accidents" previously evaluated are described in the [Updated Final Safety Analysis Report] UFSAR and fall into one of the following four categories:

- Normal Operation and Operational Transients.
- Faults of Moderate Frequency.
- Infrequent Faults.
- Limiting Faults.

Inspection of the UFSAR descriptions reveals that the presence of MOX fuel lead assemblies could potentially impact the probability of occurrence for only two "accidents;" Radioactivity in Reactor Coolant Due to Cladding Defects and Fuel Handling Accidents. An evaluation of each of these events follows.

Radioactivity in Reactor Coolant Due to Cladding Defects Probability

Cladding defects are imperfections in the cladding material of a fuel assembly that allow fission products from the active fuel material to migrate to the reactor coolant. They can be caused by manufacturing defects that go undetected until the stresses of pressure, temperature, and/or irradiation eventually result in fuel cladding failure. This type of cladding failure occurs very infrequently in low-enriched uranium (LEU) fuel. The Mark BW design, which is the basis for the Mark BW/MOX1 design to be used in the MOX fuel lead assemblies, has experienced a failure rate of less than one per 100,000 rods, from all manufacturing related causes, since its inception in 1987. There is no reason to expect that the probability of this type of failure in a MOX fuel assembly will be any different than for a LEU fuel assembly because the probability of fuel failure due to these factors is no different for MOX fuel assemblies than for LEU fuel assemblies. The MOX fuel lead assemblies will be manufactured using the same quality standards that are used in the manufacture of LEU fuel, under a Quality Assurance program that conforms to 10 CFR 50 Appendix B. Likewise, the same operational procedures and precautions to preclude loose parts and debris in the reactor coolant will equally preclude fuel failures from these mechanisms for the MOX and LEU fuel assemblies.

Other mechanisms that could potentially cause fuel cladding failure are physical interaction of the cladding with loose debris in the reactor coolant system or corrosion product transport and buildup on cladding material. The design of both the current LEU fuel assemblies and the planned MOX fuel assemblies minimizes these types of interactions such that the probability of fuel failure is equally unlikely for both MOX and LEU fuel assemblies.

Fuel Handling Accident Probability

There is nothing in the physical design of a MOX fuel lead assembly that would make it more susceptible to a fuel handling accident than a LEU assembly. The physical dimensions are virtually identical, the difference in weight between a MOX assembly and a LEU assembly is less than 1%, and the top nozzle engages the manipulator crane and handling fixture in the same manner as LEU fuel.

The shipping container and associated unloading procedure for a fresh MOX fuel assembly are slightly different from that of a LEU fuel assembly but such differences do not result in a significant increase in the probability of an accident. The MOX fuel lead assembly shipping container is an end-loaded container with capacity for one fuel assembly as opposed to a LEU shipping container which is side loaded and has the capacity for two fuel assemblies. The MOX fuel assembly container is unloaded by uprighting the container, removing the closure lid, grappling the assembly with the Fuel Handling Tool, and lifting the assembly with a straight vertical lift out of the container. This is a straightforward lifting operation that will be practiced in a dry run involving a dummy fuel assembly, the MOX fuel shipping package, and specific fuel handling procedures. The same plant equipment will be used to grapple and lift a MOX fuel assembly that is used to lift a LEU fuel assembly. Once the MOX fuel lead assemblies are unloaded and placed into the spent fuel pool, subsequent handling operations are identical to LEU fuel handling. Thus, it is concluded that the probability of a fuel handling accident involving a MOX fuel assembly drop, either inside containment or inside the fuel building, is no different than for a LEU assembly.

The other scenarios considered as part of the fuel handling accident analyses are a weir gate drop into the spent fuel pool and a tornado-generated missile entering the spent fuel pool. There is no connection between the type of fuel assembly and the probability of occurrence of either of these accidents. The probability of a tornado missile entering the spent fuel pool is a natural event whose frequency of occurrence will not change with the storage of MOX fuel assemblies in the fuel pool. The probability of dropping a weir gate into the spent fuel pool is dependent on the reliability of handling fixtures, crane rigging procedures, and the number of handling operations, none of which will be affected adversely by the handling or presence of MOX fuel assemblies.

The conclusion is that amending the McGuire and Catawba licenses to allow the receipt, handling, storage, and use of MOX fuel lead assemblies does not result in a significant increase in the probability of occurrence of any accident previously evaluated in the UFSAR.

NRC Staff Analysis of Consequences

The licensee's calculated numerical values of dose consequences have changed since the licensee's initial submittal as addressed in the licensee's submittals dated November 3, 2003, March 1 and March 16, 2004. Therefore, the NRC staff provides results from the licensee's submittals and the NRC staff's review that relate to an assessment of whether the radiological consequences from the use of MOX LTAs on previously analyzed design basis accident (DBA) would be expected to increase significantly.

The NRC staff's review focused on the potential impacts of the following three characteristics of MOX fuel: (1) The fission product inventory in a MOX fuel assembly is expected to be different from that of an LEU assembly due to the replacement of uranium by plutonium as the fissile material, (2) the fraction of the fission product inventory in the gap region of a MOX fuel assembly is greater due to the increased fission gas release (FGR) associated with higher fuel pellet centerline temperatures of MOX fuel, and (3) the increased FGR can result in higher fuel rod pressurization.

The configuration of the MOX LTAs is very similar to that of the LEU fuel assemblies currently in use at Catawba. No other plant modifications have been proposed by the licensee. There is no change in rated thermal power or any significant changes to other plant process parameters that are inputs to the radiological consequence analyses. As such, the only impacts on these analyses would be from changes in the fission product inventory and the gap fractions, and in the case of the fuel handling accident (FHA), changes in the spent fuel pool decontamination factor due to higher fuel rod pressurization.

Radiological Consequence Analyses

Three categories of DBAs were analyzed for the effects of MOX LTAs.

The first category of accidents involves damage to a significant portion of the entire core. They range in core damage from the locked rotor accident (LRA) with 11 percent core damage, the rod ejection accident (REA) with 50 percent core damage, to the large break loss-of-coolant accident (LOCA) with full core damage. The results of Duke's analysis of these DBA categories are as follows:

For the LRA, the four MOX LTAs represent only 19 percent of the 21 affected assemblies in the core. The potential increase in the iodine release and the thyroid dose is 12 percent. The thyroid dose increased to 4.1 rem at the EAB, and 1.3 rem at the LPZ.

For the REA, the four MOX LTAs represent only 4.1 percent of the affected 97 assemblies in the core. The potential increase in the iodine release and the thyroid dose is 2.63 percent. The thyroid dose increased to 1.03 rem at the EAB, and 0.1 rem (increase masked by numeric rounding) at the LPZ.

For the LOCA, the four MOX LTAs represent only 2.1 percent of the 193 assemblies in the core. The potential increase in the iodine release and the thyroid dose is 1.32 percent. The thyroid dose increased to 90.2 rem at the exclusion area boundary (EAB), 25.3 rem at the low population zone (LPZ), and 5.37 at the control room.

These changes in dose consequences constitute a small percent of the difference between the current dose value and the regulatory guideline value, and therefore, do not represent a significant increase in the consequences of these previously evaluated accidents.

The second category of accidents includes the fuel handling accident (FHA), the weir gate drop accident (WGD) and the fresh MOX LTA drop accident. Duke assessed the MOX LTA impact on doses for the FHA and WGD accidents by re-calculating the analyses of record with updated input data. Duke projected radiological consequences to increase for the FHA from 1.4 to 2.3 rem Total Effective Dose Equivalent (TEDE) at the EAB, from 0.21 to 0.34 rem TEDE at the outer boundary of the LPZ and from 1.3 to 2.1 rem TEDE in the control room. Duke projected radiological consequences for the WGD to increase from 2.2 to 3.5 rem TEDE at the EAB, from 0.31 to 0.5 rem TEDE at the outer boundary of the LPZ and from 2.1 to 3.3 rem TEDE in the control room.

Duke also assessed the radiological consequences of a drop of a fresh MOX LTA prior to it being placed in the spent fuel pool. Although the configuration of the MOX pellets and LTA fuel rods provides protection against inhalation hazards, it is conceivable that some plutonium might become airborne if the MOX LTA is severely damaged. The EAB and control room TEDE estimated by the licensee for the postulated fresh fuel assembly drop were less than 0.3 rem. These consequences are bounded by the consequences of a dropped irradiated fuel assembly.

These resulting dose consequence values provide significant margin to the values specified in 10 CFR 50.67, "Accident Source Term," as supplemented by regulatory position 4.4 of RG 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," and therefore, do not represent a significant increase in the consequences of these accidents.

The third category of accidents includes accidents whose source term assumptions are derived from reactor coolant system (RCS) radionuclide concentrations. These include, steam generator tube rupture, main steam line break, instrument line break, waste gas decay tank rupture, and liquid storage tank rupture. The radionuclide releases resulting from these events are based on established administrative controls that are monitored by periodic surveillance requirements, for example: RCS and secondary plant specific activity LCOs, or offsite dose calculation manual effluent controls. Increases in specific activities due to MOX LTAs, if any, would be limited by these administrative controls. Since the analyses were based upon the numerical values of these controls, there can be no impact of MOX LTAs on the previously analyzed DBAs in this category.

II. New or Different Accident Evaluation

The proposed license amendment to allow the use of MOX fuel lead assemblies will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MOX fuel assemblies have similar mechanical and thermal-hydraulic properties to and nuclear characteristics only slightly different from the current LEU fuel assemblies. The use of MOX fuel lead assemblies does not involve any alterations to plant equipment or procedures that would introduce any new or unique operational modes or accident precursors. The existing design basis accidents described in the UFSAR remain appropriate and have been evaluated to demonstrate that there is no significant adverse safety impact related to the use of MOX fuel lead assemblies.

The main physical difference between a fresh MOX fuel assembly and a LEU fuel assembly is the presence of more radioactivity from the actinides in the MOX fuel matrix, resulting in a measurable dose rate in the immediate vicinity of a MOX fuel assembly. As a result, fresh MOX fuel is transported in a sealed leaktight shipping container by an enclosed tractor trailer truck. There are also differences in the fresh MOX fuel handling procedures, but these differences do not lead to a new or different type of accident.

A fuel handling accident involving a fresh MOX fuel assembly has potential for off-site dose consequences; however, the results of this fuel handling accident are bounded by the current analysis of a spent LEU fuel assembly drop accident. The calculated site boundary and control room dose consequences for a fresh MOX fuel handling accident are much less than the calculated doses for an accident involving a spent LEU fuel assembly and are well within the guidelines in 10 CFR Part 100. This accident does not involve a new release path, does not result in a new fission product barrier failure mode, and does not create a new sequence of events that would result in significant cladding failure. Therefore, this accident is not a new or different kind of accident.

In conclusion, amending the * * * Catawba license to allow the receipt,

handling, storage, and use of MOX fuel lead assemblies does not create the possibility of a new or different kind of accident.

III. Margin of Safety Evaluation

The proposed license amendment to allow the use of MOX fuel lead assemblies will not involve a significant reduction in a margin of safety.

There are provisions in the * * * Catawba Technical Specifications that allow a "limited number of lead test assemblies" to be placed in "nonlimiting core regions." These provisions will not change and will apply to the planned use of MOX fuel lead assemblies. The effect of these provisions is to place restrictions on the allowable power distribution limits for a MOX fuel lead assembly.

The core design process assures that the limiting fuel rod in the core, whether LEU or MOX, has adequate nuclear power design limits under normal, transient, and accident conditions. If the core design process reveals unacceptable margin, adjustments are made to restore the needed margin. The operating limits are established in Core Operating Limits Report to assure the design limits are not exceeded, thus assuring that adequate design margins for the fuel are maintained. This iterative design process is used to analyze the core containing MOX fuel lead assemblies to assure that there is no significant reduction in a margin of safety.

Because these lead assemblies will be located in nonlimiting locations *i.e.*, will have margin above that of the limiting assemblies, the results of safety analyses will likewise assure that appropriate margins to safety are maintained during transients and accidents.

On the basis of the information provided by the licensee and developed by the NRC staff, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Comments on this Notice may also be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. A copy of any Comments should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is also requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of any Comments should also be sent to Ms. Lisa F. Vaughn, Legal Department (ECIIX), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee. Documents may be examined, and/or copied for a fee, at the NRC's PDR.

A Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing was published in the **Federal Register** on July 25, 2003 (68 FR 44107). On August 21 and August 25, 2003, respectively, the Nuclear Information and Resource Service and the Blue Ridge Environmental Defense League filed a petition requesting a hearing and seeking to intervene in the license amendment proceeding. Pursuant to a notice issued on September 17, 2003, the Commission established an Atomic Safety and Licensing Board to preside over this matter.

Since a hearing has been requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. The completion of any ongoing hearing may take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

For further details with respect to this action, see the application for amendment dated February 27, 2003, as supplemented by letters dated September 15, September 23, October 1 (two letters), October 3 (two letters), November 3 and 4, December 10, 2003, February 2, 2004, (two letters), March 1, 2004, (two letters), March 9, 2004, (two letters), March 16, 2004 (two letters), March 26, March 31, April 13, April 16, May 13 and June 17, 2004 which are available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (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, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of July 2004.

For the Nuclear Regulatory Commission.

Robert E. Martin, Sr.,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–15696 Filed 7–9–04; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09015]

Notice of Consideration of Amendment Request to Decommission The Michigan Department of Natural Resources' Tobico Marsh State Game Area Site, Bay County, MI, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a license amendment request and opportunity to request a hearing; notice of Public Meeting.

DATES: Comment must be sent by August 11, 2004. A request for a hearing must be filed by September 10, 2004. Public meeting will be held on July 21, 2004.

FOR FURTHER INFORMATION CONTACT: David Nelson, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6626; fax (301) 415–5398; or e-mail at *dwn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SUC–1581, issued to the Michigan Department of Natural Resources (the licensee), to authorize decommissioning of its Tobico Marsh State Game Area Site in Bay County, Michigan, and to allow termination of this license.

On January 30, 2004, the Michigan Department of Natural Resources submitted Revision 1 of the Decommissioning Plan (DP) for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site, for NRC review, approval, and incorporation, by amendment to license, SUC–1581. An NRC administrative review, documented in a letter to the Michigan Department of Natural Resources, dated April 22, 2004, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUC–1581. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The license will be terminated if this amendment is approved following completion of decommissioning activities and verification by the NRC in accordance with the license termination rule (Subpart E of 10 CFR Part 20) and the Commission's regulations.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this amendment should be provided in writing within 30 days of this notice and addressed to David Nelson, Project Manager, Mail Stop: T–7F27, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6626, fax number (301) 415–5398 or e-mail *dwn@nrc.gov.*

Because of possible disruptions in the delivery of mail to United States Government offices, it is requested that comments mailed also be transmitted to the Project Manager by means of facsimile transmission or by e-mail. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Public Meeting

A public meeting will be held in Bay County, Michigan, to solicit comments from individuals in the vicinity of the site and answer any questions about NRC's review of the DP for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site. The public meeting will be held on July 21, 2004, from 7 p.m. to 9:30 p.m. at the Bay County Community Center, 800 John F. Kennedy Drive, Bay City, Michigan, 48708.

IV. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff between, 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to the Michigan Department of Natural Resources, Office of Legal Services, PO Box 30028, Lansing, MI 48909, Attention: Keili Sobel, and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents are contained in 10 CFR 2.304 (b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by September 10, 2004.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

V. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: ML040790356 which contains the January 30, 2004 application for license amendment and the DP for the Michigan Department of Natural Resources' Tobico Marsh State Game Area Site; ML041110650 which contains the April 22, 2004 NRC acceptance review letter. 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 (800) 397–4209 or (301) 415–4737, or by email to *pdr@nrc.gov*. These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, MD 20852. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated at Rockville, Maryland, this 2nd day of July 2004.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–15699 Filed 7–9–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–09022]

Notice of Consideration of Amendment Request To Decommission the S. C. Holdings (SCA Hartley & Hartley Landfill) Site, Kawkawlin Township, MI and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a license amendment request and opportunity to request a hearing; notice of public meeting.

DATES: Comment must be sent by August 11, 2004. A request for a hearing must be filed by September 10, 2004. Public meeting will be held on July 21, 2004.

FOR FURTHER INFORMATION CONTACT: David Nelson, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6626; fax (301) 415–5398; or e–mail at *dwn@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SUC–1565, issued to S. C. Holdings (the licensee), to authorize decommissioning of its Hartley & Hartley Landfill Site in Bay County, Michigan, and to allow termination of this license.

On November 26, 2003, S. C. Holdings submitted the Decommissioning Plan (DP) for the Hartley & Hartley Landfill Site for NRC review, approval, and incorporation, by amendment to license, SUC–1565. An NRC administrative review, documented in a letter dated March 1, 2004, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUC–1565. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The license will be terminated if this amendment is approved following completion of decommissioning activities and verification by the NRC in accordance with the license termination rule

(subpart E of 10 CFR part 20) and the Commission's regulations.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to David Nelson, Project Manager, Mail Stop: T–7F27, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6626, fax number (301) 415–5398 or e-mail *dwn@nrc.gov*.

Because of possible disruptions in the delivery of mail to United States Government offices, it is requested that comments mailed also be transmitted to the Project Manager by means of facsimile transmission or by e-mail. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Public Meeting

A public meeting will be held in Bay County, Michigan, to solicit comments from individuals in the vicinity of the site and answer any questions about NRC's review of the DP for the S. C. Holdings SCA Hartley & Hartley Landfill Site. The public meeting will be held on July 21, 2004, from 7 p.m. to 9:30 p.m. at the Bay County Community Center, 800 John F. Kennedy Drive, Bay City, Michigan, 48708.

IV. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Waste Management, Inc., 700 56th Avenue, Zeeland, MI 49464, Attention: Philip M. Mazor, and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents are contained in 10 CFR 2.304 (b), (c), (d), and (e), and must be met. However, in accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed by September 10, 2004.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309 (f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a

joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309 (f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

V. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html*. ADAMS Accession Nos ML033430565, ML033430567, ML033430568 and ML033430570 contain the November 23, 2003, application for license amendment and the DP for the S. C. Holdings Hartley & Hartley Landfill Site, and ADAMS Accession No. ML040570438 contains the March 1, 2004, NRC acceptance review letter. 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (First Floor), Rockville, MD 20852. The PDR is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Dated in Rockville, Maryland, this 2nd day of July 2004.

Claudia M. Craig,

Acting Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–15698 Filed 7–9–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on July 20, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 20, 2004—8:30 a.m.–9:45 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: July 2, 2004.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–15700 Filed 7–9–04; 8:45 am]

BILLING CODE 7590–01–P

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Announcement of public meeting.

SUMMARY: The U.S. Commission on Ocean Policy was established pursuant to the Oceans Act of 2000 to make recommendations to the President and Congress for a coordinated and comprehensive national ocean policy. The meeting will be held to consider changes to the Commission's Preliminary Report and approval of a draft final report containing such recommendations.

DATES: The public meeting will be held on Thursday, July 22, 2004, from 8:45 a.m. to 11:30 a.m., ET.

ADDRESSES: The meeting will be held in the Amphitheater of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Polin Cohanne, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Suite 200 N, Washington, DC 20036, 202–418–3442, *cohanne@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to the requirements of Section 3(e)(1) and (2) of the Oceans Act of 2000 (Pub. L. 106–256). The agenda will include opening remarks by the Chairman of the Commission, Admiral James D. Watkins, U.S. Navy (Retired) and other Commissioners, a discussion of changes being proposed to the Commission's Preliminary Report as a result of comments received from Governors and non-gubernatorial stakeholders pursuant to Section 3(g) of Public Law 106–256, a public comment session, the consideration of a motion to approve a draft final report, and such other actions as deemed necessary to submit to Congress and the President a final report of the Commission's findings and recommendations regarding United States ocean policy. A more detailed agenda, including the specific time for the public comment period, will be posted on the Commission's Web site at *www.oceancommission.gov* closer to the date of the public meeting. Anyone

interested in speaking during the public comment period should review the Guidelines for Public Comment at Meetings posted on the Commission website.

Dated: July 6, 2004.

Thomas R. Kitsos,

Executive Director, Commission on Ocean Policy.

[FR Doc. 04–15691 Filed 7–9–04; 8:45 am]

BILLING CODE 6820–WM–U

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0002).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0002, the Peace Corps Week Survey Questionnaire. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Agnes Ousley, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2163, Washington, DC 20526. Ms Ousley may be contacted by telephone at 202–692–1429 or 800–424–8580, Peace Corps Headquarters, ext 1429, by e-mail at *aousley@peacecorps.gov*. Comments on the form should also be addressed to the attention of Ms. Ousley by September 10, 2004.

Information Collection Abstract

Title: Peace Corps Week Survey Questionnaire.

Need For and Use of this Information: This collection of information is necessary because the Peace Corps' Office of Domestic Programs will use this information to determine how to better serve the needs of the participants. The information gathered will be used for the following purposes: programmatic improvements, to determine customer satisfaction, and to increase our awareness of participants' activities. Additionally, information regarding the activities and events sponsored by the participant's may be used in press releases on the Peace Corps' anniversary celebration. Finally, information regarding participants' activities will be disseminated to the Peace Corps 11 regional offices for press/public relations, and recruitment purposes.

Respondents: Returned Peace Corps Volunteers and family members of currently serving Peace Corps Volunteers.

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 2,500 hours.

b. Annual record keeping burden: 0.

c. Estimated average burden per response: 5 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 2,500.

f. Estimated cost to respondents: $2.15.

Responses will be returned by postage-paid business reply card, fax, e-mail, and downloaded from the Peace Corps Web site: (*www.peacecorps.gov*).

This notice is being issued in Washington, DC on July 2, 2004.

Ed Anderson,

Chief Information Officer.

[FR Doc. 04–15668 Filed 7–9–04; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATES: 10:30 a.m., Monday, July 19, 2004; 8 a.m., Tuesday, July 20, 2004.

PLACE: San Francisco, California, at the Ritz-Carlton Hotel, 600 Stockton at California Street, in Salon III.

STATUS: July 19—10:30 a.m. (Closed); July 20—8 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, July 19—10:30 a.m. (Closed)

1. Financial Update.
2. Preliminary Report on Goals and Performance Assessment for Fiscal Year 2005.
3. Preliminary Fiscal Year 2005 Integrated Financial Plan and Financial Outlook.
4. Implementation of Postal Rate Commission Recommendation for Electronic Return Receipt.
5. Strategic Planning.
6. Personnel Matters and Compensation Issues.

Tuesday, July 20—8 a.m. (Open)

1. Minutes of the Previous Meeting, June 15, 2004.
2. Remarks of the Postmaster General and CEO.
3. Committee Reports.
4. Capital Investments.

a. Springfield, Massachusetts, Logistics and Distribution Center.

b. Pontiac, Michigan, Northeast Metro Processing and Distribution Center.

c. Informational Briefing on Letter Mail Automation.

5. Quarterly Report on Financial Performance.
6. Report on the San Francisco District.
7. Tentative Agenda for the September 13–14, 2004, meeting in Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 04–15844 Filed 7–8–04; 2:17 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Certification Regarding Rights to Unemployment Benefits.

(2) *Form(s) submitted:* UI–45.

(3) *OMB Number:* 3220–0079.

(4) *Expiration date of current OMB clearance:* 08/31/04.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,950.

(8) *Total annual responses:* 2,900.
(9) *Total annual reporting hours:* 487.
(10) *Collection description:* In administering the disqualification for the voluntary leaving of work provision of section 4 of the Railroad Unemployment Insurance Act, the Railroad Retirement Board investigates an unemployment claim that indicates that the claimant left voluntarily. The certification obtains information needed to determine if the leaving was for good cause.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,
Clearance Officer.
[FR Doc. 04–15672 Filed 7–9–04; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17j–1; SEC File No. 270–239; OMB Control No. 3235–0224.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collection of information discussed below.

Rule 17j–1 under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"), which the Commission adopted in 1980 [1] and amended in 1999,[2] implements section 17(j) of the Act. Section 17(j) makes it unlawful for persons affiliated with a registered investment company or with the investment company's investment adviser or principal underwriter (each, a "17j–1 organization"), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) authorizes the Commission to promulgate rules requiring the adoption of codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and "Access Persons" [3] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a rule 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization [4] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report at least annually to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[5] to file: (i) Within ten days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the access person's securities and accounts, (ii) within ten days of the end of each calendar quarter, a dated quarterly transaction report providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter, and (iii) dated annual holding reports providing information with respect to each covered security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

The Commission estimates that each year a total of 73,976 Access Persons and 17j–1 organizations are subject to the rule's reporting requirements. Respondents provide approximately 102,230 responses each year. The total

[1] Prevention of Certain Unlawful Activities With Respect To Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) [45 FR 73915 (Nov. 7, 1980)].

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) [64 FR 46821–01 (Aug. 27,1999)].

[3] Rule 17j–1(a)(1) defines an "access person" as "any director, officer, general partner, or advisory person of a fund or of a fund's investment adviser" and as "any director, officer, or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities."

[4] Money market funds and funds that do not invest in "Covered Securities," as defined in paragraph (a)(4) of the rule, are excepted.

[5] Rule 17j–1(d)(2) exempts Access Persons from reporting in five instances in which reporting would be duplicative or would not serve the purposes of the rule.

annual burden of the rule's paperwork requirements is estimated to be approximately 243,884 hours. Of the total, 38,722 hours are associated with reporting requirements for access persons, and the remaining 205,162 hours are associated with the requirements applicable to rule 17j–1 entities.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[6]

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or email to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15682 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 3a–4; SEC File No. 270–401; OMB Control No. 3235–0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Rule 3a–4 under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a–4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a–4 are not required to register under the Investment Company Act or comply with the Act's requirements.[1] These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a–4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor[2] (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.[3] In addition, the sponsor (or its designee) annually must contact the client to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) also must notify the client quarterly, in writing, to contact the sponsor (or the designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.[4]

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

Rule 3a–4 is intended primarily to provide guidance regarding the status of investment advisory programs under the Investment Company Act. The rule is not intended to create a presumption about a program that is not operated according to the rule's guidelines.

The requirement that the sponsor (or its designee) obtain information about the client's financial situation and investment objectives when the account is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients

[6] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act [15 U.S.C. 80a–30(c)].

[1] Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31,1997)] ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. *See* 17 CFR 270.3a–4, introductory note.

[2] For purposes of rule 3a–4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

[3] Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

[4] The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account. Maintaining current information enables the portfolio manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 64 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a–4.[5] Although it is impossible to determine the exact number of clients that participate in investment advisory programs, an estimate can be made by dividing total assets by the minimum account requirement ($172.3 billion[6] divided by $40,714),[7] for a total of 4,231,960 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 2000 through 2003, by the minimum account requirement ($13.4 billion divided by $40,714), for an average annual number of new accounts of 329,125.[8]

The Commission staff estimates that each program sponsor spends approximately one hour annually in preparing, conducting and/or reviewing interviews for each new client; 30 minutes annually preparing, conducting and/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork requirements for all program sponsors to be 6,512,502.5 hours. This represents a decrease of 7,636,910 hours from the prior estimate of 14,149,412.5 hours. The decrease results from a change in the method of computation of assets managed under investment advisory programs, and the resulting decrease in the estimated number of clients in those programs.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's safe harbor. Nevertheless, rule 3a–4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. 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.

General comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15683 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

[5] These estimates are based on statistical information on wrap fee and mutual fund wrap programs provided by Cerulli Associates.

[6] The estimate of the amount of assets in wrap fee and mutual fund wrap programs was provided by Cerulli Associates.

[7] The estimate of the average minimum account requirement was provided by Cerulli Associates.

[8] The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated annual hourly burden is based on the average number of new accounts opened each year.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49969; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 11 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Processing of Satisfaction Orders

July 2, 2004.

I. Introduction

On February 18, 2004, March 1, 2004, March 23, 2004, April 20, 2004, April 23, 2004, and April 28, 2004, the International Securities Exchange, Inc. ("ISE"), the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange, Inc. ("PCX") the Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), (collectively, the "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") an amendment ("Joint Amendment No. 11") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[1] The amendment proposes to change the manner in which the Participants and their members process Satisfaction Orders[2] they send following a Trade-Through[3], and the executions ("fills") that arise from such orders.

The proposed amendment to the Linkage Plan was published in the **Federal Register** on May 19, 2004.[4] No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

II. Description of the Proposed Amendment

The Participants propose to change the manner in which they process Satisfaction Orders following a Trade-Through in Joint Amendment No. 11. Pursuant to the Linkage Plan, if a disseminated quote that is traded through represents a customer order, a member representing that order may send a Satisfaction Order.[5] Upon receipt

[1] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[2] A "Satisfaction Order" is defined as an order sent through the Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[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. *See* Section 2(29) of the Linkage Plan.

[4] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954.

[5] See Sections 7(a)(ii)(D) & 8(c)(ii)(B)(2) of the Linkage Plan.

of the Satisfaction Order, the member that initiated the Trade-Through can either fill the Satisfaction Order, or cause the price of the transaction that constituted the Trade-Through to be corrected to a price at which a Trade-Through would not have occurred.[6] While the Participants believe this process generally works well, the experience with the Options Intermarket Linkage ("Linkage") to date has led the Participants to agree to three changes related to Satisfaction Order processing.

In Joint Amendment No. 11, the Participants explain that currently, the Linkage Plan permits a Participant to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through).[7] The amendment proposes that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

In addition, the proposed amendment explains that the Linkage Plan currently permits a Participant that sends a Satisfaction Order through Linkage to reject the receiving Participant's fill within 30 seconds of being notified of the fill if the customer order that underlies the Satisfaction Order either has been executed on the sending exchange or has been canceled while the Satisfaction Order is being processed.[8] However, if the order is filled or canceled, the Participants represent that there is currently no requirement in the Linkage Plan for the Participant that sent the Satisfaction Order to cancel it while it is still pending execution on another market. The Participants believe that this aspect of the Linkage Plan leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the amendment proposes a requirement that a Participant cancel a pending Satisfaction Order that it sent through Linkage as soon as practical if the underlying customer order is filled or canceled. The proposed amendment would clarify that the customer order must be canceled or executed prior to the receipt of the Satisfaction Order fill report.

Lastly, as noted above, a Participant can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, the member that initiated the Satisfaction Order may, itself, trade against the customer order before the member receives a notice from the receiving Participant that the Satisfaction Order has been filled. In this case, the Participants believe that it would be inappropriate to reject the fill. Accordingly, the proposed amendment would provide that a Participant may not reject the fill of the Satisfaction Order when the underlying customer order has been executed against the member that initiated the Satisfaction Order.

[6] *See* Section 8(c)(ii)(A) of the Linkage Plan.

[7] *See* Section 8(c)(ii)(B)(2) of the Linkage Plan.

[8] *See* Section 8(c)(ii)(C) of the Linkage Plan.

III. Discussion

After careful consideration, the Commission finds that proposed Joint Amendment No. 11 to the Linkage Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act[9] and Rule 11Aa3–2 thereunder,[10] in that it should clarify the Participants' obligations with respect to the sending of Satisfaction Orders and the receipt of Satisfaction Order fills, which should facilitate the fair and efficient processing of Satisfaction 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[11] and Rule 11Aa3–2 thereunder,[12] that the proposed Joint Amendment No. 11 is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15685 Filed 7–9–04; 8:45 am]

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[9] 15 U.S.C. 78k–1.

[10] 17 CFR 240.11Aa3–2.

[11] *See supra* note 10.

[12] *See supra* note 11.

[13] 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, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 5, 2004:

A closed meeting will be held on Wednesday, July 7, 2004, at 3 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 matter 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)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the item listed for the closed meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the closed meeting scheduled for Wednesday, July 7, 2004, will be:

Institution and settlement of an injunctive action;

Institution of an administrative proceeding of an enforcement nature.

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: July 7, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–15780 Filed 7–7–04; 4:46 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49963; File No. SR–Amex–2004–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the American Stock Exchange LLC Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 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 13, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend the requirements regarding how its members handle Satisfaction Orders [3] pursuant to the Linkage Plan.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.[4] That amendment to the Linkage Plan, together with this proposed rule change, will enhance the manner in which the Amex processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the Amex specialist or a member of another participant in the Linkage Plan ("Participant") [5] can send a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.[6] Based on experience to date with the Linkage, the options exchanges have agreed to three changes to Satisfaction Order processing as set forth in Joint Amendment No. 11 to the Linkage Plan and proposed for implementation in this proposed rule change.

First, Section 8(c)(ii)(B)(2) of the Linkage Plan and Amex Rule 1902 (the "Rule") currently permit a specialist to send a Satisfaction Order for the full size of the customer order traded-through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). This proposed rule change would provide that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan [7] and the Rule currently permit a specialist to reject an execution ("fill") of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the Amex or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the proposed rule change would require the specialist to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a specialist can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the specialist itself could trade against the customer order before the specialist receives a notice that the Satisfaction Order has been filled. In this case, the Amex believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the specialist must accept the fill of the Satisfaction Order in that scenario.

2. Statutory Basis

The Amex believes that the proposed rule is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) [9] 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities. In particular, the Exchange believes that the proposed rule change will enhance the national market system for options by improving the way all Participants handle Satisfaction Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

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–2004–33 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.

[3] A "Satisfaction Order" is defined as an order sent through the Option Intermarket Linkage ("Linkage") to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Sections 2(16)(c) and 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"), respectively.

[4] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4–429) (Notice of filing of Joint Amendment No. 11 to the Linkage Plan).

[5] 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.

[6] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[7] *See* Section 8(c)(ii)(C) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–Amex–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 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–2004–33 and should be submitted on or before August 2, 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.[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 an 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 the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

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. 11, 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. 11. The Commission believes that no new issues of regulatory concern are being raised by 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.[13]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2004–33) 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. 04–15746 Filed 7–9–04; 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. 34–49964; File No. SR–BSE–2004–17]

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. Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2004, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to 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 Exchange submitted Amendment No. 1 to the proposed rule change on June 14, 2004.[3] 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 BSE is proposing to amend the requirements in the rules of the BSE related to the trading of options contracts on the Boston Options Exchange ("BOX"), a facility of the Exchange, regarding how its members handle Satisfaction Orders[4] pursuant to the Linkage Plan.

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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.[5] That amendment to the Linkage Plan,

[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 J. Sanow, Assistant Director, Commission, dated June 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced and superceded the original filing in its entirety.

[4] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage ("Linkage") to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Sections 2(16)(c) and 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan"), respectively.

[5] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

together with this proposed rule change, will enhance the manner in which the BOX processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the BOX Market Maker or a member of another participant in the Linkage Plan ("Participant")[6] can send a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.[7] While the BSE believes that this process generally works well, the experience with the Linkage to date has led the options exchanges to agree to implement three changes to Satisfaction Order processing.

First, Section 8(c)(ii)(C) of the Linkage Plan and Chapter XII, Section 3 of the BSE Rules related to the trading of options contracts on the BOX (the "Rule") currently permit a BOX Market Maker to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). This proposed rule change would provide that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan and the Rule currently permit a BOX Market Maker to reject an execution ("fill") of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the BOX or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the proposed rule change would require the Market Maker to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a BOX Market Maker can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the Market Maker itself could trade against the customer order before the Market Maker receives a notice that the Satisfaction Order has been filled. In this case, the BSE believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the Market Maker must accept the fill of the Satisfaction Order in that scenario.

2. Statutory Basis

The BSE believes that the proposed rule is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5)[9] 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 general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE 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

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–BSE–2004–17 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–2004–17. 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 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–2004–17 and should be submitted on or before August 2, 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.[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 an 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 the proposed rule change should facilitate

[6] 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.

[7] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[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).

the handling of Satisfaction Orders in an efficient and fair manner.

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. 11, 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. 11. The Commission believes that no new issues of regulatory concern are being raised by BSE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change, as amended, 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, as amended, (SR–BSE–2004–17) 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. 04–15748 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49798A; File No. SR–CBOE–2004–23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Permanently Approve the Modified ROS Opening Procedure Pilot Program, Which Occurs on the Settlement Date of Futures and Options on Volatility Indexes

July 6, 2004.

Correction

In Part III of Release No. 34–49798, issued June 3, 2004,[1] the Commission is replacing the following sentence: "The Commission notes that futures and options on Volatility Indexes with contract months that expire beyond November 2004 are currently being traded" [2] with "The Commission notes that, with respect to futures on Volatility Indexes, the futures contract month on the CBOE Volatility Index, which is the only Volatility Index futures contract traded on the CBOE Futures Exchange, LLC, having the furthest expiration month as of June 18, 2004 is the November 2004 futures contract. CBOE listed the February 2005 futures contract on Monday, June 21, 2004." [3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15684 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49965; File No. SR–CBOE–2004–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 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, Inc. ("CBOE" or "Exchange") submitted to 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules regarding how its members handle Satisfaction Orders [3] pursuant to the Linkage Plan.

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.[4] That amendment to the Linkage Plan, together with this proposed rule change, will enhance the manner in which the CBOE processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the CBOE Designated Primary Market Maker ("DPM"), specialist, or specialist equivalent of another participant in the Linkage Plan ("Participant") [5] can send

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[12] *See supra* note 5.

[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).

[1] *See* Securities Exhange Act Release No. 49798 (June 3, 2004), 69 FR 32644 (June 10, 2004).

[2] Telephone conversation between David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, on May 24, 2004.

[3] *See* letter from David Doherty, Attorney, CBOE, and Christopher Solgan, Attorney, Division, Commission, dated June 18, 2004. The Commission notes CBOE has not commenced trading options on Volatility Indexes. *Id.*

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Sections 2(16)(c) and 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan"), respectively.

[4] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28594 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

[5] 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.

a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.[6] The CBOE proposes the following changes.

First, Section 8(c)(ii)(B)(2) of the Linkage Plan and CBOE Rule 6.83 (the "Rule") currently permit a DPM to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). Because the recipient of the Satisfaction Order can limit the execution of the Satisfaction Order to the size of the Trade-Through, this proposed rule change would provide that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan[7] and the Rule currently permit a DPM to reject an execution ("fill") of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the CBOE or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the proposed rule change would require the DPM to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a DPM can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the DPM itself could trade against the customer order before the DPM receives a notice that the Satisfaction Order has been filled. In this case, the CBOE believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the DPM must accept the fill of the Satisfaction Order in that scenario.

2. Statutory Basis

The CBOE believes that the proposed rule is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5)[9] 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 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

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–CBOE–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–CBOE–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 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 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–2004–30 and should be submitted on or before August 2, 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.[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 an 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 the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

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 CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 11, 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. 11. The Commission believes that no new issues of regulatory concern are being raised by CBOE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the

[6] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[7] *See* Sections 8(c)(ii)(C) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[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.

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–CBOE–2004–30) 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. 04–15747 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49966; File No. SR–ISE–2004–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the requirements regarding how its members handle Satisfaction Orders[3] pursuant to the Linkage Plan.

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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.[4] That amendment to the Linkage Plan, together with this proposed rule change, will enhance the manner in which the ISE processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the ISE Primary Market Maker ("PMM") or a member of another participant in the Linkage Plan ("Participant")[5] can send a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.[6] While the ISE believes that this process generally works well, the experience with Linkage to date has led the options exchanges to agree to implement three changes to Satisfaction Order processing.

First, Section 8(c)(ii)(B)(2) of the Linkage Plan and ISE Rule 1902 (the "Rule") currently permit a PMM to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). This proposed rule change would limit the size of the Satisfaction Order to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan[7] and the Rule currently permit a PMM to reject an execution ("fill") of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the ISE or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the proposed rule change would require the PMM to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a PMM can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the PMM itself could trade against the customer order before the PMM receives a notice that the Satisfaction Order has been filled. In this case, the ISE believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the PMM must accept the fill of the Satisfaction Order in that scenario.

2. Statutory Basis

The ISE believes that the proposed rule is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5)[9] in particular in that it in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities. In particular, the Exchange believes that the proposed rule change will enhance the national market system for options by improving the way all Participants handle Satisfaction Orders.

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[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage ("Linkage") to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Sections 2(16)(c) and 2(29) of the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"), respectively.

[4] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

[5] 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.

[6] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[7] *See* Section 8(c)(ii)(C) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE 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

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–ISE–2004–07 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–2004–07. 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 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–2004–07 and should be submitted on or before August 2, 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.[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 an 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 the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

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 ISE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 11, 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. 11. 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–2004–07) 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. 04–15745 Filed 7–9–04; 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. 34–49967; File No. SR–PCX–2004–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Handling of Satisfaction Orders Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 PCX. The Exchange submitted Amendment No. 1 to the proposed rule change on June 3, 2004.[3] 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 PCX is proposing to amend the requirements regarding how its members handle Satisfaction Orders[4] pursuant to the Linkage Plan.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Stephen B. Matlin, Senior Counsel, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, 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 "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage ("Linkage") to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Sections 2(16)(c) and 2(29) of the Plan for the Purpose of Creating and Operating an

Continued

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to implement a proposed rule change related to proposed Joint Amendment No. 11 to the Linkage Plan.[5] That amendment to the Linkage Plan, together with this proposed rule change, will enhance the manner in which the PCX processes Satisfaction Orders following a Trade-Through. If the displayed price that is traded through represents a customer order, the PCX Lead Market Maker ("LMM") or a member of another participant in the Linkage Plan ("Participant")[6] can send a Satisfaction Order requiring the member on the exchange who caused the Trade-Through to satisfy the customer order.[7] While the PCX believes that this process generally works well, the experience with the Linkage to date has led the options exchanges to agree to implement three changes to Satisfaction Order processing.

First, Section 8(c)(ii)(C) of the Linkage Plan and PCX Rule 6.94 (the "Rule") currently permit a LMM to send a Satisfaction Order for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through (although the Participant receiving the Satisfaction Order that elects to execute it must limit its execution to the size of the Trade-Through). This proposed rule change would provide that the size of the Satisfaction Order be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through.

Second, the Linkage Plan and the Rule currently permit a LMM to reject an execution ("fill") of a Satisfaction Order if the customer order that underlies the Satisfaction Order either has been filled on the PCX or has been canceled while the Satisfaction Order is being processed. However, if the order is filled or canceled, there is no current requirement to cancel the pending Satisfaction Order, which leads to the rejection of Satisfaction Order fills that may have been avoided had the Satisfaction Order been canceled. To address this issue, the proposed rule change would require the LMM to cancel a pending Satisfaction Order as soon as practical if the underlying customer order is filled or canceled.

Third, as noted above, a LMM can reject a Satisfaction Order fill if the underlying customer order is executed or canceled while the Satisfaction Order is pending. However, it is possible that the LMM itself could trade against the customer order before the LMM receives a notice that the Satisfaction Order has been filled. In this case, the PCX believes that it would be inappropriate to reject the fill. Accordingly, the proposed rule change would provide that the LMM must accept the fill of the Satisfaction Order in that scenario.

2. Statutory Basis

The PCX believes that the proposed rule is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5)[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, 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

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–PCX–2004–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change;

Intermarket Option Linkage (the "Linkage Plan"), respectively.

[5] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

[6] 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 PCX, the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

[7] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–34 and should be submitted on or before August 2, 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.[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 an 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 the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

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 PCX Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 11, 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. 11. The Commission believes that no new issues of regulatory concern are being raised by PCX's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change, as amended, 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, as amended, (SR–PCX–2004–34) 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. 04–15687 Filed 7–9–04; 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 5.

[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. 34–49968; File No. SR–Phlx–2004–27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Processing of Satisfaction Orders Following a Trade-Through Pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage

July 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is proposing to amend Exchange Rule 1085 to modify the method in which following a Trade-Through,[3] the Exchange processes Satisfaction Orders[4] pursuant to the Linkage Plan when there is a change in the status of the underlying customer 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had 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 this filing is to enhance the manner in which the Phlx processes Satisfaction Orders following a Trade-Through, which also is the subject of a recent amendment to the Linkage Plan.[5] If the displayed price that is traded through represents a customer order, the Phlx specialist representing that order can send a Satisfaction Order requiring the member on the exchange that caused the Trade-Through to satisfy the customer order.[6] The proposed rule change would modify the manner in which Satisfaction Orders are processed in three ways.

First, the size of the Satisfaction Order would be limited to the lesser of the size of the customer order traded through and the size of the transaction that caused the Trade-Through. Currently, Section 8(c)(ii)(B)(2) of the Linkage Plan and Exchange Rule 1085 permits a Satisfaction Order to be submitted for the full size of the customer order traded through, regardless of the size of the transaction that caused the Trade-Through. Under the proposal, a Satisfaction Order would be limited to the lesser of the size of the Verifiable Number of Customer Contracts[7] in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A "Trade-Through" is a transaction in an options series at a price that is inferior to the National Best Bid or Offer. *See* Section 2(29) of the Linkage Plan and Exchange Rule 1083(t).

[4] A "Satisfaction Order" is defined as an order sent through the Options Intermarket Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") and Exchange Rule 1083(k)(iii).

[5] *See* Securities Exchange Act Release No. 49691 (May 12, 2004), 69 FR 28954 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 11 to the Linkage Plan).

[6] *See* Sections 7(a)(ii)(D) and 8(c)(ii) of the Linkage Plan.

[7] "Verifiable Number of Customer Contracts" is defined as the number of Customer contracts in the book of a Participant. *See* Section 2(30) of the Linkage Plan. A "Participant" is defined as an Eligible Exchange whose participation in the

Continued

disseminated bid or offer that was traded through, or the size of the transaction that caused the Trade-Through.

Second, the Exchange proposes to amend its rules concerning the cancellation of pending Satisfaction Orders if the underlying customer order is executed or canceled. Currently, Exchange Rule 1085 and the Linkage Plan [8] permit a Phlx specialist that sends a Satisfaction Order to reject a message from the receiving exchange that the customer order has been satisfied (hereinafter, a "fill" of that Satisfaction Order) if the underlying customer order has been executed on the Phlx or has been canceled while the Satisfaction Order is being processed. There is, however, no current requirement for the Phlx specialist to cancel the pending Satisfaction Order if the underlying customer order is executed or canceled. Therefore, the Phlx specialist may send a rejection of a fill of a Satisfaction Order that might have been avoided if the pending Satisfaction Order had been canceled when the underlying customer order was executed or canceled. The proposed rule change is intended to address this issue by requiring the exchange that sends a Satisfaction Order to cancel such Satisfaction Order when the underlying customer order has been executed or canceled.

Third, as noted above, a specialist that sends a Satisfaction Order currently may reject a fill of such Satisfaction Order if the underlying customer order is executed or canceled while the Satisfaction Order is pending. The proposed rule change would limit the circumstances under which the sender of a Satisfaction Order could reject a fill of that order when the underlying customer order is executed or canceled while the Satisfaction Order is pending. Specifically, the sender of the Satisfaction Order would not be permitted to reject such a fill when the sender, itself, trades against the underlying customer order while the Satisfaction Order is pending. The Exchange believes that this provision should ensure that the sender of a Satisfaction Order would not be permitted to reject a fill of the Satisfaction Order when it executes against the underlying customer order for its own account.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) [10] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by providing enhancements to the current method of Satisfaction Order processing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were 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–Phlx–2004–27 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–2004–27. 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–2004–27 and should be submitted on or before August 2, 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.[11] In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act [12] which requires, among other things, that the rules of an 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 the proposed rule change should facilitate the handling of Satisfaction Orders in an efficient and fair manner.

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 Phlx Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 11, which was published for public comment in the **Federal Register** on May 19, 2004.[13] The Commission

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 Phlx, and the Boston Stock Exchange, Inc.

[8] *See* Section 8(c)(ii)(C) of the Linkage Plan.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 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).

[12] 15 U.S.C. 78f(b)(5).

[13] *See supra* note 5.

received no comments in response to publication of Joint Amendment No. 11. The Commission believes that no new issues of regulatory concern are being raised by Phlx'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.[14]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–2004–27) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–15686 Filed 7–9–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3578]

State of Iowa; Amendment #4

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 2, 2004, the above numbered declaration is hereby amended to include Appanoose, Davis, Des Moines, Hamilton, Henry, Louisa, Lucas, Monroe, Muscatine, Scott, Wapello, Washington, and Wayne Counties as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on May 19, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Decatur, Jefferson, Lee, and Van Buren in the State of Iowa; Henderson and Mercer Counties in the State of Illinois; and Mercer, Putnam, Schuyler, and Scotland Counties in the State of Missouri may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is July 26, 2004, and for economic injury the deadline is February 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–15739 Filed 7–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3590]

Commonwealth of Kentucky; Amendment #3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 2, 2004, the above numbered declaration is hereby amended to include Boyd, Carter, Greenup, and Jackson Counties as disaster areas due to damages caused by severe storms, tornadoes, flooding, and mudslides occurring on May 26, 2004 and continuing through June 18, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Lawrence in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 9, 2004, and for economic injury the deadline is March 10, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 2, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–15740 Filed 7–9–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region X Regulatory Fairness Board

The Small Business Administration Region X Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, July 27, 2004 at 8:30 a.m. at SBA Seattle District Office, 1200 6th Avenue, Suite 1700, Seattle, WA 98101, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies. The hearing will be simultaneously teleconferenced to the SBA Spokane Branch Office, 801 West Riverside Avenue, Suite 240, Spokane, WA 99201. In Seattle the hearing will be translated into Mandarin Chinese.

Anyone wishing to attend or to make a presentation must contact Roger Hopkins in writing or by fax, in order to be put on the agenda. Roger Hopkins, Economic Development Specialist, Public Information Officer, SBA Seattle District Office, 1200 6th Avenue, Suite 1700, Seattle, WA 98101, phone (206) 553–7082, fax (206) 553–7066, e-mail: *roger.hopkins@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: July 6, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–15738 Filed 7–9–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4757]

Meetings of the U.S.-Chile Environment Affairs Council and the U.S.-Chile Joint Commission for Environmental Cooperation

ACTION: Notice and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative are providing notice that, as set forth in Chapter 19 (Environment) of the U.S.-Chile Free Trade Agreement (FTA), the two governments intend to hold the first meeting of the Environment Affairs Council (the "Council") in Santiago on July 22, 2004. Immediately following this meeting, the U.S.-Chile Joint Commission for Environmental Cooperation (the "Commission"), established under the U.S.-Chile Environmental Cooperation Agreement (ECA), will hold its inaugural meeting. The purpose of the two meetings is detailed below under **SUPPLEMENTARY INFORMATION**. A joint public session will also be held in conjunction with these meetings. In this notice, the Department of State and USTR are requesting: (1) Written comments from the public regarding agenda items for the Council meeting; (2) written comments regarding the eight cooperative projects listed in Annex 19.3 of Chapter 19 (Environment) of the FTA; and (3) written suggestions for bilateral environmental cooperation between the United States and the Republic of Chile in the priority areas

[14] 15 U.S.C. 78f and 78s(b).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

outlined below under **SUPPLEMENTARY INFORMATION**. In preparing comments, the public is encouraged to refer to:

- The environment chapter of the U.S.-Chile Free Trade Agreement, available at: *http://www.ustr.gov/new/fta/Chile/final/19.environment.PDF*;
- The U.S.-Chile Environmental Cooperation Agreement, available at: *http://www.state.gov/g/oes/rls/or/22185.htm*; and
- The Final Environment Review of the U.S.-Chile Free Trade Agreement, available at: *http://www.ustr.gov/environment/tpa/chile-environment.pdf*.

DATES: To guarantee receipt in proper time for consideration prior to the meeting, comments are requested no later than July 20, 2004.

ADDRESSES: Comments may be sent by fax to (202) 647–5947 or 202–647–1052, by e-mail to *OES–ENV–Mail@state.gov*.

FOR FURTHER INFORMATION CONTACT: Luke Ney, Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Policy, telephone 202–647–6867.

SUPPLEMENTARY INFORMATION: The U.S.-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004. Article 3 of Chapter 19 (Environment) of the FTA establishes an Environment Affairs Council (the "Council"), which is required to meet once a year, or more often if agreed by the two governments, to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that meetings of the Council include a public session, unless otherwise agreed by the two governments. Through this notice the Department announces that the first meeting of the Council will be held on July 22, 2004, in Santiago, Chile, to discuss issues of mutual concern related to Chapter 19 of the FTA, including matters related to the eight cooperation projects listed in Annex 19.3 of the FTA. In this meeting the Council will also consider how to implement the provisions of Chapter 19, including public participation. Written comments from the public regarding agenda items for the Council meeting, as well as written comments regarding the eight cooperative projects, may be submitted to the contact addresses listed above.

The Agreement Between the Government of the United States of America and the Government of the Republic of Chile on Environmental Cooperation (the "Environmental Cooperation Agreement," or ECA) entered into force on May 1, 2004. The objective of the ECA is to establish a framework for cooperation between the two governments to support sustainable development by promoting the conservation and protection of the environment, the prevention of pollution and degradation of natural resources and ecosystems, and the rational use of natural resources. Article II of the ECA establishes a U.S.-Chile Joint Commission for Environmental Cooperation (the "Commission"), comprised of representatives from both governments. The Commission is responsible for establishing and developing programs of work resulting from the ECA, examining and evaluating the cooperative activities under the ECA, making recommendations to the two governments on ways to improve cooperation under the ECA, and undertaking other activities as the two governments agree. Through this notice, the Department announces the first meeting of the Commission, to take place immediately following the Council meeting, on July 22, 2004 in Santiago. The primary objective of the Commission meeting will be to prepare a formal work plan. Public comment is invited on possible areas for bilateral environmental cooperation under the work plan, including: (1) Capacity building and exchange of information on strategies and experiences regarding the control, supervision and the compliance of environmental laws, norms and regulations; (2) Capacity building and exchange of information regarding eco-tourism; (3) Participation of civil society in decision-making related to environmental matters; (4) Joint research and collaboration on preventing the introduction of alien invasive species, with special emphasis on highly-trafficked maritime ports and other pathways of introduction; (5) Impact mitigation of longline fishing on non-target species such as turtles and seabirds; and (6) Capacity building and exchange of information on forest management and protection.

A special introductory public session will take place in Santiago prior to the Council and Commission meetings, at a time and place to be announced, in order to explain the provisions in Chapter 19 of the FTA and the role of the Council, as well as discuss the cooperative projects identified in the annex of Chapter 19. This session will also provide the opportunity for the public to learn about, and provide input towards, the cooperative activities envisioned by the ECA. The public is advised to refer to the State Department Web site at *www.state.gov/g/oes/env/* for further information related to this meeting.

Dated: July 7, 2004.

Michael Glover,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 04–15754 Filed 7–9–04; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Panama Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Panama Free Trade Agreement (FTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml*. Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the interim environmental review are requested by no later than July 30, 2004.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Nina Fite or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—Environmental Review of Trade Agreements (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml*.

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR04034@ustr.gov* with the subject line: "Panama Interim Environmental Review." Documents should be submitted as either Word Perfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 04–15705 Filed 7–9–04; 8:45 am]

BILLING CODE 3190–W3–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34514]

Raritan Central Railway, L.L.C.—Operation Exemption—Heller Industrial Parks, Inc.

Raritan Central Railway, L.L.C. (Raritan), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 1.0 route mile and approximately 2.0 track miles of railroad trackage and right-of-way inside Heller Industrial Park, Edison Township, Middlesex County, NJ. Raritan indicates that it has executed a license agreement effective August 15, 2004, with Heller Industrial Parks, Inc., granting Raritan the exclusive right to use all railroad trackage on Heller's property for the purpose of providing railroad service to all railroad customers within Heller Industrial Park. Raritan advises that, although the subject trackage is currently served by Consolidated Rail Corporation (Conrail), Raritan will replace Conrail as the exclusive provider of rail service on the subject trackage. Raritan has further advised, in a separate pleading filed June 24, 2004, that it will not operate on track owned by Conrail.

Raritan certifies that its projected annual revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class I or Class II rail carrier.

The transaction is scheduled to be consummated on or about August 15, 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. 34514, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Esq., John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: July 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–15609 Filed 7–9–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8877

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8877, Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit.

DATES: Written comments should be received on or before September 10, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver of Annual Income Recertification Requirement for the Low-Income Housing Credit.

OMB Number: 1545–1882.

Form Number: 8877.

Abstract: Owners of low-income housing buildings that are 100% occupied by low-income tenants may request a waiver from the annual recertification of income requirements, as provided by Code section 42(g)(8)(B).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 7 hours, 59 minutes.

Estimated Total Annual Burden Hours: 1,598.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 2, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–15753 Filed 7–9–04; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 69, No. 132
Monday, July 12, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 738

[Docket No. 040614182–4182–01]

RIN 0694–AD11

Revisions to the Export Administration Regulations To Remove Certain Regional Stability and Crime Control License Requirements to New North Atlantic Treaty Organization (NATO) Member Countries

Correction

In rule document 04–14625 beginning on page 36009 in the issue of June 28, 2004, make the following correction:

PART 738—[CORRECTED]

On page 36010 after amendatory instruction 2., Supplement No. 1 to Part 738 is corrected in part to read as follows:

COMMERCE COUNTRY CHART—REASON FOR CONTROL

Countries	Chemical & biological weapons			Nuclear nonproliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Bulgaria	X					X	X	X	X							
Latvia	X	X				X	X	X	X							

[FR Doc. C4–14625 Filed 7–9–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
July 12, 2004

Part II

Department of Labor

Employment and Training Administration

20 CFR Parts 667 and 670

29 CFR Parts 2 and 37

Workforce Investment Act—Equal Treatment in Department of Labor Programs for Faith-Based Community Organizations; Protection of Religious Liberty, and Limitation on Employment of Participants; Final Rules

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 667 and 670

Office of the Secretary

29 CFR Parts 2 and 37

RIN 1290–AA21

Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

AGENCY: Employment and Training Administration and the Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: Consistent with constitutional guidelines, this final rule clarifies that faith-based and community organizations may participate in the United States Department of Labor (DOL or the Department) social service programs without regard to the organizations' religious character or affiliation, and are able to apply for and compete on an equal footing with other eligible organizations to receive DOL support. In addition, in order to consolidate the Department's regulations on religious activities, this final rule revises the Employment and Training Administration's (ETA) regulation on religious services at Job Corps centers and the Department's Workforce Investment Act of 1998 (WIA) regulations relating to the use of WIA Title I financial assistance to support employment and training in religious activities, and employment at specified locations defined with reference to certain religious activities. The U.S. Department of Labor supports the participation of faith-based and community organizations in its social service programs.

DATES: Effective Date: August 11, 2004.

FOR FURTHER INFORMATION CONTACT: On the Office of the Secretary's general regulations, 29 CFR part 2, contact: Rhett Butler, Associate Director for Policy Development, DOL Center for Faith-Based and Community Initiatives (CFBCI), (202) 693–6450. On 20 CFR part 667, contact Maria K. Flynn, Acting Administrator, Office of Policy Development, Evaluation and Research, Employment and Training Administration, (202) 693–3700. On 20 CFR 670.555, contact: Grace Kilbane, Administrator of the National Office of Job Corps, (202) 693–3000. On 29 CFR 37.6, contact Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693–6500. Please note these are not toll-free numbers. Individuals with hearing or speech impairments may access these telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The March 9, 2004 Proposed Rule

On March 9, 2004, the Department published a proposed rule (69 FR 11234) to amend the Department's general regulations to make clear that faith-based and community organizations may participate in the Department's social service programs, including as recipients of Federal financial assistance. The proposed rule also set forth conditions for seeking, receiving, and using DOL support related to DOL programs. The proposed rule was part of the Department's effort to fulfill its responsibilities under two Executive Orders issued by President George W. Bush. The first of these Orders, Executive Order 13198 (66 FR 8497), published in the **Federal Register** on January 31, 2001, created Centers for Faith-Based and Community Initiatives in five cabinet departments—Education, Health and Human Services, Housing and Urban Development, Justice, and Labor—and directed these Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the equal participation of faith-based and community organizations in the provision of social services by these Departments. The second of these Executive Orders, Executive Order 13279, published in the **Federal Register** on December 16, 2002 (67 FR 77141), charged executive branch agencies to give equal treatment to faith-based and community groups that apply for Federal financial assistance to meet social needs in America's communities. In the Order, President Bush called for an end to discrimination against faith-based organizations and ordered implementation of these policies throughout the executive branch in a manner consistent with the First Amendment to the United States Constitution. He further directed that faith-based organizations be allowed to retain their religious autonomy over their internal governance and composition of boards, and over their display of religious art, icons, scriptures, or other religious symbols, when participating in Federally-financed programs. The Administration believes that there should be an equal opportunity for all organizations—both faith-based and otherwise—to participate as partners in Federal programs.

Consistent with the President's initiative, the Department's proposed rule of March 9, 2004, proposed to amend the Department's general regulations as well as the specific regulations governing Job Corps and implementing the Workforce Investment Act. The objective of the proposed rule was to ensure that DOL-supported social service programs were open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses of DOL support and the conditions for receipt of such support. In addition, this proposed rule was designed to ensure that the implementation of the Department's social service programs would be conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment. The proposed rule had the following specific objectives:

1. *Participation by faith-based organizations in the Department of Labor's programs.* The proposed rule clarified that organizations are eligible to participate in DOL social service programs without regard to their religious character or affiliation, and that organizations must not be excluded from competing for DOL support simply because they are faith-based. Specifically, the proposed rule included regulatory provisions specifying that faith-based organizations would be eligible to compete for DOL support on the same basis, and under the same eligibility requirements, as all other organizations. The proposed rule also included provisions designed to ensure that DOL, DOL social service providers, and State and local governments administering DOL support would be prohibited from discriminating for or against organizations on the basis of religion, religious belief, or religious character in the administration or distribution of DOL support, including grants, contracts, and cooperative agreements.

2. *Inherently religious activities.* The proposed rule included requirements related to inherently religious activities in DOL-supported social service programs. Specifically, under the proposed regulatory provisions, an organization could not use direct DOL support [1] for inherently religious

[1] As in the proposed rule, the term "direct DOL support" is used here to refer to DOL support provided directly to a religious or other non-governmental organization within the meaning of

activities, such as worship, religious instruction, or proselytization. If the organization engaged in such activities, the proposed provisions required the organization to offer those activities separately in time or location from the social service programs receiving direct DOL support, and participation by program beneficiaries in any such inherently religious activities would have to be voluntary. The proposed requirements ensured that direct DOL support would not be used to support inherently religious activities. Such support could not be used, for example, to conduct prayer meetings, worship services, or any other activity that is inherently religious.

The proposed rule clarified that this restriction would not mean that DOL social service providers could not engage in inherently religious activities, but only that such providers could not use direct DOL support for these activities. Under the proposed rule, such providers would have to take steps to separate in time or location their inherently religious activities from the services they offer with direct DOL support. The proposed rule further provided that these restrictions on inherently religious activities would not apply where DOL support was indirectly provided. The proposed rule clarified that indirect DOL support referred to DOL support that is indirect within the meaning of the Establishment Clause of the First Amendment to the Constitution. An organization receives indirect support if, for example, a program beneficiary redeems a voucher, coupon, certificate, or similar mechanism that was provided to that individual using DOL financial assistance under a program that was designed to give that individual a genuine and independent private choice among providers or program options.

In addition, the proposed rule clarified that the legal restrictions applied to inherently religious activities in DOL social service programs within correctional facilities would sometimes be different from the legal restrictions that are applied to other DOL-supported social service programs, because the degree of government control over correctional environments sometimes warrants affirmative steps by prison officials, in the form of chaplaincies and similar programs, to ensure that prisoners have opportunities to exercise their religion.

The proposed rule also recognized that the legal restrictions applied to inherently religious activities in other DOL-supported social service programs under extensive government control, for example isolated residential Job Corps facilities, would sometimes be different from the legal restrictions applied to other DOL-supported social service programs. These restrictions would differ because the extensive government control over the environment of these DOL social service programs sometimes would require that affirmative steps be taken by program officials to ensure that the beneficiaries of these programs have the opportunity to exercise their religion. The proposed rule emphasized that any participation in such inherently religious activities would have to be voluntary and that nothing in the proposed rule was intended to restrict the exercise of rights or duties guaranteed by the Constitution. For example, the proposed rule specified that program officials, although permitted to impose reasonable time, place, and manner restrictions, would not be allowed to restrict program beneficiaries' ability to freely express their views and to exercise their right to religious freedom. In addition, the proposed rule specified that residential facilities receiving DOL support would be required to permit residents to engage in voluntary religious activities, including holding religious services, at such facilities (although reasonable time, place, and manner restrictions would be permitted).

3. *Independence of faith-based organizations.* The proposed rule also clarified that a faith-based organization that is a DOL social service provider or that participates in DOL social service programs would retain its independence and could continue to carry out its mission, including the definition, development, practice, and expressions of its religious beliefs, although no organization, faith-based or otherwise, could use direct DOL support for any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, the proposed rule included provisions that explicitly stated that a faith-based organization could use space in its facilities to provide DOL-supported social services without removing religious art, icons, scriptures, or other religious symbols. In addition, under the proposed rule, a DOL-supported faith-based organization could retain its name (even if the name made a religious reference), select its board members and otherwise govern itself on a religious basis, and include religious references in its mission statements and other governing documents.

4. *Nondiscrimination in providing assistance.* The proposed rule provided that DOL, DOL social service intermediary providers, DOL social service providers in their use of direct DOL support, and State and local governments could not, in providing social services (including outreach for such services), discriminate for or against a current or prospective program beneficiary on the basis of religion, religious belief, or absence thereof. The proposed rule clarified that organizations receiving DOL support indirectly (for example, as a result of the genuine and independent private choice of a beneficiary of a program offering choice among providers or program options) would not be prohibited from offering assistance that integrates faith and social services and requires participation in all aspects of the organizations' programs and activities, including the religious aspects.

5. *Assurance requirements.* The proposed rule also prohibited, and directed the removal of, provisions in the Department's grant documents, agreements, covenants, memoranda of understanding, policies, or regulations that require only faith-based organizations applying for or receiving DOL support to provide assurances that they would not use such support for inherently religious activities. Under the proposed rule, all DOL social service providers, as well as State and local governments administering DOL support, would be required to carry out all DOL-supported activities in accordance with all program requirements and other applicable requirements governing the conduct of DOL-supported activities, including those requirements prohibiting the use of direct DOL support for inherently religious activities. In addition, to the extent that provisions in grant documents, agreements, covenants, memoranda of understanding, policies, or regulations used by DOL, or by a DOL social service intermediary provider or a State or local government administering DOL support, disqualify organizations from participating in DOL's programs because such organizations are motivated or influenced by religious faith to provide social services, or because of the organizations' religious character or affiliation, the proposed rule removed such restrictions, which are inconsistent with governing law.

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the Establishment Clause of the First Amendment. For example, direct DOL support may occur where the Federal Government, a State or local government administering DOL support, or a DOL intermediary social service provider selects an organization and obtains the needed services straight from the organization (*e.g.*, via a grant or cooperative agreement).

II. Discussion of Comments Received on the Proposed Rule

The Department received comments on the proposed rule from 7 commenters—two individuals, four civil or religious liberties organizations, and one State agency receiving financial assistance under the Workforce Investment Act (WIA). Some comments were generally supportive of the proposed rule; others were critical. The following is a summary of the comments, and the Department's responses.

Participation by Faith-Based Organizations in Department of Labor Social Service Programs

Several commenters expressed appreciation and support for the Department's efforts to clarify the rules governing participation of religious organizations in its programs. Two commenters commended DOL, in particular, for explicitly stating that DOL, DOL social service providers, and State and local governments administering DOL-supported social service programs may not discriminate either for or against religious providers.

Other commenters disagreed with the proposed rule, arguing that it would allow Federal financial assistance to be given to "pervasively sectarian" organizations in violation of what the commenters described as a constitutional principle that government may not fund programs that are so permeated by religion that their secular side cannot be separated from the sectarian. These commenters maintained that the rule places no limitations on the kinds of religious organizations that can receive financial assistance, and they requested that "pervasively sectarian" organizations be barred from receiving such assistance from the Department.

We do not agree that the Constitution requires the Department to assess the overall religiousness of an organization and deny financial assistance to organizations that are "pervasively sectarian." Rather, faith-based (and other) organizations that receive direct DOL support must not use such support for inherently religious activities, and they must ensure that such religious activities are separate in time or location from services directly supported by the Department and that participation in such activities by program beneficiaries is voluntary. Furthermore, under the proposed rule, such religious organizations are prohibited from discriminating for or against program beneficiaries on the basis of religion or religious belief, and participating organizations that violate these requirements are subject to applicable sanctions and penalties. The regulations would thus ensure that direct DOL support is not used for inherently religious activities, as required by current case law.

Moreover, the Supreme Court's "pervasively sectarian" doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even "secular" tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–29 (2000) (plurality opinion), and Justice O'Connor's opinion in that case, joined by Justice Breyer, set forth reasoning that is inconsistent with its underlying premises, *see id.* at 857–58 (O'Connor, J., concurring in judgment) (requiring proof of "actual diversion of public support to religious uses"). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes. That view is the foundation of the "pervasively sectarian" doctrine. The Department therefore believes that under current precedent, the Department may provide DOL support to all social service providers, without regard to religion and without criteria that would require providers to abandon their religious expression or character. As a result, the Department declines to make the requested change.

Another commenter expressed concern that section 2.32(a) of the proposed rule failed to circumscribe how and when religion could be accommodated. Section 2.32(a) states in pertinent part: "DOL, DOL social service providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation, although this requirement does not preclude DOL, DOL social service providers, or State and local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause." The commenter suggested that the Department revise the rule to set limits on permissible accommodation, for instance, by stating that accommodation must be handled in an even-handed manner and not favor some faiths over others; by stating that accommodation is permissible only if it removes a substantial burden on religious exercise; and by "prohibiting accommodations to religion that would vitiate the essence of the program, or which would work a hardship on participants."

The Department does not agree that the requested change is necessary. The purpose of the rule is to clarify that all organizations, both faith-based and otherwise, are eligible to participate in DOL social service programs without regard to their religious character or affiliation and to establish clearly the proper uses to which DOL support could be put and the conditions for receipt of such support. The rule is designed to ensure that the implementation of the Department's social service programs will be conducted in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment. All accommodations provided to religious individuals or organizations must be done within the confines of law. Such law includes statutory program requirements as well as the conditions set forth in this rule. The statement in the rule concerning accommodation simply clarifies that otherwise valid religious accommodations do not violate the religious nondiscrimination requirement of the rule.

One commenter requested that the Department revise § 2.32(c) to clarify that an organization may not be discriminated against because it lacks a faith-based component. This section as proposed stated in pertinent part: "A grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify religious organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, or on the grounds that such organizations have a religious character or affiliation."

We believe the commenter's concerns are already addressed by § 2.32(a), which provides, *inter alia*, that "DOL, DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate *for or against* an organization on the basis of the organization's religious character or affiliation" (emphasis added). However, we have modified the language of the final rule to further address this concern and to make even more clear that it is impermissible to disqualify an organization from receiving DOL

support based on the organization's religious faith, character, or affiliation, or because such organization lacks a religious component. Section 2.32(c) of the final rule reads: "A grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or from participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, have a religious character or affiliation, or lack a religious component."

Inherently Religious Activities

Some commenters suggested that the proposed rule does not sufficiently detail the scope of religious content that must be omitted from programs receiving DOL support. For example, two commenters suggested that the explanation given of "inherently religious activities" as "worship, religious instruction, or proselytization" is unclear or incomplete. Relatedly, one commenter suggested that the proposed rule would authorize conduct that would impermissibly convey the message that government endorses religious content. Another commenter suggested that the Department modify the proposed rule to make clear that the government may not disburse public funds to organizations that convey religious messages or in any way advance religion. Another commenter suggested that the rule define "participation" to provide guidance as to whether "compelled but passive presence at religious activities * * * constitute[s] coerced participation." Finally, one commenter requested clarification whether it would be permissible for a DOL social services provider to engage in inherently religious activity at a beneficiary's request before or following the provision of social services that receive direct financial assistance.

The Department disagrees with these comments and declines to make the requested changes. Concerning the rule's definition of "inherently religious activities," it would be difficult, if not impossible, to establish a complete list of all inherently religious activities. Inevitably, a regulatory definition would exclude some inherently religious activities while including activities that arguably may not be inherently religious. Rather than attempt to establish an exhaustive regulatory definition, the Department has decided to retain the language of the proposed rule, which provides examples of prohibited activities. This approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. In response to the suggestion that the rule will indicate or create the appearance that the Department endorses religious content, it again merits emphasis that the rule forbids the use of direct government assistance for inherently religious activities and states that any such activities must be voluntary for participants and separated in time or location from activities directly supported by the Department. As to the suggestion that the government must exclude from its programs those organizations that convey religious messages or advance religion with their own funds, the Department finds no constitutional support for this view. As noted above, the Supreme Court has held that the Constitution forbids the use of direct Federal financial assistance for inherently religious activities, but the Court has rejected the presumption that religious organizations will inevitably divert such assistance for their own religious activities. The Department likewise rejects the view that faith-based organizations cannot be trusted to fulfill their written promises to adhere to grant or contract requirements.

Moreover, for reasons similar to those articulated above regarding "inherently religious activities," the Department does not believe that it would be appropriate to provide a more detailed definition of "participation." Nonetheless, we reaffirm that a beneficiary's participation in any religious activities offered by a recipient of DOL support must be entirely voluntary and further, that such activities must be offered separately in time or location from social service programs receiving direct DOL support. We recommend that DOL social service providers, including State and local governments administering DOL-supported programs, help to ensure that beneficiaries and prospective beneficiaries of their programs understand their rights by having literature available for the beneficiaries explaining their rights.

Finally, in response to commenter's request for further clarification of the "separate, in time or location" requirement, the Department declines to revise this portion of the rule, because the Department does not believe that it is ambiguous or necessitates additional regulation for proper adherence. Regarding the example posed by the commenter, the Department believes it would be permissible under the rule for staff of a DOL-supported social services provider to engage in inherently religious activity with a beneficiary at a beneficiary's request before or after the provision of social service activities directly supported by DOL. Such activity would be permitted because it would be voluntary (because it was at the beneficiary's request) and separate in time from any social service activity receiving direct DOL support (because it took place before or after, but not during, the social service activities directly supported by DOL). Under the rule, an organization receiving direct DOL support is responsible for maintaining a distinction between the social service activities directly supported by DOL and any privately-supported inherently religious activities. Of course, no direct DOL support can be used for inherently religious activities.

Voucher-Style Programs Under the Rule

Two commenters claimed that the proposed rule would authorize the use of voucher programs to provide assistance to faith-based organizations without instituting adequate "constitutional safeguards," and requested that the rule be revised to comply with the framework instituted by *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). These commenters emphasized the need for program beneficiaries to have a "real choice" of their social service provider and suggested there was "no * * * social service structure in place to ensure a real choice." One commenter requested clarification whether inherently religious activities conducted by a service provider receiving both direct and indirect support must be separate in time and location from DOL program services. This commenter also requested reconciliation between, as the commenter described it, the rule's requirement that service providers receiving vouchers must satisfy "all legal and programmatic requirements" (*see* 2.32(c) and 2.33(c), both referring to "all applicable legal and programmatic requirements") and the rule's implication that the Department may "dispense with programmatic requirements where doing so relieves a substantial burden on religious practice." Last, one commenter requested a rule change that would make the nondiscrimination provision of § 2.33(a) applicable to service providers receiving indirect support.

The Department respectfully declines to adopt the recommendations of the commenters requesting incorporation of

additional requirements by regulation. The proposed rule clearly states that any organization receiving indirect DOL support, whether through a voucher-style program or other qualifying program offered by the Department, must comply with Federal law. Such law includes constitutional requirements. The Department thus believes that the proposed rule adequately addresses these commenters' constitutional concerns.

Regarding the inquiry whether inherently religious activities conducted by a social service provider receiving both direct and indirect support must be separate in time and location from DOL program services, § 2.33(b)(1) of the rule plainly prohibits service providers from using direct DOL support to conduct inherently religious activities. Using any direct support to conduct such activities would violate this prohibition, even if the organization also received indirect support. Religious activity need not be restricted, however, when related to services (or part of programs) that receive only indirect DOL support.

The Department also disagrees with the suggestion that the rule is inconsistent in requiring faith-based organizations to meet applicable legal and programmatic requirements but also permitting constitutional accommodations for certain religious practices. One fundamental purpose of this rule is to allow organizations to be eligible for Department programs without regard to their religious character or affiliation and to prevent the exclusion of organizations from competing for DOL support simply because of their religious character. Thus, faith-based organizations are eligible to compete for DOL support on the same basis, and under the same eligibility requirements, as all other organizations. The statement in the proposed rule that indicated accommodations to religion may be permitted, "in a manner consistent with the Establishment Clause," does not signify that discrimination against or preferential treatment for religion is permissible, but rather acknowledges the special circumstances involved when DOL provides support to religious organizations. Necessarily included within these special circumstances are any accommodations for religious practices that are consistent with the Free Exercise and Establishment Clauses of the Constitution.

The Department also disagrees with the commenter's request to extend the proposed rule's nondiscrimination provision (§ 2.33(a)) to religious organizations receiving indirect DOL support. As an initial matter, this final rule does not alter any nondiscrimination provisions of existing statutes, including statutes governing programs providing DOL support. See section of preamble entitled *Applicability and Notice of Nondiscrimination Requirements*. Thus, to the extent that such statutes restrict the activities of indirectly funded organizations, those restrictions remain in effect under this rule. Questions regarding the applicability of these other statutes may be addressed to the appropriate DOL program official or the DOL's Civil Rights Center. *See* § 2.35 of this final rule. Additionally, the religious freedom of beneficiaries in a program receiving indirect support is protected by the guarantee of genuine and independent private choice. Officials administering public support under a program providing indirect assistance have an obligation to ensure that every eligible applicant receives services from some provider, and no beneficiary may be required to receive services from a provider to which the beneficiary has a religious objection. In other words, DOL-supported vouchers and other mechanisms for providing indirect support must be available to all participants regardless of their religious belief, and those who object to a religious provider have a right to services from some alternative provider.

Exceptions for Chaplains and Certain DOL-Supported Social Service Programs From the Restriction on Direct Funding of "Inherently Religious" Activities

Some commenters objected to the exception from the "inherently religious activities" restrictions for religious or other organizations assisting chaplains in carrying out their duties in prisons, detention facilities, or community correction centers. Others criticized the rule for excepting certain DOL-supported social service programs—*i.e.*, those that involve a high degree of government control over the program environment—from the restriction on direct financial assistance of inherently religious activities, asserting that there is no legal basis for such an exception. One commenter suggested modifying the proposed rule to clarify that religious accommodation at remote Job Corps centers must be available to all participants and not limited to participants of dominant religions. Still another commenter criticized the rule for lacking clarity, and expressed concern that too much discretion was being given to the government in determining which programs have a high degree of government control.

The Department respectfully disagrees with these comments. As noted in the proposed rule, the legal restrictions that apply to religious programs within correctional facilities will sometimes be different from legal restrictions that govern other Department programs. That is because correctional institutions are heavily regulated, and this extensive government control over the prison environment means that prison officials must sometimes take affirmative steps, in the form of chaplaincies and similar programs, to provide an opportunity for prisoners to exercise their religion. Without such efforts, religious freedom would not exist for Federal prisoners. *See Cruz* v. *Beto*, 450 U.S. 319, 322 n.2 (1972) (explaining that "reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty"); *Abington School District* v. *Schempp*, 374 U.S. 203, 299 (1963) (Brennan, J., concurring) (observing that "hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners . . . cut off by the State from all civilian opportunities for public communion"). Of course, religious activities must be voluntary for the inmates.

Sometimes the activities of chaplains and those assisting them will be inherently religious. For example, a chaplain might conduct a voluntary worship service or administer sacraments. The rule does not effect any change in the professional or legal responsibilities of chaplains or those persons or organizations assisting them. Nor does it diminish the fact that chaplains' duties often include the provision of secular counseling. Rather, the rule is intended simply to make clear that the rule's otherwise-applicable restrictions on the use of direct DOL support for inherently religious activities do not apply to chaplains in correctional facilities or those functioning in similar roles. Accordingly, the rule as stated reflects the law and requires no change.

For similar reasons, the legal restrictions that apply to religious activities within some DOL-supported social service programs, such as isolated residential Job Corps facilities, may sometimes be different from the legal restrictions that govern other DOL programs. This is because where there is extensive government control over the environment of a DOL-supported social service program, like an isolated residential Job Corps facility, program officials must sometimes take affirmative steps, in the form of access to ministers and similar programs, to ensure that program beneficiaries may

exercise their religious freedom. *Cf. Katcoff* v. *Marsh*, 755 F.2d 223, 234 (2d Cir. 1985) (finding it "readily apparent" that government is obligated by the First Amendment to make religion available to members of the Army who otherwise would not have access to their religion because they are often in isolated areas without access to religious opportunities). Without such efforts, religious freedom would not exist for these DOL program beneficiaries. Of course, participation in such activities must be voluntary. In response to the suggestion that the rule be modified to clarify that any religious accommodation at Job Corps centers must not be limited to participants from dominant faiths, the Department rejects the suggestion as unnecessary. Of course, religious activities on Job Corps Centers must be permitted for all beneficiaries of such DOL programs regardless of faith. The rule already provides that there can be no "discriminat[ion] for or against a current or prospective program beneficiary on the basis of religious or religious belief." The Department believes that the proposed rule requires no change in this regard.

Applicability and Notice of Nondiscrimination Requirements

Three commenters suggested that the rule should explain the scope of applicable independent statutory provisions requiring grantees not to discriminate on the basis of religion, rather than simply referring grantees to appropriate Department program offices. One commenter further suggested that the proposed rule be amended to provide specific directions on which programs statutorily bar religious discrimination.

The Department understands that organizations participating in DOL programs need to be aware of such provisions, but declines to adopt the suggested recommendation because the Department believes such information is most easily obtained and best explained by the appropriate Department offices. The purpose of this rulemaking is to eliminate undue administrative barriers that the Department has imposed to the participation of religious organizations in Department programs; it is not to alter existing statutory requirements, which apply to Department programs to the same extent that they applied under the prior rule.

State and Local Diversity Requirements and Preemption

Two commenters expressed concern that the proposed rule will exempt religious organizations from State and local diversity and nondiscrimination requirements. Both commenters suggested that the proposed rule be modified to provide that State and local laws will not be preempted by the rule. Conversely, one commenter indicated that the rule should clearly state that it preempts all such State and local requirements.

The requirements that govern financial assistance under the Department programs at issue in these regulations do not address preemption of State or local diversity or nondiscrimination laws. Federal financial assistance, however, carries Federal obligations. The Federal obligations continue to be applicable even when Federal financial assistance is first given to the States or localities through block grants and the latter are then responsible for disbursing the Federal financial assistance. No organization is required to apply for assistance under these programs, but organizations that apply and are selected for assistance must comply with the applicable legal and programmatic requirements. As discussed below, these Federal requirements apply not only to Federal financial assistance but also to State matching funds and to State funds that are commingled with the Federal assistance.

Applicability of Rule to State, Local, and "Commingled" Funds

One commenter stated that the proposed rule was unclear on whether it applied to funds supplied by the States. Two commenters stated that the Department lacked the statutory or constitutional authority to require States to waive, for their own funds, State law that is inconsistent with the rule. A third commenter requested a rule change that would make State matching funds that are not commingled subject to the rule's requirements.

The Department disagrees with these objections, but has modified the regulatory text slightly for clarification. The rule makes clear that when States and local governments voluntarily choose to contribute their own funds to supplement program activities, they have the option of commingling their funds with Federal funds or to separate out their funds from Federal funds. The rule applies to State funds in the former instance, but not the latter. To the extent a Department program may explicitly require that Federal rules apply to State matching funds (or other grantee contributions) or may require State matching funds to be part of the program grant budget, these State matching funds are considered to be commingled and thus subject to the requirements of this rule. The Department also disagrees that it lacks statutory or constitutional authority to require States to comply with this rule for commingled State funds when State law is inconsistent with the rule. Neither States nor localities are obligated to participate in Department programs, but should they choose to do so, they must comply with Federal requirements. Valid Federal requirements may be imposed through, among other means, statute or agency rulemaking, as was done here. And, of course, where no statute requires commingling of funds, States remain free to separate their funds from Federal funds, and Federal requirements do not apply to segregated State funds.

Organizations' Display of Religious Art or Symbols

Three commenters objected to the provisions allowing faith-based organizations conducting DOL-supported social service programs in their facilities to retain religious art, icons, scriptures, or other religious symbols in their facilities.

The Department disagrees with these comments. A number of Federal statutes affirm the principle embodied in this rule. *See, e.g.*, 42 U.S.C. 290kk–1(d)(2)(B). Moreover, for no other service providers do Department regulations prescribe the types of artwork or symbols that may be placed within the structures or room in which DOL-supported social services are provided. In addition, a prohibition on the use of religious icons would make it more difficult for many religious organizations to participate in Department programs than other organizations by forcing them to procure additional space. It would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional church-state guidelines, a religious organization that participates in Department programs retains its independence and may continue to carry out its mission, although it must not use direct DOL support to support any inherently religious activities. Accordingly, this final rule continues to provide that religious organizations may use space in their facilities to provide DOL-supported services, without removing religious art, icons, scriptures, or other religious symbols.

Religious Freedom Restoration Act

One commenter requested that the Department include language in the regulation stating that the Religious

Freedom Restoration Act ("RFRA"), 42 U.S.C. 2000bb *et seq.*, may provide relief from otherwise applicable statutory provisions prohibiting employment discrimination on the basis of religion. The commenter noted that, for example, the Department of Health and Human Services has recognized RFRA's ability to provide relief from certain employment nondiscrimination requirements in the final regulations it promulgated governing its substance abuse and mental health programs (*e.g.*, 42 CFR 54.6).

The Department notes that RFRA, which applies to all Federal law and its implementation, 42 U.S.C. 4000bb–3, 4000bb–2(1), is applicable regardless of whether it is specifically mentioned in this rule. Whether a party is entitled to an exemption or other relief under RFRA simply depends upon whether the party satisfies the RFRA's statutory requirements. The Department therefore declines to adopt this recommendation at this time.

Recognition of Religious Organizations' Title VII Exemption

The Department received three comments expressing views on the rule's provision that, absent statutory authority to the contrary, religious organizations do not forfeit their Title VII exemption by receiving financial assistance from the Department. One commenter approved of the retention of the Title VII exemption, but urged renaming the section with a more expansive title, such as "Preserving the Freedom of Faith-Based Organizations in Employment Decisions." Two commenters stated that the rule "improperly extends [the] Title VII" exemption because "Congress has never authorized [the] exemption" for DOL programs. These commenters further assert that providing Federal financial assistance for the provision of social services to an organization that considers religion in its employment decisions is unconstitutional.

The Department disagrees with the objections to the rule's recognition that a religious organization does not forfeit its Title VII exemption when administering DOL-supported social services. As an initial matter, applicable statutory nondiscrimination requirements are not altered by this rule. Congress establishes the conditions under which religious organizations are exempt from Title VII. This rule simply recognizes that the Title VII exemption, including its limitations, is fully applicable to Federally-assisted organizations unless Congress says otherwise.

As to the suggestion that the Constitution restricts the government from providing support for social services to religious organizations that consider faith in hiring, that view does not accurately represent the law. As noted below, the employment decisions of organizations that receive extensive public financial assistance are not attributable to the State, *see Rendell-Baker* v. *Kohn*, 457 U.S. 830 (1982), and it has been settled for more than 100 years that the Establishment Clause does not bar the provision of direct Federal grants to organizations that are controlled and operated exclusively by members of a single faith. *See Bradfield* v. *Roberts*, 175 U.S. 291 (1899); *see also Bowen* v. *Kendrick*, 487 U.S. 589, 609 (1988). Finally, the Department notes that allowing religious organizations to consider faith in hiring when they receive government support is much like allowing a Federally-supported environmental organization to hire those who share its views on protecting the environment—both types of organization are allowed to consider ideology and missions, which improves the organizations' effectiveness and preserves their integrity. Thus, the Department declines to amend the final rule to require religious organizations to forfeit their Title VII rights.

The Department also rejects the request to give this section a more expansive title. The section relates most directly to the retention of the Title VII exemption, and the proposed title accurately reflects the section's scope and purpose.

Nondiscrimination in Providing Assistance

Commenters have requested a number of rule changes that would provide express protections for beneficiaries who object to the religious character of an assigned service provider. One commenter requested a revision to make clear that the right to religious freedom includes the right to be free from religion. Other commenters have requested provisions that would require notice to beneficiaries that they may object to a religious service provider and obtain a secular alternative; that participation in religious activity is voluntary, and pressure or coercion, even subtly applied, is prohibited; and that the failure to participate in religious activities will not impact the receipt of social services. These commenters additionally requested the creation of a grievance process and remedies for violations of these rights.

The Department declines to adopt these recommendations, because it believes that the rule's existing language prohibiting organizations from discriminating for or against program beneficiaries on the basis of religion or religious belief encompasses beneficiaries who hold no religious belief or who desire to be free of religion. Such a prohibition is straightforward and requires no further elaboration. In addition, the rule provides that organizations may not use direct DOL support for inherently religious activities and that any such activities must be offered separately in time or location and must be voluntary for program beneficiaries. These requirements further protect the rights of program beneficiaries. The Department also declines to adopt the recommendation that the rule create a grievance process that is specific to the requirements contained in this rule, because traditional channels of airing grievances or filing complaints are already generally available.

Assurance Requirements

One commenter, in order to mitigate constitutional concerns raised by the proposed rule, opposed the removal of any existing requirements that faith-based organizations provide assurances that direct DOL support will not be used for inherently religious activities. This commenter, and one other, stated that the proposed rule should include additional assurances and safeguards to "prevent religious use of [Department] funds." Still another commenter requested that the rule require State and local governments to provide assurances that they will follow the equal treatment principles of this rule.

The Department disagrees with the commenters and declines to adopt their recommendations. Once this rule comes into effect, each prospective DOL social service provider, including State and local governments, must certify in its application for assistance that it will comply with various laws applicable to recipients of Federal financial assistance, including this final rule and its prohibitions on the use of direct DOL support for inherently religious activities and on discrimination either for or against religious organizations. Additional assurances, such as those that are being removed and prohibited by this rule, only perpetuate an unfair presumption that program requirements applicable to all DOL providers are insufficient to bind faith-based organizations and that additional requirements and assurances must be imposed on these organizations.

The Department believes that no additional requirements above and beyond those imposed on all participating organizations are needed.

In issuing this rule, the Department's general approach is that faith-based organizations are not a category of applicants or service providers that require additional requirements or oversight in order to ensure compliance with program regulations. Rather, the Department presumes that faith-based organizations, like other recipients of DOL support, fully understand the restrictions on the support they receive, including the restriction that inherently religious activities cannot be undertaken with direct DOL support and must remain separate from the Federally-supported activities. The requirements for use of DOL support under a Department program apply to, and are binding on, all Department social service providers.

One commenter requested that the proposed rule require monthly reports and periodic site visits of all Department grantees to ensure compliance with the Establishment Clause.

The Department respectfully declines to adopt this recommendation. Ordinary enforcement and monitoring procedures are sufficient to ensure that faith-based organizations, like other participating organizations, do not violate program restrictions, including those concerning unauthorized uses of financial assistance. The need for enforcement of Department regulations does not increase simply because some service providers are faith-based organizations. The Department has a responsibility to ensure that all DOL support is used in accordance with program-specific regulations and any government-wide requirements. Compliance with the Establishment Clause is just one aspect of compliance with legal and programmatic requirements. We believe the monitoring mechanisms currently in place are sufficient to address whatever compliance issues may arise.

Another commenter suggested that the Department amend the proposed rule regarding assurances to clarify that § 2.32(c) is not limited to grant documents and applies equally to contracts. The commenter noted that State and local governments frequently administer federally-financed social service programs by issuing contracts with service providers rather than grants.

The Department believes that no change is required. Section 2.32(c) applies to "a grant document, agreement, covenant, memorandum of understanding, policy, or regulation." The language is broadly sweeping and the use of the term "agreement" includes by definition "contracts." However, in an effort to further clarify the regulation, the Department has made the requested change.

Employment or Training Activities That Involve the Maintenance of a Building Used for Religious Activities

One commenter objected that the proposed rule purportedly "incorporates by reference an earlier proposed rule" proposing revisions to 29 CFR 37.6(f)(2). The commenter stated that the proposed revision to 37.6(f)(2) would lead to confusion and possible unconstitutional use of Federal funds for capital improvements to religious buildings. The Department notes that, contrary to the commenter's assertions, the rule proposed on March 9 did not include proposed changes to 29 CFR 37.6(f)(2). As a result, the Department has responded in detail to this and similar objections in its notice of final rulemaking for 29 CFR part 37, published elsewhere in the **Federal Register** today.

Definitions

The Department received several comments relating to definitions for terms used in the proposed rule. Two comments focused on the definition of "social service program," which the Department defined as including, *inter alia*, childcare services and literacy and mentoring programs. One commenter expressed concern that the proposed rule subsequently failed to address how a religious childcare service provider would be able to ensure that children as young as three or four, or perhaps even younger, would have a choice as to whether to participate in inherently religious activities of the childcare center. Likewise, the commenter was concerned that such children would be unable to separate out the religious childcare center's views from the instruction provided.

The Department disagrees that changes to the rule are necessary in response to this comment. As with the definition of "inherently religious activities" discussed earlier in this preamble, it would be difficult, if not impossible, to craft regulatory language that would address the specific circumstances of every activity covered by the rule. In the Department's view, the language of the rule is sufficiently broad to cover the circumstances suggested by the commenter. That language requires recipients to operate their DOL-supported programs in a manner consistent with applicable Federal law. Such law, of course, includes the Constitution.

The same commenter questioned whether a ban on using direct DOL support for inherently religious activities would apply to volunteer mentors who were not paid with government money. The commenter wondered whether such mentors could engage in religious activities with the children they mentored in an activity receiving direct DOL support.

DOL social service providers may not use direct DOL support for inherently religious activities. As is discussed below, DOL support includes more than money. Thus, in a program receiving any form of direct DOL support, a DOL social service provider—including one staffed by volunteer mentors—must comply with this rule's restrictions on inherently religious activities. Of course, where volunteer mentors are acting outside the scope of a DOL-supported program, they are not subject to such restrictions on their religious activities.

One commenter suggested that the Department provide a definition for "religious organization" or "faith-based organization," reasoning that a common definition across Federal programs would maximize opportunities for these organizations. The Department declines to adopt this suggestion. One of the objectives of this rule is to move away from unnecessary Federal inquiry into the religious nature, or absence of religious nature, of an organization seeking DOL support or participation in a DOL social service program. The Department believes the focus should always be on (1) whether the organization is eligible as defined by the program in question; and (2) whether the organization commits to abide, and does abide, by all legal and programmatic requirements that govern that support.

Finally, a commenter suggested that "Federal financial assistance" should be defined to include non-financial assistance that might be provided by DOL or by State or local governments using DOL funds. The Department declines to amend the definition. Historically, Federal regulations have used similar, if not identical, language to define Federal financial assistance. Through the course of time, it has been clearly established that such assistance includes more than money. *See U.S. Dep't of Transp.* v. *Paralyzed Veterans*, 477 U.S. 597, 607 n.11 (1986) (noting that Federal financial assistance may take non-monetary form). Federal financial assistance may include, for example, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, or other arrangements with the intention of providing assistance. *See Delmonte* v. *Department of Bus. & Prof'l Regulation*,

877 F. Supp. 1563 (S.D. Fla. 1995) (training of city police officers by Federal personnel considered to be Federal financial assistance).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

One commenter suggested that the rule met the unfunded mandate requirement only because the rule failed to mandate that alternative secular providers must be made available for beneficiaries who object to the religious character of an organization. Contrary to the commenter's suggestion, the Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. This is largely because these regulations impact only Federal financial assistance. Although State or local governments may commingle their funds with Federal funds, the rule does not require them to do so.

Amendments to Job Corps and WIA Regulations

Except to the extent discussed above, the Department did not receive comments concerning the portions of the proposed rule that proposed to amend the Job Corps and WIA regulations. The Department has revised the language of these portions of the proposed rule to improve their clarity and consistency with the part of the proposed rule that is now the new subpart D of DOL's final general regulation at 29 CFR part 2. The Department has also revised the language of the proposed WIA regulations in order to ensure greater conformity with the language of WIA section 188(a)(3).

II. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). OMB reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Center for Faith-Based and Community Initiatives, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2235, Washington, DC 20210.

Regulatory Flexibility Act

The Secretary of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that the rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose any new costs, or modify existing costs, applicable to recipients of DOL support. Rather, the purpose of the rule is to clarify that DOL's social service programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the permissible uses to which DOL support may be put. Notwithstanding the Secretary's determination that this rule will not have a significant economic effect on a substantial number of small entities, the Department specifically invited comments regarding any less burdensome alternatives to this rule that will meet the Department's objectives as described in this preamble. No such comments were received.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Order 13132, Federalism

Executive Order 13132, *Federalism*, prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Consistent with Executive Order 13132, the Department specifically solicited comments from State and local government officials on this proposed rule, and no comments from these entities were submitted that raised federalism concerns.

List of Subjects

20 CFR Part 667

Employment; Grant programs—labor; Reporting and recordkeeping requirements.

20 CFR Part 670

Employment; Grant programs—labor; Job Corps; Religious discrimination.

29 CFR Part 2

Administrative practice and procedure; Claims; Courts; Government employees; Religious discrimination.

29 CFR Part 37

Administrative practice and procedure; Aged; Aliens; Civil rights; Discrimination; Equal educational opportunity; Equal employment opportunity; Grant programs-labor; Individuals with disabilities; Investigations; Manpower training programs; Political affiliation discrimination; Religious discrimination; Reporting and recordkeeping requirements; Sex discrimination.

Signed at Washington, DC, this 7th day of July, 2004.

Elaine L. Chao,

Secretary of Labor.

Emily S. DeRocco,

Assistant Secretary for Employment and Training.

■ For the reasons set forth in the preamble, the Department of Labor amends 20 CFR Part 667; 20 CFR Part 670; 29 CFR Part 2; and 29 CFR Part 37 as set forth below.

Title 20—Employees' Benefits

Chapter V—Employment and Training Administration, Department of Labor

PART 667—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 1. The authority citation for part 667 is revised to read as follows:

Authority: Subtitle C of Title I, Sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 9276(c)); Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 2. In § 667.266, paragraph (b) and the section heading are revised to read as follows:

§ 667.266 What are the limitations related to religious activities?

* * * * *

(b)(1) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. *See also* 20 CFR 667.275 and 29 CFR 37.6(f)(1). 29 CFR part 2, subpart D also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries.

(2) Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place for religious worship are described at 29 CFR 37.6(f)(2).

■ 3. In § 667.275, paragraph (b) and the section heading are revised to read as follows:

§ 667.275 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

* * * * *

(b) 29 CFR part 2, subpart D governs the circumstances under which recipients may use DOL support, including WIA Title I financial assistance, to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. *See also* 20 CFR 667.266 and 29 CFR 37.6(f)(1). 29 CFR part 2, subpart D also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). *See* section 188(a)(3) of the Workforce Investment Act of 1998, 29 U.S.C. 2938(a)(3).

PART 670—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INVESTMENT ACT

■ 4. The authority citation for part 670 is revised to read as follows:

Authority: Subtitle C of title I, sec. 506(c), Pub. L. 105–220, 112 Stat. 936 (20 U.S.C. 2881 *et seq.* and 9276(c)); 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750); Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 5. Section 670.555 is amended by removing paragraph (b), redesignating paragraph (d) as paragraph (b), and revising paragraph (c) to read as follows:

§ 670.555 What are the center's responsibilities in ensuring that students' religious rights are respected?

* * * * *

(c) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. *See also* §§ 667.266 and 667.275 of 20 CFR; 29 CFR part 37.

Title 29—Labor

Chapter I—Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

■ 7. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 301; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 8. Part 2 is amended by adding a new subpart D to read as follows:

PART 2—GENERAL REGULATIONS

* * * * *

Subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

Sec.
2.30 Purpose.
2.31 Definitions.
2.32 Equal participation of religious organizations.
2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.
2.34 Application to State and local funds.
2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.
2.36 Status of nonprofit organizations.

§ 2.30 Purpose.

The purpose of the regulations in this subpart is to ensure that DOL-supported social service programs are open to all qualified organizations, regardless of the organizations' religious character, and to establish clearly the permissible uses to which DOL support for social service programs may be put, and the conditions for receipt of such support. In addition, this proposed rule is designed to ensure that the Department's social service programs are implemented in a manner consistent with the requirements of the Constitution, including the Religion Clauses of the First Amendment.

§ 2.31 Definitions.

As used in the regulations in this subpart:

(a) The term *Federal financial assistance* means assistance that non-Federal entities (including State and local governments) receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, direct appropriations, or other direct or indirect assistance, but does not include a tax credit, deduction or exemption.

(b) The term *social service program* means a program that is administered or supported by the Federal Government, or by a State or local government using Federal financial assistance, and that provides services directed at reducing poverty, improving opportunities for low-income children, revitalizing low-income communities, empowering low-income families and low-income individuals to become self-sufficient, or otherwise helping people in need. Such programs include, but are not limited to, the following:

(1) Child care services and services to meet the special needs of children, older individuals, and individuals with

disabilities (including physical, mental, or emotional disabilities);

(2) Job training and related services, and employment services;

(3) Information, referral, and counseling services;

(4) Literacy and mentoring programs; and

(5) Services for the prevention and treatment of juvenile delinquency and substance abuse, services for the prevention of crime and the provision of assistance to the victims and the families of criminal offenders, and services related to intervention in, and prevention of domestic violence.

(c) The term *DOL* means the U.S. Department of Labor.

(d) The term *DOL-supported social service program, DOL social service program,* or *DOL program* means a social service program, as defined in paragraph (b) of this section, that is administered by or for DOL with DOL support. Such programs include, but are not limited to, the One Stop Career Center System, the Job Corps, and other programs supported through the Workforce Investment Act.

(e) The term *DOL social service provider* means any non-Federal organization, other than a State or local government, that seeks or receives DOL support as defined in paragraph (g) of this section, or participates in DOL programs other than as the ultimate beneficiary of such programs.

(f) The term *DOL social service intermediary provider* means any DOL social service provider that, as part of its duties, selects subgrantees to receive DOL support or subcontractors to provide DOL-supported services, or has the same duties under this part as a governmental entity.

(g) The term *DOL support* means Federal financial assistance, as well as procurement funding provided to a non-Federal organization, including a State or local government, to support the organization's administration of or participation in a DOL social service program as defined in paragraph (d) of this section.

§ 2.32 Equal participation of religious organizations.

(a) Religious organizations must be eligible, on the same basis as any other organization, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL, DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character or affiliation, although this requirement does not preclude DOL, DOL social service providers, or State and local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause. In addition, because this rule does not affect existing constitutional requirements, DOL, DOL social service providers (insofar as they may otherwise be subject to any constitutional requirements), and State and local governments administering DOL support must continue to comply with otherwise applicable constitutional principles, including, among others, those articulated in the Establishment, Free Speech, and Free Exercise Clauses of the First Amendment to the Constitution.

(b) A religious organization that is a DOL social service provider retains its independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, subject to the provisions of § 2.33 of this subpart. Among other things, such a religious organization must be permitted to:

(1) Use its facilities to provide DOL-supported social services without removing or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(2) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on a religious basis, and including religious references in its mission statements and other governing documents.

(c) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require only religious organizations to provide assurances that they will not use direct DOL support for inherently religious activities. Any such requirements must apply equally to both religious and other organizations. All organizations, including religious ones, that are DOL social service providers must carry out DOL-supported activities in accordance with all applicable legal and programmatic requirements, including those prohibiting the use of direct DOL support for inherently religious activities. A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program must not disqualify organizations from receiving DOL support or participating in DOL programs on the grounds that such organizations are motivated or influenced by religious faith to provide social services, have a religious character or affiliation, or lack a religious component.

§ 2.33 Responsibilities of DOL, DOL social service providers and State and local governments administering DOL support.

(a) DOL, DOL social service intermediary providers, DOL social service providers in their use of direct DOL support, and State and local governments administering DOL support must not, when providing social services, discriminate for or against a current or prospective program beneficiary on the basis of religion or religious belief. This requirement does not preclude DOL, DOL social service intermediary providers, or State or local governments administering DOL support from accommodating religion in a manner consistent with the Establishment Clause of the First Amendment to the Constitution.

(b)(1) DOL, DOL social service providers, and State and local governments administering DOL support must ensure that they do not use direct DOL support for inherently religious activities such as worship, religious instruction, or proselytization. DOL social service providers must be permitted to offer inherently religious activities so long as they offer those activities separately in time or location from social services receiving direct DOL support, and participation in the inherently religious activities is voluntary for the beneficiaries of social service programs receiving direct DOL support. For example, participation in an inherently religious activity must not be a condition for participating in a directly-supported social service program.

(2) This regulation is not intended to and does not restrict the exercise of rights or duties guaranteed by the Constitution. For example, program officials must not impermissibly restrict the ability of program beneficiaries or DOL social service providers to freely express their views and to exercise their right to religious freedom. Additionally, subject to reasonable and permissible time, place and manner restrictions, residential facilities that receive DOL support must permit residents to engage in voluntary religious activities, including holding religious services, at these facilities.

(3) Notwithstanding the requirements of paragraph (b)(1), and to the extent

otherwise permitted by Federal law (including constitutional requirements), direct DOL support may be used to support inherently religious activities, and such activities need not be provided separately in time or location from other DOL-supported activities, under the following circumstances:

(i) Where DOL support is provided to chaplains to work with inmates in prisons, detention facilities, or community correction centers through social service programs;

(ii) Where DOL support is provided to social service programs in prisons, detention facilities, or community correction centers, in which social service organizations assist chaplains in carrying out their duties; or

(iii) Where DOL-supported social service programs involve such a degree of government control over the program environment that religious exercise would be significantly burdened absent affirmative steps by DOL or its social service providers.

(c) To the extent otherwise permitted by Federal law, the restrictions set forth in this section regarding the use of direct DOL support do not apply to social service programs where DOL support is provided to a religious or other non-governmental organization indirectly within the meaning of the Establishment Clause of the First Amendment to the Constitution. Religious or other non-governmental organizations will be considered to have received support indirectly, for example, if as a result of a program beneficiary's genuine and independent choice the beneficiary redeems a voucher, coupon, or certificate that allows the beneficiary to choose the service provider, or some other mechanism is provided to ensure that beneficiaries have a genuine and independent choice among providers or program options. All organizations must, however, satisfy all applicable legal and programmatic requirements.

§ 2.34 Application to State and local funds.

If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, then the provisions of this subpart apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal assistance. State funds that are contributed pursuant to the requirements of a matching or grant agreement are considered to be commingled funds.

§ 2.35 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in § 702(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–1, is not forfeited when the organization receives direct or indirect DOL support. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. Accordingly, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program official or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4123, Washington, DC 20210, (202) 693–6500. Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

§ 2.36 Status of nonprofit organizations.

(a) In general, DOL does not require that an organization, including a religious organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code in order to be eligible for Federal financial assistance under DOL social service programs. Many such programs, however, do require an organization to be a "nonprofit organization" in order to be eligible for such support. Individual solicitations that require organizations to have nonprofit status must specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation for a program that requires an organization to maintain tax-exempt status must expressly state the statutory authority for requiring such status. For assistance with questions about a particular solicitation, applicants should contact the DOL program office that issued the solicitation.

(b) Unless otherwise provided by statute, in DOL programs in which an applicant must show that it is a nonprofit organization, the applicant must be permitted to do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as tax exempt under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State Secretary of State certifying that:

(i) the organization is a nonprofit organization operating within the State; and

(ii) no part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (b)(3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

■ 9. The authority citation for part 37 is revised to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; Title IX of the Education Amendments of 1972, as amended, 29 U.S.C. 1681; Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; and Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

■ 10. In § 37.6, paragraph (f)(1) and the section heading are revised to read as follows:

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part, and what limitations are there related to religious activities?

* * * * *

(f)(1) 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect. *See also* §§ 667.266 and 667.275 of 20 CFR. 29 CFR part 2, subpart D also contains requirements

related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries.

* * * * *

[FR Doc. 04–15707 Filed 7–8–04; 8:45 am]
BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 37

RIN 1291–AA29

Limitation on Employment of Participants Under Title I of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Labor's (the Department's or DOL's) regulations that implement section 188(a)(3) of the Workforce Investment Act of 1998 (WIA). That statutory section delimits the circumstances under which WIA title I participants may be employed to carry out the construction, operation, or maintenance of any part of any facility that is used, or to be used, for religious instruction or as a place for religious worship. The amendments make the relevant regulatory language adhere more closely to the language of section 188(a)(3).

DATES: This rule is effective August 11, 2004.

FOR FURTHER INFORMATION CONTACT: Annabelle T. Lockhart, Director, Civil Rights Center (CRC), (202) 693–6500. Please note that this is not a toll-free number. Individuals who do not use voice telephones may contact Ms. Lockhart via TTY/TDD by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

This section of the preamble to this final rule is organized as follows:

I. Background

A. WIA and DOL's Implementing Regulations

WIA superseded the Job Training Partnership Act (JTPA) as DOL's primary mechanism for providing financial assistance for a comprehensive system of employment and training services for adults and dislocated workers, and comprehensive youth activities for eligible youth. That system is known as the One Stop Career Center system. DOL's Employment and Training Administration (ETA) administers the One Stop Career Center system.

WIA section 188 contains certain nondiscrimination, equal opportunity, and other requirements applicable to recipients of WIA financial assistance. DOL's Civil Rights Center (CRC) administers these requirements.

Section 188(a)(3) of WIA prohibits the employment of WIA participants to carry out construction, operation, and maintenance at specified locations, with a limited exception for maintenance. Specifically, this section provides as follows:

> Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants). 29 U.S.C. 2938(a)(3).

Section 188(e) of WIA authorizes the Secretary to issue regulations necessary to implement this section. 29 U.S.C. 2938(e). Both ETA and CRC have published rules relating to WIA section 188(a)(3).

CRC on November 12, 1999, published an Interim Final Rule (IFR) entitled "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998," to implement Section 188 of WIA. 64 FR 61692. That IFR, which was codified at 29 CFR part 37 and remains in effect, generally carried over the nondiscrimination and equal opportunity-related policies and procedures promulgated in the JTPA regulations.

Section 37.6(f) of CRC's IFR contained several paragraphs—specifically, paragraphs (f)(1), (2), and (3)—that related to religious activities. Although the preamble to the IFR stated that "[p]aragraph 37.6(f) * * * is directly based on, and implements, section 188(a)(3) of WIA," the actual language of § 37.6(f) differed from the statute in several significant respects. 64 FR 61691. First, § 37.6(f)(1) carried over a prohibition on employment and training in sectarian activities that had appeared in the JTPA regulations at 20 CFR 627.210(b). This prohibition was not related to the limitations in WIA section 188(a)(3) on employing participants to carry out construction, operation, or maintenance, and was not based on either the JTPA statute or the WIA statute. See section I(B) of this preamble, below. Second, although paragraphs 37.6(f)(2) and (3) did deal with the subject matter of WIA section 188(a)(3), the language of these paragraphs departed from the statutory language and organization, containing several "structural, stylistic, and phrasing changes" intended to "enhance the readability of the rule." 64 FR 61691.

ETA had published on April 15, 1999, prior to CRC's IFR, an IFR implementing WIA title I and III, including section 188(a)(3). 64 FR 18661. That IFR included a new part 667 of title 20 of the Code of Federal Regulations, which "assemble[d] all of the administrative requirements from the various parts of the Act and other applicable sources in order to facilitate the administrative management of WIA programs." *Id.* This new part 667 included two sections—§§ 667.266 and 667.275—that related to WIA section 188(a)(3). Section 667.266(b) tracked the language of the statutory section almost exactly, while § 667.275(b) referred only to the statute's maintenance exception. After CRC promulgated its November 12, 1999 IFR, ETA on August 11, 2000, published a Final Rule based on ETA's April 15, 1999 IFR. The preamble to this Final Rule noted that CRC had published an IFR in the interim, and stated that changes had been made to ETA's Final Rule "for consistency with the [CRC] regulations implementing * * * WIA Section 188." With respect to §§ 667.266 and 667.275, however, the Final Rule's preamble described only changes relating to cross-references. Except for the addition of these cross references, one technical change ("funds" was changed to "financial assistance"), and some rearranging of phrase ordering, ETA's Final Rule did not alter the relevant initial language of either § 667.266(b) or § 667.275(b).

B. The September 30, 2003, Proposed Rule

On December 12, 2002, President Bush issued Executive Order 13279, published in the **Federal Register** on December 16, 2002 (67 FR 77141).

Executive Order 13279 charges executive branch agencies with giving equal treatment to faith-based and community organizations that apply for or receive Federal financial assistance to meet social needs in America's communities. Consistent with, and to assist in implementing, the principles underlying this Executive Order, the Department published a Notice of Proposed Rule-Making (NPRM) on September 30, 2003. *See* 68 FR 56386, 56388. The NPRM proposed to amend the regulatory provisions promulgated by CRC, codified at 29 CFR 37.6(f), as well as the provisions promulgated by ETA, codified at 20 CFR 667.266 and 667.275, that referenced § 37.6(f). The proposed amendments fell into two main categories: first, amendments intended to eliminate inappropriate restrictions on the use of indirect WIA financial assistance; and second, amendments intended to clarify the language of the various regulatory provisions related to WIA section 188(a)(3).

1. Use of Indirect Federal Financial Assistance

As explained in the preamble to the September 30, 2003, NPRM, among the Department's primary reasons for proposing the amendments was to eliminate inappropriate regulatory restrictions, set forth in the original language of 29 CFR 37.6(f)(1) and referenced in original paragraphs 20 CFR 667.266(b)(1) and 667.275(b), on the use of indirect Federal financial assistance to employ or train participants in religious activities. 29 CFR 37.6(f)(1) has precluded recipients from permitting participants "to be employed or trained in sectarian activities," regardless of whether the financial assistance at issue is direct or indirect. Similarly, 20 CFR 667.266(b)(1) has stated that "WIA title I financial assistance may not be spent on the employment or training of participants in sectarian activities" (referring readers to 29 CFR 37.6(f)(1) for further information), and 20 CFR 667.275(b) has stated, in pertinent part, that "[u]nder 29 CFR 37.6(f)(1), the employment or training of participants in sectarian activities is prohibited."

These restrictions, which were carried over from the JTPA nondiscrimination regulations, were not based on any specific statutory authority conferred by either WIA or JTPA, and are inconsistent with current law as articulated by the U.S. Supreme Court. 68 FR at 56387. The Court has clarified in a number of cases issued since JTPA was enacted that the use of indirect financial assistance to provide religious training is permitted by the Establishment Clause of the First Amendment to the Constitution where certain requirements are satisfied. For example, assistance is indirect in cases in which participants are given a genuine and independent private choice among training providers or program options, and freely elect to receive training in religious activities. Of course, the training offered must otherwise satisfy the requirements of the governmental program through which the financial assistance is provided. 68 FR at 56387–88. For this reason, and to permit participants in WIA title I-financially assisted programs and activities more choice and greater freedom while obtaining essential employment and training skills, the Department proposed in the September 30, 2003, NPRM to amend 20 CFR 667.266(b)(1), 20 CFR 667.275(b), and 29 CFR 37.6(f)(1), to add a new 29 CFR 37.6(f)(2), and to renumber 37.6(f)(2) and (3) as (f)(3) and (4), respectively. These proposed revisions are discussed in detail in the preamble to the September 30, 2003, NPRM (*see* 68 FR at 56387–89).

2. General Prohibition on Employment of Participants for Construction, Operation, or Maintenance at Specified Locations Defined With Reference to Certain Religious Activities; Maintenance Exception

In the same September 30, 2003, NPRM, the Department proposed revisions to those portions of CRC's and ETA's regulations that related to WIA section 188(a)(3). These revisions were intended both to clarify these paragraphs and to adhere more closely to the statute.

With regard to CRC's regulations, the NPRM proposed changes to 29 CFR 37.6(f)(2) and (3). The original language of these paragraphs broke the language of WIA section 188(a)(3) down into separate elements in an effort to make the statutory requirements easier to understand. However, in the course of drafting the September 30, 2003, NPRM, DOL determined that these paragraphs should be further revised to make them easier to understand and to adhere more closely to the language of WIA section 188(a)(3). *See* 68 FR at 56388. Therefore, in the September 30, 2003, NPRM, the Department proposed to renumber the paragraphs in accordance with the proposed revisions described in Subsection I(B)(1) of this preamble, and to revise the language of the paragraphs as follows:

(3) Except under the circumstances described in paragraph (f)(4) below, a recipient must not permit participants to engage in employment or training activities that involve the construction, operation, or maintenance of any facility, or any part of a facility, that is used, or will be used, for religious instruction or as a place of religious worship.

(4) A recipient may permit participants to engage in employment or training activities that involve the maintenance of a facility that is used, or will be used, for religious instruction or religious worship,

(i) To the extent that the facility is not primarily or inherently devoted to religious instruction or religious worship, and

(ii) Provided that the organization operating the facility is part of a program or activity providing services to participants.

68 FR at 56390. The proposed revisions were intended to make these paragraphs easier to understand, and to adhere more closely to the language of the statute. 68 FR at 56388. As explained in section II of this preamble, however, the language of this proposal also diverged in several respects from the language of the statute. This final rule returns to the statutory language in order to better ensure close adherence to the intent of Congress.

The Department also proposed to revise 20 CFR 667.266(b)(2) to correct the cross-references contained therein. As explained in the September 30, 2003, NPRM, the Department had determined, upon examination, that the insertion of the cross-references in this paragraph of ETA's August 11, 2000, Final Rule had been done erroneously. The cross-reference in the first sentence of § 667.266(b)(2), instead of referring to § 37.6(f)(2), referred to § 37.6(f)(1). The cross-reference in the second sentence of § 667.266(b)(2), instead of referring to § 37.6(f)(3), had referred to § 37.6(f)(2). The Department proposed to correct these two cross-references without otherwise altering the language of § 667.266.

Finally, the September 30, 2003, NPRM also proposed to revise 20 CFR 667.275(b) in two respects. First, as noted in section I(B)(1) of this preamble, the flat prohibition on the employment of participants in "sectarian activities" was revised to permit such employment when financial assistance is provided indirectly. Second, the paragraph was revised so that it referred to the entire prohibition in section 188(a)(3), rather than just the maintenance exemption. The proposed revisions to this paragraph contained minor language differences from the statute and from the proposed CRC revisions to § 37.6(f)(2) and (3). These differences were not intended to alter the meaning of the statute or to diverge from the meaning of the corresponding provisions of the relevant ETA and CRC regulations.

3. Comments on the Proposed Rule

The closing date for comments on the September 30, 2003, NPRM was December 1, 2003. 68 FR at 56386. DOL received a total of 11 sets of comments on the proposed rule, six sets from civil or religious liberties organizations or other stakeholders and five sets from individual members of the public. All of the comments were received by the closing date.

Two commenters expressed general support for the revisions proposed in the NPRM, without reservation or suggestions for change. Seven commenters expressed opposition to those revisions, and two commenters either took no position on, raised questions about, or suggested changes or alternatives to, the various proposed revisions.

The majority of comments dealt with the issue of the use of indirect financial assistance to employ or train participants in religious activities. As explained earlier in this section of this preamble, however, that issue is now addressed in a separate NPRM, published on March 9, 2004, that proposed revisions to 29 CFR part 2, as well as conforming revisions to 29 CFR part 37 and 20 CFR part 667. Therefore, this preamble will not address those comments. Comments on the March 9, 2004, NPRM, which is discussed in the next section of this preamble, were solicited separately. The final rule that addresses the proposals made in the March 9, 2004, NPRM is published elsewhere in today's **Federal Register**. The comments received that are relevant to this final rule will be discussed below in section III of this preamble.

C. The March 9, 2004, Proposed Rule

After the September 30, 2003, NPRM was published, the Department determined that in order to implement more fully the principles of Executive Order 13279, DOL would revise its general regulations at 29 CFR part 2 to clarify that faith-based and community organizations are able both to participate in all DOL social service programs for which they are otherwise eligible—not just those financially assisted under WIA title I—without regard to the organizations' religious character or affiliation, and to apply for and compete on an equal footing with other organizations to receive DOL support. Accordingly, on March 9, 2004, DOL published an NPRM that proposed adding to 29 CFR part 2 a new subpart D, to be entitled "Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries." 69 FR 11234, 11235.

At the same time, the Department also determined that, in order to ensure uniformity and consistency in implementing the principles of these Executive Orders throughout DOL, the regulations dealing with faith-based and community organizations, and with religious activities, should to the extent possible be consolidated in one place. 69 FR 11234. The Department further determined that the new subpart D should not be program-specific, but should apply to all organizations receiving DOL support, except where the implementing statute imposed particular requirements. Accordingly, in the March 9, 2004, NPRM, the Department proposed new revisions to 29 CFR 37.6(f)(1), as well as to 20 CFR 667.266(b)(1) and (2) and 667.275(b). Instead of the language proposed in the September 30, 2003, NPRM, the March 9, 2004, NPRM proposed that each of these regulatory provisions cross-reference 29 CFR part 2, subpart D. *See* 69 FR at 11237, 11238, 11241. The March 9, 2004, NPRM also proposed similar revisions to the relevant provision of the regulations governing Job Corps, at 20 CFR 670.555(c). *See* 69 FR at 11237, 11238.

The March 9, 2004, NPRM contained no proposals for revisions to 29 CFR 37.6(f)(2) and (3), for two reasons. First, as discussed in section I(B)(2) of this preamble, those two paragraphs are program-specific: they effectuate a specific paragraph of WIA section 188 that applies only to recipients of financial assistance under WIA title I, and not to recipients of other types of DOL support. *See* 29 U.S.C. 2938(a)(3); *see also* 29 CFR 37.2(b)(1), "Limitation of Application."

Second, careful analysis reveals that the statutory and regulatory provisions at issue do not genuinely deal with "religious activities." Instead, the "activities" they address are the employment of participants in the nonreligious skills of construction, operation, and maintenance. The provisions at issue merely limit the physical locations in which such employment may take place: participants may not be employed to carry out construction, operation or maintenance of any part of any facility used or to be used for religious instruction or as a place for religious worship, except that participants may be employed to carry out maintenance of a facility that is not primarily or inherently devoted to religious instruction or worship when the organization operating the facility is part of a program or activity providing services to participants. *See* 29 U.S.C. 2938(a)(3); *see also* new paragraphs 37.6(f)(2) and (3) below. Therefore, it would be inappropriate for these issues to be addressed by amendments or additions to DOL's general regulations at 29 CFR part 2.

For these reasons, the Department has chosen to publish this final rule amending 29 CFR 37.6(f)(2) and (3). As noted in section I(C) of this preamble, a separate final rule amending those provisions addressed in the March 9, 2004, NPRM is published elsewhere in today's **Federal Register**.

D. Proposed Amendments Dealing With Indirect Federal Financial Assistance

The Department is withdrawing the portions of the September 30, 2003, NPRM that proposed amending 29 CFR 37.6(f)(1), as well as 20 CFR 667.266(b)(1) and 20 CFR 667.275(b), to eliminate inappropriate restrictions on the use of indirect Federal financial assistance for religious activities. As explained in section I(C) of this preamble, these restrictions are now eliminated by the other final rule, published elsewhere in today's **Federal Register**, that finalizes the rules proposed in the March 9, 2004, NPRM. An additional document, withdrawing those portions of the September 30, 2003, NPRM now dealt with by that new rule, is published in the proposed rule section of today's **Federal Register**.

II. Differences Between the September 30, 2003, Proposed Rule and This Final Rule

As described above, the amendments to 29 CFR 37.6(f)(1), as well as 20 CFR 667.266(b)(1) and (2), and 20 CFR 667.275(b), proposed in the September 30, 2003, NPRM were superseded by the amendments to those paragraphs that were proposed in the March 9, 2004, NPRM. Therefore, this final rule does not include amendments to those regulatory provisions.

In addition, upon consideration, the Department has concluded that the language of 29 CFR 37.6(f)(2) and (3) that was proposed in the September 30, 2003, NPRM did not adequately track the language of WIA section 188(a)(3). Therefore, in the final rule, these two paragraphs have been revised to track the statutory language more closely and thereby ensure that the meaning of WIA section 188(a)(3) is not changed. Such revisions are necessary in order to fulfill the intent of the September 30, 2003, NPRM, which stated that a primary purpose of the proposed revisions was to adhere more closely to Congressional language. Comments and responses regarding the substantive effects of these

provisions are discussed in section III of this preamble.

Finally, as a result of the amendments proposed in the March 9, 2004, NPRM, the Department has decided that paragraphs 37.6(f)(2) and (3) will retain their original numbers.

The following changes have been made to the language proposed in the September 30, 2003, NPRM for these two paragraphs:

A. "Permit" vs. "Employ"

The proposed revisions of 29 CFR 37.6(f)(2) and (3) stated that a recipient "must not permit" participants to engage in the activities prohibited by the statute. This language was different from the language of WIA section 188(a)(3), which states that participants "shall not be employed" in prohibited activities. Recipients are not expected, and this section of the statute does not authorize them, to control the work activities of participants except when such work is financially assisted under WIA title I. To ensure that these paragraphs do not alter the meaning of WIA section 188(a)(3), and that they effectuate Congressional intent more closely, we have changed the language of the final rule to use the phrase "must not employ."

*B. "Engage in Employment or Training Activities That Involve" vs. "Employed * * * To Carry Out"*

The proposed revisions of 29 CFR 37.6(f)(2) and (3) required recipients not to permit participants to "engage in employment or training activities that involve" construction, operation, or maintenance. This language was different from the language of WIA section 188(a)(3), which provides only that participants must not be "employed * * * to carry out" such construction, operation, or maintenance. For the reasons expressed in section II(A) of this preamble, as well as to ensure that these paragraphs do not alter the meaning of WIA section 188(a)(3) and that they effectuate Congressional intent more closely, we have changed the language of the final rule to use the phrase "employ * * * to carry out."

C. "Any Facility, or Any Part of a Facility" vs. "Any Part of Any Facility"

Similarly, the proposed revision of 29 CFR 37.6(f)(2) used the language "any facility, or any part of a facility," to discuss which facilities were covered by the provision. This language was different from the language of WIA section 188(a)(3), which used the phrase "any part of any facility." To ensure that this provision of the final rule does not alter the meaning of WIA section 188(a)(3) and that it effectuates Congressional intent more closely, we have changed the paragraph to use language identical to that in the statute.

D. "Used, or Will Be Used" vs. "Used, or To Be Used"

In the same vein, the proposed revisions of 29 CFR 37.6(f)(2) and (3) referred to any part of any facility that is "used, or will be used," for religious instruction or as a place for religious worship. This language was different from the language of WIA section 188(a)(3), which used the phrase "used or to be used." To ensure that these paragraphs do not alter the meaning of WIA section 188(a)(3) and that they effectuate Congressional intent more closely, we have changed the language of the final rule to employ the phrase "used, or to be used."

E. "Place of Worship" vs. "Place For Religious Worship"

Furthermore, the proposed revision of 29 CFR 37.6(f)(2) referred to any part of any facility that is a place "of worship." This language was different from WIA section 188(a)(3), which referred to a place "for religious worship." To ensure that this paragraph does not alter the meaning of WIA section 188(a)(3) and that it effectuates Congressional intent more closely, we have changed the language of the final rule to use the phrase "for religious worship."

F. Separate Paragraphs vs. One Paragraph

The proposed revision of 29 CFR 37.6(f)(3) separated that paragraph into two subparagraphs. To adhere more closely to the statute, the final rule uses a single paragraph to set forth the relevant requirements.

III. Comments Received on the September 30, 2003, Proposed Rule and DOL's Responses

As noted in section II of this preamble, the amendments to 20 CFR 667.266(b)(1) and (2), 20 CFR 667.275(b), and 29 CFR 37.6(f)(1) proposed in the September 30, 2003, NPRM were superseded by the amendments to those paragraphs that were proposed in the NPRM published March 9, 2004, and the Department is withdrawing the portions of the September 30, 2003, NPRM that proposed amending those provisions to eliminate inappropriate restrictions on the use of indirect Federal financial assistance for religious activities. Therefore, this preamble will not address the comments that were submitted regarding the proposed amendments to those provisions. As noted above, the final rule that addresses the proposals contained in the March 9, 2004, NPRM is published elsewhere in today's **Federal Register**. Other comments received are summarized and discussed below.

A. Comments and Questions Regarding "Carry[ing] Out the Construction, Operation, or Maintenance of Any Part of Any Facility Used or To Be Used for Religious Instruction or as a Place for Religious Worship," and the Maintenance Exemption

1. *Comment:* The proposed rule could unconstitutionally allow religious institutions to use public funds to make capital improvements to structures used for religious activities.

Several commenters asserted that it would violate the Constitution if recipients' efforts were to increase the monetary value of, or result in an improvement to, facilities used by such institutions, "at least in part," for religious instruction or worship. Commenters suggested that the regulation be amended to prohibit any such result.

Additionally, several commenters raised questions about the constitutionality of the proposed maintenance exception. These commenters contend that the exception is unconstitutional, because in their view maintenance might result in capital improvements to structures owned by religious institutions. In the view of these commenters, public funds may be used by religious institutions for capital improvements only when the improved structures are wholly and permanently dedicated to secular use.

DOL response: We do not agree with the contention that paragraphs § 37.6(f)(2) and (3) (or WIA section 188(a)(3) itself) will allow religious institutions to use WIA financial assistance to make impermissible capital improvements to, or to otherwise increase the value of, facilities used for religious activity. These statutory and regulatory provisions may not be viewed in isolation. Rather, they must be considered in the broader context not only of the WIA administrative system, but also of the entire Federal system for providing and administering domestic financial assistance.

Section 188(a)(3) clearly prohibits the employment of participants to carry out construction, or even the operation, of "any part of any facility that is used or to be used for sectarian instruction or religious worship." Thus, the range of activities permitted under Section 188(a)(3), and the implementing regulation finalized today, does not exceed constitutional boundaries.

With respect to maintenance, under the statutory scheme established by Congress, the only type of work that participants may be employed under WIA title I to carry out in any part of any facility that is used or to be used for religious instruction or worship is "maintenance." *See* 29 U.S.C. 2938(a)(3); *see also* new paragraph 37.6(f)(3) below. Even such "maintenance" work is permitted only in specific, well-delineated circumstances: the facility must not be "primarily or inherently devoted to religious instruction or religious worship," and the organization operating the facility must be part of a program or activity providing services to participants. Id. The provisions relating to maintenance must be read in conjunction with the remainder of ETA's general WIA regulations, as well as with DOL's regulations establishing uniform administrative requirements for Federal grants and agreements with nonprofit organizations. *See* 20 CFR 667.200; 29 CFR part 95. Both of these sets of regulations require that the allowability of costs incurred by nonprofit organizations receiving Federal financial assistance be determined in accordance with the provisions of Office of Management and Budget (OMB) Circular A–122, "Cost Principles for Non-Profit Organizations." 20 CFR 667.200; 29 CFR 95.27.

Circular A–122 explicitly describes "maintenance and repair costs" as "costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment * * * which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition." Circular No. A–122, Attachment B, "Selected Items of Cost," paragraph 27. The Circular further provides that "[c]osts incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures." *Id.*

Maintenance and repair costs, according to the Circular, are allowable; by contrast, capital expenditures are generally unallowable as direct costs, except with the prior approval of the awarding agency. Circular No. A–122, Attachment B, "Selected Items of Cost," paragraph 15. Thus, the administrative system is designed to ensure that a recipient cannot receive reimbursement for capital expenditures by attempting to characterize them as "maintenance" expenditures. Because of the limitations already in place to prevent the use of "maintenance" work to increase capital value, there is no need to make additional changes to the regulation to address the commenter's concern that maintenance work might unconstitutionally increase capital value.

Overall, then, the various regulatory and administrative requirements described above are sufficient to make clear that no WIA title I financial assistance will be used to employ participants to make impermissible capital improvements to any part of any facility used or to be used for religious instruction or as a place for religious worship. Therefore, the Department has not revised the final rule in response to this comment.

2. *Comment:* The proposed rule could result in excessive entanglement with religion, in violation of the Establishment Clause of the First Amendment.

One commenter noted that proposed paragraphs 37.6(f)(3) and (f)(4) (paragraphs 37.6(f)(2) and (3) of the final rule) authorize the employment of participants under WIA title I "for maintenance of a facility on the conditions that the facility is not 'primarily or inherently devoted to religious instruction or religious worship * * *'" This commenter was therefore concerned that the rule "raise[s] the specter of the government monitoring pervasively sectarian institutions to determine on a case-by-case basis whether a facility is actually used for sectarian purposes or whether facility usage is primarily religious. This monitoring will put government officials in the problematic position of determining what acts constitute religion," likely resulting in Establishment Clause violations on the basis of excessive entanglement with religion.

DOL response: The Department does not agree that the rule will lead to excessive governmental entanglement in the affairs of recipients that are religious organizations. The existing WIA regulations—both the nondiscrimination regulations promulgated by CRC at 29 CFR part 37 and the programmatic regulations promulgated by ETA—impose numerous limitations on the use of WIA financial assistance. *See, e.g.*, 20 CFR 667.260–667.270. The Department will monitor the compliance of recipients that "employ participants to carry out" the activities covered by the statute in the same way that it monitors the compliance of other recipients. See 29 CFR 37.60, 37.62–37.66. Similarly, the Department will investigate and resolve complaints alleging violations of these regulatory provisions in the same manner, and following the same procedures, that have been established for investigating complaints alleging violations of the other nondiscrimination provisions of WIA. *See* 29 CFR 37.70–37.75, 37.80–37.89. In addition, violations of the provisions preventing maintenance expenditures from being used for capital improvements will be investigated and resolved in accordance with the procedures set forth in 20 CFR part 667. The amount of oversight and monitoring needed to ensure that WIA financial assistance is not used impermissibly is no greater than that involved in monitoring to ensure compliance with other regulatory requirements.

Finally, the Department is already obliged, to a certain extent, to determine "what acts constitute religion," in the course of investigating allegations of unlawful religious-based discrimination (and, for that matter, in the course of ensuring that direct DOL assistance is not used to support inherently religious activities). *Cf.* 29 CFR part 1605, Equal Employment Opportunity Commission (EEOC) Guidelines on Discrimination Because of Religion, section 1605.1, "Religious nature of a practice or belief." In the Department's view, determinations as to "whether a facility is actually used for sectarian purposes" or "whether facility usage is primarily religious" will not require a greater amount of "entanglement with religion" than the determination of whether a particular participant's, applicant's, or employee's beliefs should be protected as "religious" beliefs.

For these reasons, the Department has not revised the final rule in response to this comment.

3. *Comment:* Violations of these provisions "could raise difficult remedial questions."

The commenter who raised this issue inquired, "Will the Department of Labor * * * remove a structure from an offending institution? Will it place liens on houses of worship?"

DOL response: The WIA regulations at 29 CFR part 37 provide that if compliance is not achieved through the procedures set forth in the regulations, the Secretary of Labor may take the following actions: "(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the [recipient's] WIA Title I financial assistance, in whole or in part; (2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or (3) Take such action as may be provided by law." 29 CFR 37.110(a). The Department does not view the "remedial questions" raised by the regulatory provisions

amended by this final rule as any more "difficult" than those raised with regard to possible violations of other regulatory provisions. Therefore, the Department has not revised the final rule in response to this comment.

4. *Comment:* Providing financial assistance under WIA to "pervasively sectarian" organizations or institutions violates the Establishment Clause of the First Amendment.

The commenter that raised this issue noted that under the proposed regulatory provisions, "WIA Title I funds could be used for construction, operation, or maintenance of a facility used by a pervasively sectarian organization for non-religious purposes." In this commenter's view, such use would violate the Establishment Clause. Therefore, the commenter recommended that the provisions be amended to "prohibit the use of WIA Title I funds for construction, operation, or maintenance of facilities owned or operated by pervasively sectarian institutions."

DOL response: The Department does not agree with the commenter's analysis. The Supreme Court's "pervasively sectarian" doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even "secular" tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms*, 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case, joined by Justice Breyer, set forth reasoning that is inconsistent with its underlying premises, *see id.* at 857–858 (O'Connor, J., concurring in judgment) (requiring proof of "actual diversion of public support to religious uses"). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the "pervasively sectarian" doctrine. Therefore, under current precedent, the Department may provide financial assistance to all service providers, without regard to religion, so long as the providers meet eligibility requirements and the assistance is not otherwise precluded. The Department therefore declines to adopt the recommended change.

B. General Comments Regarding the Proposed Rule

1. *Comment:* The terms "faith-based" and "religious organization" should be "clearly defined" in the regulations.

The commenter that made this suggestion provided no reasons for adding these definitions to the regulations.

DOL response: The Department declines to adopt the recommended change in this final rule. Such definitions are unnecessary, because these terms are not used in 29 CFR part 37 as amended by this final rule.

2. *Comment:* The regulations should be amended to require faith-based organizations "to abide by * * * state and local civil rights laws."

One commenter strongly suggested that the rule should make clear that nothing in the new regulations affected state and local non-discrimination laws covering sexual orientation and gender identity/expression.

DOL response: In the Department's view, the recommended change is unnecessary. The WIA regulations at 29 CFR part 37 already contain a provision that explicitly states that the IFR "does not preempt consistent State and local requirements." 29 CFR 37.3(f). As a result, unless specific provisions of State or local civil rights laws conflict with the requirements set forth in the rule, those provisions will continue to apply to recipients of WIA title I financial assistance. The Department therefore declines to make the suggested change.

3. *Comment:* The regulations should be amended to bar discrimination on the basis of sexual orientation and gender identity.

The commenter that made this suggestion stated that "Federal policy expanding the application of charitable choice provisions should prohibit discrimination on the basis of religion *and* sexual orientation and gender identity—discrimination against those organizations applying for a federal grant or contract, employees of the grantee, *as well as* the ultimate beneficiary of the program or service." (Emphases in original.)

DOL response: The Department declines to adopt the recommended change. The WIA regulations at 29 CFR part 37 implement section 188 of WIA; therefore, they address only discrimination on bases prohibited by that statutory section. Neither sexual orientation nor gender identity is included among these bases, *see* 29 U.S.C. 2938(a)(2), and we decline to impose a prohibition on such discrimination by regulation.

4. *Comment:* The rule should contain administrative requirements to ensure that government funds are not used to support religious activities.

One commenter recommended that "faith-based and community-based organizations * * * be held as accountable as any other non-profit entity that receives taxpayer dollars" and that "firewalls * * * be [put] in place prohibiting federal money from being used to fund religious materials."

Additionally, the commenter recommended that Federal funds "supplement and not supplant existing money." Two additional commenters made similar recommendations.

DOL response: In the Department's view, the Federal reporting, financial management, and other administrative requirements that are already in place, and that are applicable to all recipients of WIA title I financial assistance, are sufficient to ensure that faith-based and community organizations are held as accountable as any other recipient of federal assistance. Some of these requirements are described above in section II(A)(1) of this preamble. Faith-based and community organizations are not exempt from these requirements. *See* 20 CFR part 667; 29 CFR part 95; OMB Circulars Nos. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," A–122, "Cost Principles for Nonprofit Organizations," and A–133, "Audits of States, Local Governments, and Non-Profit Organizations." Furthermore, the Department believes that new subpart D to 29 CFR part 2, published in today's **Federal Register**, sets up appropriate constitutional safeguards regarding the use of DOL assistance. For example, with regard to direct financial assistance, new subpart D makes clear that such assistance must not be used for inherently religious activities. The Department therefore declines to impose additional changes related to accountability.

With regard to the comments that federal funds must "supplement and not supplant existing money," we would simply note that WIA already provides that title I financial assistance must only be used for activities that "are in addition to those that would otherwise be available in the local area in the absence of such funds." WIA section 195(2); 29 U.S.C. 2945(2). We disagree, therefore, that any additional such requirements must be included in this regulation.

5. *Comment:* The proposed rules "fail to take any steps to prevent government

money from flowing to anti-Semitic, racist and bigoted organizations."

DOL response: The WIA regulations at 29 CFR part 37 that are already in place contain several provisions designed to ensure that organizations that discriminate on prohibited grounds—including race, color, national origin, and religion—are barred from receiving financial assistance under WIA. The regulations contain a broad provision stating that "[n]o individual in the United States" may be "excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with" any WIA title I-financially assisted program or activity on any prohibited basis, including race, color, national origin, or religion. 29 CFR 37.5. In addition, the regulations explicitly prohibit recipients from "[a]id[ing] or perpetuat[ing] discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground [including race, color, national origin, or religion] in providing any aid, benefits, services, or training to registrants, applicants, or participants in a WIA Title I-funded program or activity." 29 CFR 37.6(c)(1). This provision bars not only direct assistance to persons or entities that discriminate, but also bars assistance provided "through contractual, licensing, or other arrangements." 29 CFR 37.6(c). Recipients that provide such assistance are themselves violating the nondiscrimination requirements, and can be subjected to the sanctions listed in 29 CFR 37.110. These provisions contain no exemption for religious organizations. *See generally* 29 CFR part 37. Therefore, in the Department's view, no additional regulatory provisions "to prevent government money from flowing to anti-Semitic, racist and bigoted organizations" are needed.

IV. Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, "Regulatory Planning and Review." OMB has determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order. However, this rule is not an economically significant regulatory action under the Order, and therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The final rule will not substantially change the existing obligation of recipients or entities operating Federally-assisted programs or activities to apply a policy of nondiscrimination and equal opportunity in employment or services. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in increased expenditures by any State, local, and tribal governments.

Paperwork Reduction Act

The final rule contains no new information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act.

Executive Order 13132

This final rule has been reviewed in accordance with Executive Order 13132 regarding Federalism. The final rule will 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. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

List of Subjects in 29 CFR Part 37

Administrative practice and procedure, Discrimination, Civil rights, Equal education opportunity, Equal employment opportunity, Grant programs—Labor, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 7th day of July.

Elaine L. Chao,

Secretary of Labor.

Title 29—Labor

■ For the reasons discussed in the preamble, Part 37, Subpart A, title 29 of the Code of Federal Regulations, is amended to read as set forth below.

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

■ 1. The authority citation for Part 37 continues to read as follows:

Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.*; title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101; and title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681.

■ 2. In § 37.6, paragraphs (f)(2) and (3) are revised to read as follows:

§ 37.6 What specific discriminatory action, based on prohibited grounds other than disability, are prohibited by this part?

* * * * *

(f)(2) Except under the circumstances described in paragraph (f)(3) below, a recipient must not employ participants to carry out the construction, operation, or maintenance of any part of any facility that is used, or to be used, for religious instruction or as a place for religious worship.

(3) A recipient may employ participants to carry out the maintenance of a facility that is not primarily or inherently devoted to religious instruction or religious worship if the organization operating the facility is part of a program or activity providing services to participants.

* * * * *

[FR Doc. 04–15708 Filed 7–8–04; 8:45 am]

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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Outer Continental Shelf regulations—
California; consistency update; comments due by 7-23-04; published 6-23-04 [FR 04-14220]
Stratospheric ozone protection—
HCFC production, import, and export; allowance system; comments due by 7-19-04; published 6-17-04 [FR 04-13680]
HCFC production, import, and export; allowance system; comments due by 7-19-04; published 6-17-04 [FR 04-13681]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 7-21-04; published 6-21-04 [FR 04-13932]
Connecticut; comments due by 7-23-04; published 6-23-04 [FR 04-14219]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin, etc.; comments due by 7-23-04; published 5-24-04 [FR 04-11673]
Indoxacarb; comments due by 7-19-04; published 5-19-04 [FR 04-11346]
Solid wastes:
Hazardous waste generator program evaluation; comments due by 7-21-04; published 4-22-04 [FR 04-09141]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]
FEDERAL COMMUNICATIONS COMMISSION
Digital television stations; table of assignments:
Hawaii; comments due by 7-19-04; published 6-18-04 [FR 04-13812]
Radio frequency devices:
Radio frequency identification systems; operation in 433 MHz band; comments due by 7-23-04; published 5-24-04 [FR 04-11537]
Radio stations; table of assignments:
Alabama and Georgia; comments due by 7-19-04; published 6-18-04 [FR 04-13808]
Florida and Nevada; comments due by 7-19-04; published 6-18-04 [FR 04-13811]
Various States; comments due by 7-19-04; published 6-18-04 [FR 04-13809]
Wisconsin; comments due by 7-19-04; published 6-18-04 [FR 04-13810]
FEDERAL DEPOSIT INSURANCE CORPORATION
Fair and Accurate Credit Transactions Act; implementation:

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 884/P.L. 108–270

Western Shoshone Claims Distribution Act (July 7, 2004; 118 Stat. 805)

H.R. 2751/P.L. 108–271

GAO Human Capital Reform Act of 2004 (July 7, 2004; 118 Stat. 811)

H.J. Res. 97/P.L. 108–272

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003. (July 7, 2004; 118 Stat. 818)

S. 2017/P.L. 108–273

To designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the "Luis A. Ferre United States Courthouse and Post Office Building". (July 7, 2004; 118 Stat. 819)

Last List July 7, 2004

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1]Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–052–00004–3)	60.00	Jan. 1, 2004
700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
1200–End	(869–052–00006–0)	61.00	Jan. 1, 2004
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–052–00008–6)	44.00	Jan. 1, 2004
27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–052–00011–6)	62.00	Jan. 1, 2004
300–399	(869–052–00012–4)	46.00	Jan. 1, 2004
400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
700–899	(869–052–00014–1)	43.00	Jan. 1, 2004
900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–052–00017–5)	61.00	Jan. 1, 2004
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8	(869–052–00023–0)	63.00	Jan. 1, 2004
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10 Parts:			
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51–199	(869–052–00027–2)	58.00	Jan. 1, 2004
200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–052–00029–9)	62.00	Jan. 1, 2004
11	(869–052–00030–2)	41.00	Feb. 3, 2004
12 Parts:			
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*1–199	(869–052–00050–7)	50.00	Apr. 1, 2004
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
*240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
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400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
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*400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
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*170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
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300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
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600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
*800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
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*1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
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*§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
*§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
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§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
*2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
*30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
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*300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

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*200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
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1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
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1927–End	(869–050–00110–1)	62.00	July 1, 2003
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17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
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200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
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CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
Complete set (one-time mailing)		298.00	2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

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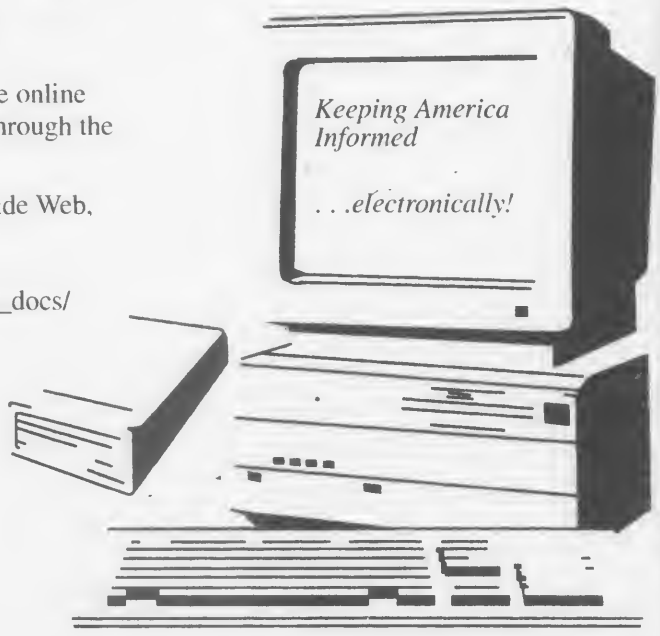

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