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

Rules and Regulations

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OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Address Change for Inspection of Materials Incorporated by Reference

AGENCY: Office of the Federal Register, NARA.

ACTION: Technical amendment.

SUMMARY: This document changes the address for public inspection of materials incorporated by reference and filed at the Office of the Federal Register (OFR). The change is necessary because the collection of incorporated materials has accumulated to the point that the OFR cannot accommodate any additional material in its building in Washington, DC. The Office is transferring older material to the National Archives building in College Park, MD, and to the Washington National Records Center in Suitland, MD. A new general availability statement replaces the Washington, DC, address wherever it appears throughout titles 1 through 50 of the Code of Federal Regulations.

EFFECTIVE DATE: April 9, 2004. We will accept comments on this technical amendment through June 8, 2004.

ADDRESSES: To submit comments or questions, please use any of the following methods:

- E-mail: *Fedreg.legal@nara.gov.* Include the heading "Address for IBR Materials" in the subject line of the message.
- Fax: 202–741–6012.
- Mail: Office of the Federal Register (NF), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- Hand Delivery or Courier: Office of the Federal Register, 800 North Capitol Street, Suite 700, Washington, DC 20002.
- Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Bunk, Attorney-Advisor, Office of the Federal Register, 800 North Capitol Street, Suite 700, Washington, DC 20002. Telephone: 202–741–6030. E-mail: *Fedreg.legal@nara.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Freedom of Information Act (FOIA), 5 U.S.C. 552(a), the Director of the Federal Register has the sole responsibility for review and approval of materials incorporated by reference into the **Federal Register** system. In administering this provision of the FOIA, the Office of the Federal Register (OFR) acts as an independent regulatory authority. Currently, all materials approved for incorporation by reference in the **Federal Register** and Code of Federal Regulations (CFR) are maintained at the OFR in Washington, DC. The OFR's address in Washington, DC, appears as an inspection location for all of these materials throughout titles 1 through 50 of the CFR.

The collection of material has grown to the point that the OFR has exceeded its capacity for on-site storage. To rectify this situation, the OFR proposed a permanent retention schedule be established for all materials incorporated by reference in titles 1 through 50 of the Code of Federal Regulations, under 36 CFR part 1228 and the National Archives and Records Administration's (NARA) records management handbook, "Disposition of Federal Records to NARA" (*http://www.archives.gov/records_management/publications/disposition_of_federal_records/*). A notice of availability of the OFR's proposed record schedule and request for comments was published on May 6, 2003 (68 FR 24020). NARA received no comments regarding OFR's proposed record schedule. Under the newly approved records schedule, the OFR is authorized to transfer materials incorporated by reference to new locations.

The records schedule identifies three categories of records: Aircraft Service Bulletins (SBs) incorporated by reference into Federal Aviation Administration (FAA) Airworthiness Directives at 14 CFR part 39, State Implementation Plans (SIPs) incorporated by reference into Environmental Protection Agency (EPA) regulations at 40 CFR part 52, and all other technical standards and miscellaneous materials incorporated by reference into various other agencies' regulations throughout the CFR.

FAA Service Bulletins will be held at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC, for 3 years starting from the year in which they were incorporated by reference into the CFR. They will then be transferred to the Washington National Records Center (WNRC), 4205 Suitland Road, Suitland, MD, and held for years 3 through 10. When the records are 10 years old, they will be transferred from WNRC to the National Archives at College Park, 8601 Adelphi Road College Park, MD, for permanent retention.

EPA State Implementation Plans (SIPs) will be held at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC, for approximately 5 years from the year in which they were incorporated by reference. They will then be transferred to the WNRC, 4205 Suitland Road, Suitland, MD, and held for years 5 through 15. When the records are 15 years old, they will be transferred from WNRC to the National Archives at College Park, 8601 Adelphi Road College Park, MD, for permanent retention.

All other materials incorporated by reference into the CFR will be held at the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC, for 5 years from the year in which they were incorporated by reference into the CFR. They will then be transferred to the WNRC, 4205 Suitland Road, Suitland, MD, and held for years 5 through 15. When the records are 15 years old, they will be transferred from WNRC to the National Archives at College Park, 8601 Adelphi Road, College Park, MD, for permanent retention.

The following table summarizes the disposition schedule and location of the materials incorporated by reference. The dates and timeframes listed are approximate because the records will be gathered annually and transferred in groups. Persons interested in inspecting incorporated materials should call the **Federal Register** Legal Staff at 202–741–6030 for help in determining the current location of the materials. The location

and contact information is also posted on NARA's Web site.

DISPOSITION AND LOCATION OF MATERIALS INCORPORATED BY REFERENCE

Category of records	Location of records		
	Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington, DC	Washington National Records Center, 4205 Suitland Road, Suitland, MD	National Archives at College Park, 8601 Adelphi Rd., College Park, MD
	Retention period		
Aircraft Service Bulletins for FAA Airworthiness Directives (14 CFR 39).	From Year 0–3	From Year 3–10	From Year 10 Forward (permanent storage).
State Implementation Plans and Amendments submitted to EPA (40 CFR part 52).	From Year 0–5	From Year 5–15	From Year 15 Forward (permanent storage).
All other materials incorporated by reference in the CFR.	From Year 0–5	From Year 5–15	From Year 15 Forward (permanent storage).

The OFR remains the legal custodian of the incorporated by reference materials stored at WNRC, and therefore controls access to the records. WNRC requires researchers obtain a written request and authorization from the OFR before the records can be used. If you are interested in researching these materials at WNRC, please call the OFR at 202–741–6030 to obtain authorization to review these materials. Please note that WNRC's Reference Services Branch must receive the request and authorization at least one day before the researcher's visit. For more information on viewing materials at WNRC, see *http://www.archives.gov/facilities/md/suitland/public_services.html#general.*

When materials are transferred from WNRC to NARA's College Park, MD, facility for permanent storage in the Archives of the United States, NARA, rather than the OFR, becomes the legal custodian of the records. For general information about NARA's College Park facility, see *http://www.archives.gov/facilities/md/archives_2.html.* For information about researching records at the College Park facility, see *http://www.archives.gov/facilities/md/researcher_information.html.*

Materials incorporated by reference are also available from sources other than NARA. Availability statements for all material approved for incorporation by reference in the CFR cite contact information for the publisher and the inspection location at each agency that incorporated the material. That information remains unchanged throughout the CFR.

The Amendment

Since materials incorporated by reference will be located at different NARA facilities based on the type of document and the year in which it was incorporated by reference into the CFR, the OFR must replace the address of the Office of the Federal Register wherever it is listed as a public inspection location in titles 1 through 50 of the CFR. The language listing the OFR's address as the location for inspection will be replaced by a general availability statement and contact information that reads as follows: "or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*"

Rulemaking Analyses and Notices

Administrative Procedure

The APA permits an agency to waive the normal notice and comment requirements if it finds, for good cause, that doing so would be impracticable, unnecessary, or contrary to the public interest as per 5 U.S.C. 553(b). The OFR finds that there is good cause to waive prior notice and comment as it would be unnecessary and serve no useful public interest to establish a comment period for a nonsubstantive action to change address information for materials at a public inspection room. We also find that there is good cause to make this rule effective immediately upon publication under 5 U.S.C. 553(d)(3), as the collection of incorporated by reference material has accumulated to the point that the OFR cannot accommodate any additional on site storage. In any case, the OFR will take comments and questions at the addresses provided to ensure that our customers understand this change to the availability of incorporated by reference materials.

Executive Order 12866 (Regulatory Planning and Review)

The OFR has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. It is anticipated that the economic impact of this rulemaking will be minimal because the technical amendment merely changes the address for public inspection of documents.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the OFR has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. The change of address will not significantly affect access to incorporated by reference materials. For this reason, the OFR certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This interim rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not 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.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the OFR has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

The OFR has also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Paperwork Reduction Act

This action does not contain a collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The OFR will submit a rule report, including a copy of this final rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

List of Subjects in 1 CFR Part 51

Administrative practice and procedure, Incorporation by Reference.

■ For the reasons discussed in the preamble, and under the authority of 5 U.S.C. 552(a), the Director of the Federal Register amends titles 1 through 50 of the Code of Federal Regulations as set forth below:

■ 1. Wherever it appears in titles 1 through 50, the phrase "or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC." is revised to read: "or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*."

Dated: April 6, 2004.

Raymond A. Mosley,

Director of the Federal Register.

[FR Doc. 04–8078 Filed 4–8–04; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket Nos. AO–341–A6; FV02–929–1]

Cranberries Grown in the States of Massachusetts, et al.; Order Amending Marketing Agreement and Order No. 929

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The amendments are based on those proposed by the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order and other interested parties representing cranberry growers and handlers. The amendments include increasing Committee membership and related amendments. The amendments are intended to improve the operation and functioning of the cranberry marketing order program.

EFFECTIVE DATE: April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on April 23, 2002, and published in the May 1, 2002, issue of the **Federal Register** (67 FR 21854); Secretary's Decision and Referendum Order issued on December 4, 2003, and published in the **Federal Register** on December 12, 2003 (68 FR 69343).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated based on the record of a public hearing held in Plymouth, Massachusetts on May 20 and 21, 2002; in Bangor, Maine on May 23, 2002; in Wisconsin Rapids, Wisconsin on June 3 and 4, 2002; and in Portland, Oregon on June 6, 2002. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Committee, other interested parties and one proposed by the Agricultural Marketing Service (AMS). This action adopts a portion of the proposed amendments listed in the Notice of Hearing that were determined necessary to be expedited. Other proposed amendments listed in the Notice of Hearing will be addressed in a separate decision.

The amendments included in this decision will: Increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members and 1 public alternate member; Incorporate a "swing" position whereby the group (either the major cooperative or growers representing other than the major cooperative) which handles more than 50 percent of the total volume produced is assigned an additional seat; Revise nomination and selection provisions of the order, as well as quorum and voting requirements, to reflect the change in Committee membership; Authorize tenure limitations to be restarted with the seating of the expanded Committee; Re-establish districts and allocate the revised membership among those districts; Allow the Committee to request tax identification numbers for voting purposes; Authorize mail nominations for independent members; Revise the alternate member provisions to reflect the change in Committee membership and for clarity purposes; and Require Committee member nominee disclosure of non-regulated cranberry production.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform to the effectuated amendments.

Upon the basis of evidence introduced at the hearing, a Secretary's decision was issued on December 4, 2003, directing that a referendum be conducted during the period January 19 to January 30, 2004, among growers and processors of cranberries to determine whether they favored the proposed amendments to the order. In the referendum, all amendments were favored by more than two-thirds of the growers voting in the referendum by

number and volume. Processors representing more than 50 percent of the crop also approved the amendments.

The amended marketing agreement was mailed to all cranberry handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of cranberries handled by all handlers during the representative period of September 1, 2002, through August 31, 2003.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments will not result in additional regulatory requirements being imposed on some cranberry growers and handlers.

There are about 20 handlers currently regulated under Marketing Order No. 929. In addition, the record indicates that there are about 1,250 producers of cranberries in the current production area.

Based on recent years' price and sales levels, AMS finds that nearly all of the cranberry producers and some of the handlers are considered small under the SBA definition. In 2001, a total of 34,300 acres were harvested with an average U.S. yield per acre of 156.2 barrels. Grower prices in 2001 averaged $22.90 per barrel. Average total annual grower receipts for 2001 are estimated at $153,375 per grower. However, there are some growers whose estimated sales would exceed the $750,000 threshold. Thus, these amendments will apply almost exclusively to small entities.

Five handlers handle over 97 percent of the cranberry crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This action amends the order to: Increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members, 1 public alternate member; Incorporate a "swing" position whereby the entity (either the major cooperative or the group representing other than the major cooperative) which handles more that 50 percent of the total volume of cranberries produced is assigned an additional seat; Revise nomination and selection provisions of the order, as well as quorum and voting requirements, to reflect the change in Committee membership; Authorize tenure limitations to be restarted with the seating of the expanded Committee; Re-establish districts and allocate the revised membership among those districts; Allow the Committee to request tax identification numbers for voting purposes; Authorize mail nominations for non-cooperative members; Revise the alternate member provisions to reflect the change in Committee membership and for clarity purposes; and Require Committee member disclosure of non-regulated cranberry production.

The amendment to increase Committee membership to 13 grower members, 1 public member, 9 grower alternate members, 1 public alternate member will increase the Committee's size by 6 members and 1 alternate member. This will likely increase costs to the Committee with the additional members attending meetings. If alternate members are not required to attend all meetings, costs could be reduced. However, the record evidence supports increasing the Committee. The benefits of broadening the membership of the Committee and equitably allocating seats will outweigh increased costs. Since the implementation of volume regulations, more growers are expressing interest in being a part of the Committee's processes. Expansion of the Committee will allow more growers the opportunity to be involved in the process. The Committee's recommendation to not have one alternate for each member will provide appropriate district coverage for members that cannot attend meetings while taking costs into account. By increasing the membership to 14 and establishing 4 districts, regional representation will be maintained and additional representation to the largest growing regions will be provided.

The amendment to include a member-at-large position on the Committee to the entity (either the major cooperative or the group representing other than the major cooperative) that handles more than 50 percent of the total volume of cranberries produced will provide an additional member and alternate to the dominant group. This allows for recognition that the scale of the impact increases with the volume of cranberries produced and regulated.

The amendment to reset term limitations for the current members will help maintain the experience and expertise needed so that the Committee can continue its operations with a minimum of disruptions.

The amendment to allow nominations to be conducted by mail will allow more growers greater opportunity to participate on the Committee and provide for greater participation in the voting process. Administrative Committee costs associated with holding nomination meetings would decrease.

The amendment to use growers' tax identification numbers in the voting process for the group representing other than the major cooperative will help ensure that only eligible growers qualify for nomination and the voting process.

The amendment to revise and clarify which alternates can be seated in place of absent members is necessary to conform to the change in Committee structure. In addition, it will be beneficial as it more specifically designates which member seats each alternate can replace in the member's absence.

The amendment to require Committee member disclosure of non-regulated cranberry production will ensure that growers are informed of this information prior to casting their vote to nominate a representative on the Committee.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the benefits of implementing these amendments will outweigh any associated costs. Costs are not anticipated to be significant.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS obtained approval

from the Office of Management and Budget (OMB) for a new information collection request for Cranberries grown in 10 States, Marketing Order No. 929. The additional burden was merged into the information collection currently approved under OMB No. 0581–0189, Generic OMB Fruit Crops.

Specifically, the amendment increasing membership on the Committee increases the overall burden of completion of Committee generated forms and reports relative to Committee membership. There will be no increase in the non-regulated disclosure amendment since that will only entail an acknowledgement as to whether the member has a financial interest in non-regulated production.

The amendment authorizing mail nominations requires a nomination form and ballot to conduct mail nominations. It is estimated that there are approximately 500 growers who will be entitled to vote by mail ballot once every two years.

The amendment to require growers to submit a tax identification number requires this information to be added to the grower sales and acreage report form (Form No. CMC-GSAR–1) currently approved under OMB. With minimal amount of time needed to add this number on the form, there will be no increase in burden for growers to complete this form.

The information collection will be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters staff, and authorized Committee employees. Authorized Committee employees will be the primary users of the information and AMS is the secondary user.

There were no responsive comments to the request for comments concerning the information collection burden.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings to consider order amendments as well as the hearing dates were widely publicized throughout the cranberry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Order Amending the Order Regulating the Handling of Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby further amended, regulate the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**.

A later effective date would unnecessarily delay implementation of the amendments modifying and increasing Committee membership. These amendments were deemed necessary to be expedited because the current committee structure is inadequate. Therefore, making the effective date one day after publication in the **Federal Register** will allow the amendments, which are expected to be beneficial to the industry, to be implemented as soon as possible.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments

effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping cranberries covered by the order as hereby amended) who, during the period September 1, 2002, through August 31, 2003, handled 50 percent or more of the volume of such cranberries covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period September 1, 2002, through August 31, 2003 (which has been deemed to be a representative period), have been engaged within the production area in the production of such cranberries, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) The issuance of this amendatory order is favored or approved by processors who, during the period September 1, 2002, through August 31, 2003 (which has been deemed to be a representative period), have engaged in canning or freezing cranberries for market and have frozen or canned more than 50 percent of the total volume of cranberries regulated which were canned or frozen within the production area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order further amending the order contained in the Secretary's Decision issued by the Administrator on December 4, 2003, and published in the **Federal Register** on December 12, 2003, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

■ Accordingly, as stated in the preamble, AMS amends 7 CFR part 929 as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 929.20 to read as follows:

§ 929.20 Establishment and membership.

(a) There is hereby established a Cranberry Marketing Committee consisting of 13 grower members, and 9 grower alternate members. Except as hereafter provided, members and alternate members shall be growers or employees, agents, or duly authorized representatives of growers.

(b) The committee shall include one public member and one public alternate member nominated by the committee and selected by the Secretary. The public member and public alternate member shall not be a cranberry grower, processor, handler, or have a financial interest in the production, sales, marketing or distribution of cranberries or cranberry products. The committee, with the approval of the Secretary, shall prescribe qualifications and procedures for nominating the public member and public alternate member.

(c) Members shall represent each of the following subdivisions of the production areas in the number specified in Table 1. Members shall reside in the designated district of the production area from which they are nominated and selected. Provided, that there shall also be one member-at-large who may be nominated from any of the marketing order districts.

District 1: The States of Massachusetts, Rhode Island, and Connecticut;

District 2: The State of New Jersey and Long Island in the State of New York.

District 3: The States of Wisconsin, Michigan, and Minnesota.

District 4: The States of Oregon and Washington.

TABLE 1

Districts	Major cooperative	Major cooperative	Other than major	Other than major
			Members	Alternates
1	2	1	2	1
2	1	1	1	1
3	2	1	2	1
4	1	1	1	1
Any	1 member-at-large			

(d) Disclosure of unregulated production. All grower nominees and alternate grower nominees of the committee shall disclose any financial interest in the production of cranberries that are not subject to regulation by this part.

(e) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

■ 3. Revise § 929.21 to read as follows:

§ 929.21 Term of office.

(a) The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. *Provided,* That following adoption of this amendment, the term of office for the initial members and alternates shall also include any time served prior to August 1 of the first even numbered year served. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their

respective successors are selected and have been qualified.

(b) Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms. This limitation on tenure shall not include service on the committee prior to the adoption of this amendment or service on the committee by the initial members prior to August 1 of the first even-numbered year served and shall not apply to alternate members.

(c) Members who have served three consecutive terms must leave the committee for at least one full term before becoming eligible to serve again unless specifically exempted by the Secretary. The consecutive terms of office for alternate members shall not be so limited.

■ 4. Revise § 929.22 to read as follows:

§ 929.22 Nomination.

(a) *Initial members.* As soon as practicable after adoption of this amendment, the committee shall hold nominations in accordance with this section. The names and addresses of all nominees shall be submitted to the Secretary for selection as soon as the nomination process is complete. Nominees selected for the initial Committee, following adoption of this amendment, shall serve a minimum of one two-year term beginning on August 1 of the first even-numbered year served.

(b) *Successor members.* Beginning on June 1 of the even-numbered year following the adoption of this amendment, the committee shall hold nominations in accordance with this section.

(c) Whenever any cooperative marketing organization handles more than fifty percent of the total volume of cranberries produced during the fiscal period in which nominations for membership on the committee are made, such cooperative or growers affiliated therewith shall nominate:

(1) Six qualified persons for members and four qualified persons for alternate members of the committee. These members and alternate members shall be referred to as the major cooperative members and alternate members. Nominee(s) for major cooperative member and major cooperative alternate member shall represent growers from each of the marketing order districts designated in § 929.20.

(2) A seventh major cooperative member shall be referred to as the major cooperative member-at-large. The major cooperative member-at-large may be nominated from any of the marketing order districts.

(3) Six qualified persons for members and four qualified persons for alternate members of the committee shall be nominated by those growers who market their cranberries through entities other than the major cooperative marketing organization. Nominees for member and alternate member representing entities other than the major cooperative marketing organization shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(d) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal period in which nominations for membership on the committee are made, the major cooperative or growers affiliated therewith, shall nominate:

(1) Six qualified persons for major cooperative members and four qualified persons for major cooperative alternate members of the committee. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(2) Six qualified persons for members and four qualified persons for alternate members of the committee shall be nominated by those growers who market their cranberries through entities other than the major cooperative marketing organization. Nominees for member and alternate member shall represent growers from each of the marketing order districts as designated in § 929.20(c).

(3) A seventh member nominee shall be referred to as the member-at-large representing entities other than the major cooperative marketing organization. The member-at-large may be nominated from any of the marketing order districts.

(e) Nominations of qualified member nominees representing entities other than the major cooperative marketing organization shall be made through a call for nominations sent to all eligible growers residing within each of the marketing order districts. The call for such nominations shall be by such means as are recommended by the committee and approved by the Secretary.

(1) The names of all eligible nominees from each district received by the committee, by such date and in such form as recommended by the committee and approved by the Secretary, will appear on the nomination ballot for that district.

(2) Election of the member nominees and alternate member nominees shall be conducted by mail ballot.

(3) Eligible growers shall participate in the election of nominees from the district in which they reside.

(4) When voting for member nominees, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(5) The nominee receiving the highest number of votes cast in districts two and four shall be the member nominee representing entities other than the major cooperative marketing organization from that district. The nominee receiving the second highest number of votes cast in districts two and four shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

(6) The nominees receiving the highest and second highest number of votes cast in districts one and three shall be the member nominees representing entities other than the major cooperative marketing organization from that district. The nominee receiving the third highest number of votes cast in districts one and three shall be the alternate member representing entities other than the major cooperative marketing organization from that district.

(f) Nominations for the member-at-large representing entities other than the major cooperative marketing organization shall be made through a call for nominations sent to all eligible growers residing within the marketing order districts. The call for such nominations shall be by such means as recommended by the committee and approved by the Secretary.

(1) Election of the member-at-large shall be held by mail ballot sent to all eligible growers in the marketing order districts by such date and in such form as recommended by the committee and approved by the Secretary.

(2) Eligible growers casting ballots may vote for a member-at-large nominee from marketing order districts other than where they produce cranberries.

(3) When voting for the member-at-large nominee, each eligible grower shall be entitled to cast one vote on behalf of him/herself.

(4) The nominee receiving the highest number of votes cast shall be designated the member-at-large nominee representing entities other than the major cooperative marketing organization. The nominee receiving the second highest number of votes cast shall be declared the alternate member-at-large nominee representing entities other than the major cooperative marketing organization.

(g) The committee may request that growers provide their federal tax

identification number(s) in order to determine voting eligibility.

(h) The names and addresses of all successor member nominees shall be submitted to the Secretary for selection no later than July 1 of each even-numbered year.

(i) The committee, with the approval of the Secretary, may issue rules and regulations to carry out the provisions or to change the procedures of this section.

■ 5. Revise § 929.23 to read as follows:

§ 929.23 Selection.

(a) From nominations made pursuant to § 929.22(b), the Secretary shall select members and alternate members to the committee on the basis of the representation provided for in § 929.20 and in paragraph (b) or (c) of this section.

(b) Whenever any cooperative marketing organization handles more than 50 percent of the total volume of cranberries produced during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six major cooperative members and four major cooperative alternate members from nominations made pursuant to § 929.22(c)(1).

(2) One major cooperative member-at-large from nominations made pursuant to § 929.22(c)(2), and

(3) Six members and four alternate members from growers who market their cranberries through other than the major cooperative marketing organization made pursuant to § 929.22(c)(3).

(c) Whenever any major cooperative marketing organization handles 50 percent or less of the total volume of cranberries produced during the fiscal year in which nominations for membership on the committee are made, the Secretary shall select:

(1) Six major cooperative members and four major cooperative alternate members from nominations made pursuant to § 929.22(d)(1).

(2) Six members and four alternate members from nominations made pursuant to § 929.22(d)(2).

(3) One member-at-large representing entities other than the major cooperative marketing organization from nominations made pursuant to § 929.22(d)(3).

■ 6. Revise § 929.27 to read as follows:

§ 929.27 Alternate members.

An alternate member of the committee shall act in the place and stead of a member during the absence of such member and may perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, an alternate shall act for him/her until a successor for such member is selected and has qualified. In the event both a member and alternate member from the same marketing order district are unable to attend a committee meeting, the committee may designate any other alternate member to serve in such member's place and stead at that meeting provided that:

(a) An alternate member representing the major cooperative shall not serve in place of a member representing other than the major cooperative or the public member.

(b) An alternate member representing other than the major cooperative shall not serve in place of a major cooperative member or the public member.

(c) A public alternate member shall not serve in place of any industry member.

■ 7. Revise § 929.32 to read as follows:

§ 929.32 Procedure.

(a) Ten members of the committee, or alternates acting for members, shall constitute a quorum. All actions of the committee shall require at least ten concurring votes: Provided, if the public member or the public alternate member acting in the place and stead of the public member, is present at a meeting, then eleven members shall constitute a quorum. Any action of the committee on which the public member votes shall require eleven concurring votes. If the public member abstains from voting on any particular matter, ten concurring votes shall be required for an action of the committee.

(b) The committee may vote by mail, telephone, fax, telegraph, or other electronic means; Provided that any votes cast by telephone shall be confirmed promptly in writing. Voting by proxy, mail, telephone, fax, telegraph, or other electronic means shall not be permitted at any assembled meeting of the committee.

(c) All assembled meetings of the committee shall be open to growers and handlers. The committee shall publish notice of all meetings in such manner as it deems appropriate.

Dated: April 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–8072 Filed 4–8–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1700

RIN 2550–AA29

Organization and Functions

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is revising its regulations that describe the agency's organization and functions. The revisions are being made to inform the public about changes in the organizational structure of the agency and the functional responsibilities of its offices. In particular, the revisions include a summary of two new offices.

In acting on these regulations, OFHEO finds that notice and public comment are not necessary. Section 553(b)(3)(A) of title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form. In addition, OFHEO finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

DATES: The final rule is effective April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Alfred Pollard, General Counsel, telephone (202) 414–3800 (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Discussion of the Final Regulation

This final rule informs the public about structural and functional changes within OFHEO that were recently implemented by the Director. Changes in the agency's structure consist of the establishment of the "Office of Compliance" and the "Office of Chief Accountant".

The Office of Compliance works to assure that the Enterprises operate in compliance with applicable laws by conducting special reviews and examinations on focused issues that may arise at the enterprises or that are of concern to OFHEO. The Office also assists in providing information for

enforcement actions and other activities as requested by the Director.

The Office of Chief Accountant provides advice to OFHEO on all accounting matters related to the Enterprises. The Office develops policies regarding accounting and financial reporting and monitors accounting standards that affect the Enterprises. The Office supports and coordinates accounting resources within the OFHEO and supports other offices in providing consistent accounting policy interpretation across OFHEO and works with external constituencies on accounting issues.

To more accurately reflect the functions of various offices, name changes have been made and are reflected in this organization regulation. The Office of Examination and Oversight is renamed the Office of Examination, reflecting the oversight role of the new Office of Compliance, and the Office of Risk Analysis and Model Development is renamed the Office of Capital Supervision, reflecting its changed emphasis from development of a stress test to the broad supervision and analysis of enterprise capital. Other offices remain the same in name and description of function.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This final rule is not classified as a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final rule under the Regulatory Flexibility Act. The General Counsel certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a 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 (adjusted annually for inflation) in any one year.

List of Subjects in 12 CFR Part 1700

Organization and functions (Government agencies).

■ For the reasons stated in the preamble, OFHEO is amending 12 CFR part 1700 as follows:

PART 1700—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 4513, 4526.

■ 2. Section 1700.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

* * * * *

(b) *Deputy Director.* The Deputy Director of OFHEO is appointed by the Director in accordance with the Act. In the event of the absence, sickness, death or resignation of the Director, the Deputy Director serves as acting Director until the Director's return or the confirmation of a successor. The Deputy Director performs such functions, powers and duties as the Director determines are necessary with respect to OFHEO's management and the development and implementation of OFHEO's programs and functions.

(c) *Offices and functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of the Enterprises, as required by the Act, prepares and issues reports of examination summarizing the financial condition and management practices of each Enterprise, and seeks preventative and corrective actions as appropriate. The Office complements its on-site examination activities with off-site financial safety and soundness monitoring.

(2) *Office of Capital Supervision.* The Office of Capital Supervision ensures the comprehensive evaluation and classification of the capital adequacy of the Enterprises, the assessment of risks that impact capital and the development of tools to measure such risks. The Office ensures the integrity of capital classifications by effectively producing results under the minimum and risk based capital models and systems and by implementing appropriate enhancements to those measures. The Office assesses new GSE activities under the capital regime and addresses changes in accounting standards. The Office supports its responsibilities as well as other OFHEO offices through research on alternative models and measurements of risk and capital adequacy.

(3) *Office of Finance and Administration.* The Office of Finance and Administration provides support services in all areas of financial and administrative management of OFHEO. The Office is responsible for developing, managing and implementing agency policies and procedures governing: (i) All human resources functions, including payroll; (ii) support for all facility and supply requirements, including continuity of operations planning and testing; (iii) OFHEO contracting and procurement programs; and, (iv) OFHEO financial management, budgeting and accounting functions, including travel, internal controls and financial reporting.

(4) *Office of General Counsel.* The Office of General Counsel advises the Director and OFHEO staff on all legal matters concerning the functions, activities, and operations of OFHEO and of the Enterprises under the Act. The Office is responsible for interpreting the Act and other applicable law, including financial institutions regulatory issues, securities and corporate law principles, and administrative and general legal matters. This Office also coordinates the preparation of legislation and agency

regulations and works with other counsels in the government.

(5) *Office of External Relations.* The Office of External Relations is responsible for coordinating and communicating on behalf of OFHEO with the Congress, for monitoring relevant legislative developments, and for analyzing and assisting the Director in developing legislative proposals. The Office also is responsible for directing and coordinating communication with the news media and the public as well as participating in planning programs for OFHEO.

(6) *Office of Policy Analysis and Research.* The Office of Policy Analysis and Research conducts policy analysis and research to assess the short- and long-term impact on the regulatory and supervisory functions of OFHEO of trends and developments in Enterprise activities, housing finance and financial regulation. The Office also prepares data series, reports and research papers; works with other OFHEO offices to develop policy options; and, makes recommendations to the Director on a broad range of policy issues.

(7) *Office of Information Technology.* The Office of Information Technology plans, develops, secures, maintains, and assures the quality of the OFHEO information systems and records management functions. The Office is responsible for establishing and implementing policies, procedures and standards in the following areas: information systems development and procurement, office automation, records management, information systems security and other information technology-related services.

(8) *Office of Strategic Planning and Management.* The Office of Strategic Planning and Management assists the Director in developing and maintaining a long term strategic plan that is consistent with the mission of OFHEO and facilitates efforts to ensure that the activities and operations of the Agency are consistent with the strategic plan. The Office also provides leadership in planning, managing and assessing OFHEO's performance, including development of OFHEO's annual performance plans and reports.

(9) *Office of Compliance.* The Office of Compliance assists the Director in ensuring that the Enterprises operate in compliance with applicable laws, regulations and safety and soundness standards. The Office conducts special review and examinations on focused issues that may arise at the enterprises or that are of concern to OFHEO, often in coordination with other OFHEO offices, to assess compliance and obtain information. The Office also assists in providing information for enforcement actions and other activities as requested by the Director.

(10) *Office of Chief Accountant.* The Office of Chief Accountant advises the Director and OFHEO staff on all accounting matters related to the Enterprises. The Office develops policies regarding accounting and financial reporting and monitors accounting standards that affect the Enterprises, working with the Enterprises at a policy level on emerging issues. The Office supports and coordinates accounting resources within the agency to assure the best and most efficient use of those resources. The Office supports other offices in providing consistent accounting policy interpretation across OFHEO and works with external constituencies on accounting issues.

* * * * *

Dated: April 5, 2004.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 04–8122 Filed 4–8–04; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4684]

Z–RIN 1400–ZA09

Amendment to the International Traffic in Arms Regulations: Denial Policy Against Iraq

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by modifying the denial policy regarding Iraq at 22 CFR 126.1.

DATES: Effective Date: April 9, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, Iraq, 12th Floor, SA–1, Washington, DC 20522–0112. E-mail comments may be sent to *PM–DTCM@state.gov*. Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at: *http://www.reguatlions.gov/index.cfm*. Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State (202) 663–2980.

SUPPLEMENTARY INFORMATION: Section 1504 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Pub. L. 108–11) authorized the export to Iraq of any nonlethal military equipment if the President determines and notifies within 5 days prior to export to applicable Congressional committees that the export of such nonlethal military equipment is in the national interest of the United States. However, this limitation regarding nonlethal military equipment did not apply to lethal military equipment designated by the Secretary of State for use by a reconstituted (or interim) Iraqi military or police force. Consequently, § 126.1 of the ITAR was amended in 68 FR 65633 (November 21, 2003).

Section 2205 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Pub. L. 108–106) amended section 1504 of Pub. L. 108–11. Exports may be authorized of lethal military equipment designated by the Secretary of State for use by a reconstituted (or interim) Iraqi military or police force, and also of small arms designated by the Secretary of State for use for private security purposes, if the President determines and notifies within 5 days prior to export to applicable Congressional committees that the export is in the national interest of the United States. Defense services may be approved for Iraq in accordance with the Arms Export Control Act (AECA), subject to the Congressional notification requirements of section 36 of the AECA. Paragraph (f) of § 126.1 is amended to reflect this and add small arms designated by the Secretary of State for use for private security purposes.

Paragraph (d) of § 126.1 identifies countries that the Secretary of State has determined, under section 40 of the AECA, to have repeatedly provided support for acts of international terrorism and for which exports of defense articles and services are contrary to the security and foreign policy of the United States. With respect to Iraq, in Presidential Determination 2003–23, dated May 7, 2003, the President suspended the application of all the provisions, other than section 586E, of the Iraq Sanctions Act of 1990 and made inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, as amended, and any other provision of law that applies to countries that have supported terrorism. However, as described above and consistent with the provisions of

sections 1503 and 1504 of Pub. L.108–11, exports to Iraq are subject to the policy specified in paragraph (f) of § 126.1.

Regulatory Analysis and Notices: This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

This amendment/rule has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this rule does not have sufficient federalism implications to warrant application of the consultation provisions of Executive Orders 12372 and 13132.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

■ 2. Section 126.1 is amended by revising paragraph (f) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

* * * * *

(f) *Iraq.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles, destined for or originating in Iraq except, if determined to be in the national interest of the United States and subject to the notification requirements of section 1504 of Public Law 108–11, exports may be authorized of nonlethal military equipment and, in the case of lethal military equipment, only that which is designated by the Secretary of State (or designee) for use by a reconstituted (or interim) Iraqi military or police force, and of small arms designated by the Secretary of State (or designee) for use for private security purposes.

* * * * *

Dated: March 23, 2004.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 04–8108 Filed 4–8–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 04–17202]

RIN 2135–AA19

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising its regulations to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season, which are effective only in Canada. The SLSDC also is amending the regulations to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since this latter proposed amendment would be of applicability in the United States, comments were invited only on this. (*See* **SUPPLEMENTARY INFORMATION.**) The Tariff of Tolls is in effect in Canada. For consistency, because these are, under international agreement, joint regulations, and to avoid confusion among users of the Seaway, the SLSDC finds that there is good cause to make this U.S. version of the amendments effective upon publication.

DATES: This rule is effective on April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. (The Tariff is called the Schedule of Fees and Charges in Canada.) The amendments are described in the following summary.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is revising § 402.8, "Schedule of Tolls," to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada as the collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice and comment was necessary on these amendments. The SLSDC also is amending the regulations to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since only this latter proposed amendment would be of applicability in the United States, comments were invited only on this. A Notice of Proposed Rulemaking was published on March 2, 2004 (69 FR 9774). Interested parties have been afforded an opportunity to participate in the making of the amendment applicable in the United States. No comments were received. That amendment is described in the following summary.

The specific change is the amendment of § 402.8, "Schedule of Tolls", to increase the per lock charge for transit through a U.S. lock from $16.44 to $16.77. This increase is due to higher operating costs at the locks.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's

Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

■ Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.52.

■ 2. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Item	Description of chargers	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
	Column 1	Column 2	Column 3
1.	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		
	(1) a charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0912	0.1482.
	(2) a charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) bulk cargo	0.9461	0.6268.
	(*b*) general cargo	2.2795	1.0031.
	(*c*) steel slab	2.0630	0.7181.
	(*d*) containerized cargo	0.9461	0.6268.
	(*e*) government aid cargo	N/A	N/A.
	(*f*) grain	0.5812	0.6268.
	(*g*) coal	0.5585	0.6268.
	(3) a charge per passenger per lock	1.3449	1.3449.
	(4) a charge per lock for transit of the Welland Canal in either direction by cargo ships:		
	(*a*) loaded	N/A	500.61.
	(*b*) in ballast	N/A	369.87.
2.	Subject to item 3, for partial transit of the Seaway	20 per cent lock of the applicable charge under items 1 (1) and (2) plus the applicable charge under items 1 (3) and (4).	13 per cent per lock of the applicable charge under items 1 (1) and (2) plus the applicable charge under items 1 (3) and (4).
3.	Minimum charge per ship per lock transited for full or partial transit of the Seaway.	16.77	16.77.
4.	A rebate applicable for the 2004 navigation season to the rates of item 1 to 3.	Rebate of 0%	Rebate of 0%.

Item	Description of chargers	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
	Column 1	Column 2	Column 3
5.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable federal taxes [1].	20.00	20.00.

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $20 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC on April 6, 2004.
Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 04–8073 Filed 4–8–04; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC16

Sale and Disposal of National Forest System Timber; Timber Sale Contracts, Modification of Contracts

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: The Forest Service is adopting an interim final rule at part 223, subpart B, of Title 36, Code of Federal Regulations, § 223.112. This interim final rule authorizes timber sale contracting officers to modify contracts to provide a redetermination of stumpage rates and deposits to reflect significant timber market declines. This rule applies to existing timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season because of administrative appeals or litigation, through no fault of the timber purchaser. Comments received on this interim final rule will be considered in adoption of a final rule.

DATES: This interim final rule is effective April 9, 2004. Comments must be received in writing by June 8, 2004.

ADDRESSES: Send written comments to the Director of Forest and Rangeland Management, via the U.S. Postal Service to MAIL STOP 1105, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–0003; via e-mail to *wo timber sale contract rate redetermination@fs.fed.us;* or via facsimile to 202–205–1045. Comments also may be submitted via the World Wide Web/Internet Web site at: *http://www.regulations.gov.* All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this interim final rule in the office of the Director of Forest and Rangeland Management, Third Floor, Northwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205–0893 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald, Forest and Rangeland Management, (202) 205–1753.

SUPPLEMENTARY INFORMATION:

Background

The suspension of a timber sale purchaser's operations because administrative appeals or litigation, through no fault of the timber purchaser often can result in economic hardship to the purchaser, if after a period of time, the timber market decreases substantially. Not only may the purchaser face economic loss, but the government can be faced with potential claims or additonal litigation relating to the delays. When timber markets rise, during the suspension, this problem does not occur.

The regulations at 36 CFR part 223.33 currently provide for a stumpage rate redetermination on sales of 7 years duration on a predetermined schedule. These regulations also provide for stumpage rate redeterminations when a purchaser has diligently performed a contract and seeks an extension (36 CFR 223.115) if, at the time of the scheduled contract termination, at least 75 percent of the contract volume has been removed, and all specified road construction completed. However, the current regulations do not give authority to the contracting officer to provide for a stumpage rate redetermination to reflect changed market conditions when, at no fault of the purchaser, an existing timber sale contract was suspended because of administrative appeals or litigation. A rate redetermination would provide relief for purchasers in this situation.

Before 1990, very few timber sales were suspended because of administrative appeals or litigation. Now, with much less timber volume under contract, purchasers have limited opportunities to adjust operations to other sales, and thus minimize the economic impact. More recently, the suspension of sales has led to increased contract claims and litigation for damages resulting from the delays caused by the suspension. In the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), Congress provided economic relief to certain timber contracts in Alaska that were sold after 1995, because of changed timber market conditions.

A notice with request for comment on proposed revisions to timber sale contract Forms FS–2400–6, for scaled sale procedures, and FS–2400–6T, for tree measurement sale procedures, was published in the **Federal Register** on December 19, 2003 (68 FR 70758). That notice included a proposed contract provision which would provide relief for future timber sale purchasers by allowing modification of stumpage rates in contracts suspended for more than 90 days, due to administrative appeals or environmental litigation. The Forest Service currently is considering comments received from the public and anticipates issuing the final revised contracts in the near future.

Good Cause Statement

This interim final rule amends the current regulation at 36 CFR 223.112 to authorize redetermination of existing contract stumpage rates to provide economic relief to timber sale purchasers for remaining unharvested volume in timber sales awarded after October 1, 1995. This rule will authorize

redetermination of stumpage rates to reflect significant declines in timber market conditions during the suspension of timber sales for more than 90 days because of administrative appeals or litigation, through no fault of the timber purchaser.

This rule may enable purchasers obtaining stumpage rate redeterminations to continue existing contracts after the suspension has been lifted. If purchasers continue to lose money on sales, many purchasers may go out of business. In the past, timber sale contracts have not provided for a stumpage rate redetermination to reflect the economic impact on the purchaser because of contract suspensions. Authorizing rate redeterminations in limited circumstances results in claims and damages that could exceed the cost of providing this relief. There are a significant number of timber sale purchasers whose contracts have been suspended for more than 90 days due to no fault of their own, because of litigation or administrative appeals. These purchasers will have the ability to immediately request rate redetermination to insure the economic viability of the sale.

Conclusion

By adoption of this interim final rule, the Chief authorizes contracting officers to modify timber sale contracts, at the timber sale purchaser's request, to include a rate redetermination when an existing timber sale has been suspended for more than 90 days, due to administrative appeals or litigation, through no fault of the timber purchaser, to reflect significant timber market declines.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this rule will not have a significant economic impact on a substantial number of small entities. The interim final rule imposes no additional requirements on timber purchasers for the purpose of contract modifications.

Environmental Impact

This interim final rule establishes the opportunity to provide relief from adverse economic impacts that occur at no fault of a timber sale purchaser. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement * * * rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions" * * * that do not significantly affect the quality of the human environment. The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. The intent of this interim final rule is to authorize stumpage rate redeterminations for existing sales suspended, at no fault of the purchaser, more than 90 days, during the normal operating season, as a result of administrative appeals or litigation, through no fault of the timber purchaser to reflect significant timber market declines. No change in resources on National Forest System (NFS) land would occur from implementation of this rule except to defer operations on an NFS timber sale. A final determination will be made upon adoption of a final rule.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or information requirement, as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3501, *et seq*), the Forest Service has not requested emergency approval from the Office of Management and Budget for this interim final rule.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments, and the private sector. This interim final rule does not compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 223

Administrative practices and procedures, Exports, Government contracts, Forests and forest products, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, Title 36 of the Code of Federal Regulations, part 223, subpart B, is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for Part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

Subpart B—Timber Sale Contracts

■ 2. In § 223.112, designate the first paragraph as (a) and add paragraph (b) as follows:

§ 223.112 Modification of Contracts.

(a) * * *

(b) Timber sale contracts awarded after October 1, 1995, that have been suspended for more than 90 days, during the normal operating season, at no fault of the purchaser, because of administrative appeals or litigation, that did not include contract provisions for rate redeterminations may be modified at the request of the timber sale purchaser to include a rate redetermination for the remaining unharvested volume to reflect significant decreases in market value during the period of delay. Rates in effect at the time of the suspension will be redetermined in accordance with the standard Forest Service methods in effect 45 days prior to the rate redetermination.

Dated: April 2, 2004.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 04–8033 Filed 4–8–04; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–200404(c); FRL–7636–9]

Approval and Promulgation of Air Quality Implementation Plans; Kentucky Update to Materials Incorporated by Reference; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On January 12, 2004, at 69 FR 1677, EPA published a final rule updating the materials incorporated by reference (IBR) into the Kentucky State Implementation Plan (SIP). This document corrects two errors in the amendatory language in the final rule.

DATES: This correction is effective April 9, 2004.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; Office of Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the above Region 4 address, by phone at (404) 562–9031, or via e-mail at: *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a document on January 12, 2004, (69 FR 1677) which inadvertently excluded paragraph (e) from the list of paragraphs amended in 40 CFR 52.920 under Subpart S-Kentucky. The document also did not clearly state that only "Table 1-EPA-Approved Kentucky Regulations" of paragraph (c) was to be replaced in its entirety, leaving "Table 2-EPA-Approved Jefferson County Regulations for Kentucky" intact. As a result, Table 2 was inadvertently removed from paragraph (c).

This document corrects the erroneous amendatory language and reinstates Table 2 in its entirety. By this action, the amendatory instructions are replaced in their entirety in the final rule published on January 12, 2004, at 69 FR 1677, on page 1678 in the third column, number 2 of Subpart S, Part 52. These amended instructions include paragraph (e) as one of the paragraphs revised in this IBR update to the Kentucky SIP and specify that Table 2 is to be reinstated under paragraph (c). The only change made to Table 2 is a clarification to the rule publication dates in two instances. Under the column, "EPA approval date," all rule effective date entries of "11/23/01" and "12/19/02" are replaced with the rule publication dates of "10/23/01" and "11/19/02," respectively. This change is consistent with other entries of this type in the table and makes it easier for the public to reference the respective documents. Also, one correction was made to the title of Regulation 8.03 to insert the word "Requirements" as follows: "Commuter Vehicle Testing Requirements."

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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).

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 June 8, 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 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 4, 2004.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

■ In rule FR Document 04–459 published on January 12, 2004, (69 FR 1677), make the following correction. On page 1678, in the third column, the amendatory instruction 2. to § 52.920 is corrected to read:

■ 2. In § 52.920, paragraphs (b), (c), (d), and (e) are revised to read as follows:

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. In § 52.920, add a sentence to the end of paragraph (b)(1) and add Table 2 to paragraph (c) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(b) * * * (1) * * * Entries in paragraph (c), Table 2, with EPA approval dates after October 23, 2001, will be incorporated by reference in the next update to the Jefferson County portion of the Kentucky SIP compilation.

(c) * * *

TABLE 2.—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
	Reg 1—General Provisions			
1.01	General Application of Regulations and Standards	10/23/01	66 FR 53660	03/17/99
1.02	Definitions	11/19/02	67 FR 69688	12/19/01
1.03	Abbreviations and Acronyms	11/19/02	67 FR 69688	05/15/02
1.04	Performance Tests	10/23/01	66 FR 53660	11/19/97
1.05	Compliance with Emission Standards and Maintenance Requirements.	10/23/01	66 FR 53660	11/18/92
1.06	Source Self-Monitoring and Reporting	10/23/01	66 FR 53660	12/15/93
1.07	Emissions During Startups, Shutdowns, Malfunctions and Emergencies.	10/23/01	66 FR 53660	01/17/96
1.08	Administrative Procedures	11/03/03	68 FR 62236	06/19/02
1.09	Prohibition of Air Pollution	10/23/01	66 FR 53660	11/16/83
1.10	Circumvention	10/23/01	66 FR 53660	04/19/72
1.11	Control of Open Burning	10/23/01	66 FR 53660	02/22/90
1.14	Control of Fugitive Particulate Emissions	10/23/01	66 FR 53660	01/20/88
1.18	Rule Effectiveness	10/23/01	66 FR 53689	09/21/94
1.19	Administrative Hearings	11/19/02	67 FR 69688	05/15/02
	Reg 2—Permit Requirements			
2.01	General Application	10/23/01	66 FR 53660	04/21/82
2.02	Air Pollution Regulation Requirements and Exemptions	10/23/01	66 FR 53660	06/21/95
2.03	Permit Requirements—Non-Title V Construction and Operating Permits and Demolition/Renovation Permits.	10/23/01	66 FR 53660	12/15/93
2.04	Construction or Modification of Major Sources in or Impacting Upon Non-Attainment Areas (Emission Offset Requirements).	10/23/01	66 FR 53660	03/17/93
2.05	Prevention of Significant Deterioration of Air Quality	11/03/03	68 FR 62236	06/19/02
2.06	Permit Requirements—Other Sources	10/23/01	66 FR 53660	11/16/83
2.07	Public Notification for Title V, PSD, and Offset Permits; SIP Revisions; and Use of Emission Reduction Credits.	10/23/01	66 FR 53660	06/21/95
2.09	Causes for Permit Suspension	11/03/03	68 FR 62236	06/19/02
2.10	Stack Height Considerations	10/23/01	66 FR 53660	07/19/89
2.11	Air Quality Model Usage	10/23/01	66 FR 53660	05/19/99
2.17	Federally Enforceable District Origin Operating Permits	11/03/03	68 FR 62236	06/19/02
	Reg—3 Ambient Air Quality Standards			
3.01	Purpose of Standards and Expression of Non-Degradation Intention.	10/23/01	66 FR 53660	06/13/79
3.02	Applicability of Ambient Air Quality Standards	10/23/01	66 FR 53660	06/13/79
3.03	Definitions	10/23/01	66 FR 53660	06/13/79
3.04	Ambient Air Quality Standards	10/23/01	66 FR 53660	04/20/88
3.05	Methods of Measurement	10/23/01	66 FR 53660	04/20/88
	Reg—4 Emergency Episodes			
4.01	General Provisions for Emergency Episodes	10/23/01	66 FR 53660	06/13/79
4.02	Episode Criteria	10/23/01	66 FR 53660	04/20/88

TABLE 2.—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
4.03	General Abatement Requirements	10/23/01	66 FR 53660	02/16/83
4.04	Particulate and Sulfur Dioxide Reduction Requirements	10/23/01	66 FR 53660	04/19/72
4.05	Hydrocarbon and Nitrogen Oxides Reduction Requirements	10/23/01	66 FR 53660	02/16/83
4.06	Carbon Monoxide Reduction Requirements	10/23/01	66 FR 53660	02/16/83
4.07	Episode Reporting Requirements	10/23/01	66 FR 53660	06/13/79
	Reg—6 Standards of Performance for Existing Affected Facilities			
6.01	General Provisions	10/23/01	66 FR 53660	11/16/83
6.02	Emission Monitoring for Existing Sources	10/23/01	66 FR 53660	11/16/83
6.07	Standards of Performance for Existing Indirect Heat Exchangers.	10/23/01	66 FR 53660	06/13/79
6.08	Standard of Performance for Existing Incinerators	10/23/01	66 FR 53660	06/13/79
6.09	Standards of Performance for Existing Process Operations	10/23/01	66 FR 53660	03/17/99
6.10	Standard of Performance for Existing Process Gas Streams	10/23/01	66 FR 53660	11/16/83
6.12	Standard of Performance for Existing Asphalt Paving Operations.	10/23/01	66 FR 53661	05/15/91
6.13	Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds.	10/23/01	66 FR 53661	05/15/91
6.14	Standard of Performance for Selected Existing Petroleum Refining Processes and Equipment.	10/23/01	66 FR 53661	04/21/82
6.15	Standard of Performance for Gasoline Transfer to Existing Service Station Storage Tanks (Stage I Vapor Recovery).	01/25/80	45 FR 6092	06/13/79
6.16	Standard of Performance for Existing Large Appliance Surface Coating Operations.	10/23/01	66 FR 53661	05/15/91
6.17	Standard of Performance for Existing Automobile and Truck Surface Coating Operations.	10/23/01	66 FR 53661	11/18/92
6.18	Standards of Performance for Existing Solvent Metal Cleaning Equipment.	11/19/02	67 FR 69688	05/15/02
6.19	Standard of Performance for Existing Metal Furniture Surface Coating Operations.	10/23/01	66 FR 53661	05/15/91
6.20	Standard of Performance for Existing Bulk Gasoline Plants	10/23/01	66 FR 53661	11/16/83
6.21	Standard of Performance for Existing Gasoline Loading Facilities at Bulk Terminals.	10/23/01	66 FR 53661	11/16/83
6.22	Standard of Performance for Existing Volatile Organic Materials Loading Facilities.	10/23/01	66 FR 53661	03/17/93
6.24	Standard of Performance for Existing Sources Using Organic Materials.	10/23/01	66 FR 53661	03/17/93
6.26	Standards of Performance for Existing Volatile Organic Compound Water Separators.	10/23/01	66 FR 53661	06/13/79
6.27	Standards of Performance For Existing Liquid Waste Incinerators.	10/23/01	66 FR 53661	06/13/79
6.28	Standard of Performance for Existing Hot Air Aluminum Atomization Processes.	10/23/01	66 FR 53661	03/18/81
6.29	Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography.	10/23/01	66 FR 53661	05/15/91
6.30	Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling.	10/23/01	66 FR 53661	05/15/91
6.31	Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface-Coating Operations.	10/23/01	66 FR 53661	04/23/96
6.32	Standard of Performance for Leaks from Existing Petroleum Refinery Equipment.	10/23/01	66 FR 53661	05/15/91
6.33	Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations.	10/23/01	66 FR 53661	05/15/91
6.34	Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants.	10/23/01	66 FR 53661	05/15/91
6.35	Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations.	10/23/01	66 FR 53661	05/15/91
6.38	Standard of Performance for Existing Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industries.	10/23/01	66 FR 53661	12/17/86
6.39	Standard of Performance for Equipment Leaks of Volatile Organic Compounds in Existing Synthetic Organic Chemical and Polymer Manufacturing Plants.	10/23/01	66 FR 53661	07/17/96
6.40	Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control).	10/23/01	66 FR 53661	08/18/93
6.42	Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities.	10/23/01	66 FR 53661	03/17/99
6.43	Volatile Organic Compound Reduction Requirements	10/23/01	66 FR 53689	05/21/97
6.45	Standards of Performance for Existing Solid Waste Landfills	10/23/01	66 FR 53689	02/02/94
6.44	Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	10/23/01	66 FR 53661	09/20/95

TABLE 2.—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY—Continued

Reg	Title/subject	EPA approval date	Federal Register notice	District effective date
6.46	Standards of Performance for Existing Ferroalloy and Calcium Carbide Production Facilities.	10/23/01	66 FR 53661	12/21/94
6.48	Standard of Performance for Existing Bakery Oven Operations.	10/23/01	66 FR 53661	07/19/95
6.49	Standards of Performance for Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	10/23/01	66 FR 53664	06/20/01
6.50	NO_x Requirements for Portland Cement Kilns	11/19/02	67 FR 69688	03/20/02
	Reg 7—Standards of Performance for New Affected Facilities			
7.01	General Provisions	10/23/01	66 FR 53661	05/17/00
7.06	Standards of Performance for New Indirect Heat Exchangers	10/23/01	66 FR 53661	04/21/82
7.07	Standard of Performance for New Incinerators	10/23/01	66 FR 53661	09/15/93
7.08	Standards of Performance for New Process Operations	10/23/01	66 FR 53661	03/17/99
7.09	Standards of Performance for New Process Gas Streams	10/23/01	66 FR 53661	06/18/97
7.11	Standard of Performance for New Asphalt Paving Operations	10/23/01	66 FR 53661	05/15/91
7.12	Standard of Performance for New Storage Vessels for Volatile Organic Compounds.	10/23/01	66 FR 53661	05/15/91
7.14	Standard of Performance for Selected New Petroleum Refining Processes and Equipment.	10/23/01	66 FR 53661	06/13/79
7.15	Standards of Performance for Gasoline Transfer to New Service Station Storage Tanks (Stage I Vapor Recovery).	10/23/01	66 FR 53662	04/20/88
7.18	Standards of Performance for New Solvent Metal Cleaning Equipment.	10/23/01	66 FR 53662	05/15/91
7.20	Standard of Performance for New Gasoline Loading Facilities at Bulk Plants.	10/23/01	66 FR 53662	11/16/83
7.22	Standard of Performance for New Volatile Organic Materials Loading Facilities.	10/23/01	66 FR 53662	03/17/93
7.25	Standard of Performance for New Sources Using Volatile Organic Compounds.	10/23/01	66 FR 53662	03/17/93
7.34	Standard of Performance for New Sulfite Pulp Mills	10/23/01	66 FR 53662	06/13/79
7.35	Standard of Performance for New Ethylene Producing Plants	10/23/01	66 FR 53662	06/13/79
7.36	Standard of Performance for New Volatile Organic Compound Water Separators.	10/23/01	66 FR 53662	06/13/79
7.51	Standard of Performance for New Liquid Waste Incinerators	10/23/01	66 FR 53662	01/20/88
7.52	Standard of Performance for New Fabric, Vinyl, and Paper Surface Coating Operations.	10/23/01	66 FR 53662	05/15/91
7.55	Standard of Performance for New Insulation of Magnet Wire	10/23/01	66 FR 53662	03/17/93
7.56	Standard of Performance for Leaks from New Petroleum Refinery Equipment.	10/23/01	66 FR 53662	05/15/91
7.57	Standard of Performance for New Graphic Arts Facilities Using Rotogravure and Flexography.	10/23/01	66 FR 53662	05/15/91
7.58	Standard of Performance for New Factory Surface Coating Operations of Flat Wood Paneling.	10/23/01	66 FR 53662	05/15/91
7.59	Standard of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations.	10/23/01	66 FR 53662	04/23/96
7.60	Standard of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations.	10/23/01	66 FR 53662	05/15/91
7.77	Standards of Performance for New Blast Furnace Casthouses	10/23/01	66 FR 53662	10/20/93
7.79	Standards of Performance for New Commercial Motor Vehicles and Mobile Equipment Refinishing Operations.	10/23/01	66 FR 53690	02/02/94
7.81	Standard of Performance for New or Modified Bakery Oven Operations.	10/23/01	66 FR 53662	05/17/00
	Reg 8—Mobile Source Emissions Control			
8.01	Mobile Source Emissions Control Requirements	09/24/02	67 FR 59785	11/21/01
8.02	Vehicle Emissions Testing Procedure	09/24/02	67 FR 59785	11/21/01
8.03	Commuter Vehicle Testing Requirements	10/23/01	66 FR 53690	02/02/94

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[FR Doc. 04–5877 Filed 4–8–04; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[OAR–2003–0044; FRL–7643–6]

RIN 2050–AF09

Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making several changes to the reporting requirements of its chemical accident prevention regulations under section 112(r) of the Clean Air Act. Today's final rule requires that, beginning June 21, 2004, chemical facilities subject to the accident prevention regulations submit information on any significant chemical accidents and any changes to emergency contact information on a more timely basis than previously required. The rule also immediately removes the regulatory requirement for covered facilities to include in the executive summaries of their risk management plans (RMPs) a brief description of the off-site consequence analysis (OCA) for their facilities. In addition, the final rule also requires that, beginning June 21, 2004, covered facilities include three new pieces of information in their RMPs: the e-mail address for the facility emergency contact, the name, address and telephone number of the contractor who prepared the RMP, and the purpose of any RMP submission that changes or otherwise affects an earlier RMP submission. The rule also clarifies that the deadline for updating RMPs that were submitted before or on June 21, 1999, is June 21, 2004, except for those facilities required to update their RMPs as a result of changes at the facility. Finally, EPA is making several related and other revisions to the format for submitting RMPs (RMP*Submit), including expanding the list of options for possible accident causes to include uncontrolled chemical reactions. The modifications promulgated today seek to improve the accident prevention and reporting programs of covered facilities, and to assist federal, state, and local RMP implementation in light of new homeland security concerns.

DATES: This rule is effective on April 9, 2004.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section I.B for docket addresses.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346; in the Washington, D.C. metropolitan area, contact (703) 412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 535–7672. You may also access general information online at the Hotline Internet site, *http://www.epa.gov/epaoswer/hotline/*. For questions on the contents of this document contact Vanessa Rodriguez, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 564–7913, Fax (202) 564–8233, *rodriguez.vanessa@epa.gov*. You may also wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at *http://www.epa.gov/ceppo*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Affected or Regulated Entities?

Entities potentially affected by this action are those facilities (referred to as "stationary sources" under the CAA) that are subject to the chemical accident prevention requirements at 40 CFR part 68. Affected categories and entities include:

CATEGORY EXAMPLES OF AFFECTED ENTITIES

Chemical Manufacturers	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions associated with the list of substances and thresholds under 40 CFR 68.130 and the applicability criteria under § 68.10. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2003–0044. 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 Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

The information in this final rule is organized as follows:

I. Introduction

A. Statutory Authority

This final rule is being issued under section 112(r) of the Clean Air Act (CAA or Act) (42 U.S.C. 7412).

B. Background

The 1990 CAA Amendments added, among other things, section 112(r) to provide for the prevention and mitigation of accidental releases of extremely hazardous substances. Section 112(r) calls for EPA to list the most dangerous substances and a threshold quantity for each substance. It also directs EPA to issue regulations requiring any stationary source with more than a threshold quantity of a listed substance to develop and implement a risk management program and to submit a RMP describing its program. EPA published a final rule creating the list of regulated substances and establishing thresholds on January 31, 1994 (59 FR 4478) (the "List Rule"), and a final rule establishing the risk management program and plan requirements on June 20, 1996 (61 FR 31668) (the "RMP Rule"). Together, these two rules are codified as part 68 of title 40 of the Code of Federal Regulations (40 CFR part 68).

Sources subject to the RMP rule are required to develop and implement a risk management program that includes, for covered processes, a five-year accident history, an offsite consequence analysis, a prevention program, and an emergency response program. Sources must also submit to EPA a RMP describing the source's risk management program. The deadline for submitting RMPs was June 21, 1999, for sources subject to the rule by that date. Sources must also update their RMPs at least every five years. Approximately 15,000 sources have submitted RMPs, and a significant number of those sources have their five-year anniversary date coming up in June, 2004.

Specifically, the RMP rule requires sources to *update and re-submit* their RMPs at least every five years or sooner if any of the changes specified in § 68.190(b)(2) of the rule occur. Updates and re-submissions entail the review and revision of all sections of the RMP as needed to bring the RMP up to date and must be accompanied by a letter certifying that the entire RMP is true, accurate and complete. The five-year anniversary date for resubmitting the RMP is reset with any update and re-submission.

Sources may revise their RMPs for reasons other than those that trigger an update and re-submission. The Agency distinguishes between *updates and re-submissions* and other types of revisions, namely *corrections, de-registrations (revised registrations)* and *withdrawals.* A *correction* changes only individual data entries in the RMP (known as "RMP data elements"). Corrections may include clerical errors, minor administrative changes, or changes of ownership when covered process operations do not change. Corrections do not entail the review and revision of all nine sections of the RMP, nor do they affect the five-year anniversary date for updating and resubmitting the RMP. Corrections have entailed submission of the corrected RMP on a diskette (or in hard copy) accompanied by a letter certifying the change. EPA is currently working on an alternative, Internet-based, secure system that would allow corrections of administrative data elements within the RMP registration to be made more easily.

De-registrations (or *revised registrations* as these are referred to in § 68.190(c)) occur when the source is no longer covered by the program (*e.g.*, the source no longer uses any regulated substances or no longer holds regulated substances in amounts that exceed the threshold quantities). The source submits a letter requesting de-registration, with the RMP being retained in the reporting system database for 15 years. *Withdrawals* occur when sources that were never subject to the program submit an RMP in error. A letter requesting a withdrawal is submitted, and the RMP is taken out of the reporting system database.

II. Discussion of the Final Rule and Public Comments

With this final rule, EPA is taking action to amend several of the reporting requirements of the chemical accident prevention regulations. EPA is requiring any source at which a significant accident occurs following the effective date of this rule to add information about that accident and the resulting incident investigation to the source RMP within 6 months of the accident. EPA is not, however, requiring that a source necessarily update and resubmit its RMP following such an accident. EPA is also requiring sources which change emergency contact personnel or related information to correct the corresponding information in their RMP within one month of making the change. EPA is removing the regulatory requirement to briefly summarize OCA in the executive summary of the RMP. In addition, EPA is adding three mandatory data elements to the RMP: (1) The e-mail address for the facility

emergency contact, when available, (2) the purpose of any subsequent RMP submissions (*e.g.*, correction, update, withdrawal), and (3) the name, address and telephone number of any contractor who helped prepare the RMP. EPA is also allowing an optional data element for the e-mail address of the facility person responsible for the RMP. Relatedly, EPA is making several revisions to the submission format for the RMP (RMP*Submit), including expanding the list of options for possible accident causes to include uncontrolled chemical reactions.

These changes were proposed on July 31, 2003 (68 FR 45126). EPA received 71 comments on the proposal. Summaries of all comments and the Agency's responses can be found in the *Summary and Response to Comments* document in the docket.

A. Changes to the RMP Reporting Schedule

1. Five-Year Accident History

EPA is amending the RMP rule to require that facilities who have an accident that meets the criteria for the five-year accident history revise all elements of their RMP accident history (§ 68.168) and the date of investigation and expected date of completion of changes due to an accident investigation in their Incident Investigation data elements (§§ 68.170(j) and 68.175(l)) within six months of the date of the accident.

The five-year accident history section of the RMP rule (40 CFR 68.42) requires the owner or operator of a covered source to record information in their RMP on all accidental releases from covered processes in the past five years that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. However, the original RMP rule did not require a source to update its accident history until it updated and re-submitted its entire RMP, which could be as infrequently as every five years. One year ago, the U.S. Chemical Safety and Hazard Investigation Board (CSB), created under section 112(r)(6) of the CAA, recommended that RMP accident histories be updated on a more timely basis in view of the valuable information they provide for chemical accident prevention and preparedness efforts by government, industry and the public (Joint Chemical Safety Board, Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, and EPA Roundtable on Developing Improved Metrics on Accidental Chemical Process Releases, November 14, 2002). EPA agreed with that recommendation and consequently proposed to require that sources update and re-submit their RMP within six months of an accidental release that meets the five-year accident history reporting criteria. The Agency also requested comment on requiring all sources with reportable accidents to update and resubmit their RMPs by the same date (*e.g.*, June 1 of each year).

Thirteen comments supported the proposal for a full update and re-submission of the RMP after an accident that met the accident history reporting criteria, while 43 comments opposed all or part of the proposal. Comments supporting the proposal stated that it would not pose a substantial burden to the regulated community, and that timely submission of accident information in RMPs would be beneficial in assisting Federal, State, and local responders with accident prevention and response. These comments generally favored requiring an update and re-submission within some number of months following an accident, as opposed to requiring every source to update and resubmit their RMPs by a fixed date.

Other comments opposing the proposal pointed out that many accidents are subject to other reporting requirements, making timely RMP reporting arguably unnecessary. Many comments also disagreed with the need to update and re-submit an entire RMP following any reportable accident. In proposing the update and re-submission requirement, EPA explained that it sought not only more recent accident information in RMPs but also assurance that any lessons learned from an accident investigation would be applied to the source's risk management program and reflected in its RMP. A number of comments noted, however, that the RMP rule already requires the vast majority of RMP facilities to (1) investigate incidents that result in, or could have resulted in, catastrophic releases; (2) prepare a summary or report of the investigation, including a description of the incident, factors that contributed to the incident and any recommendations resulting from the investigation; (3) address and resolve all findings and recommendations; and (4) document all resolutions and corrective actions taken (see §§ 68.60 and 68.81). These comments argued that these existing requirements already accomplished EPA's goal of sources incorporating lessons learned into their risk management programs. The comments also noted that to the extent sources made changes in light of accidents that triggered the update requirement of the existing rule, the RMP would be updated and re-submitted in that event.

Several comments also stated that RMP reporting is not detailed enough to capture many of the changes a source might make in response to an accident investigation. In addition, some comments noted that for a source with more than one RMP-covered process, an accident involving one process may have no implications for other, different processes at the source. For such sources, a requirement to update and re-submit the RMP for all processes would make little sense. There was also concern that six months is not a sufficient amount of time to update and resubmit an entire RMP following an accident that may take several months or more to fully investigate. Finally, a number of comments expressed concern with a statement in the preamble to the proposed rule suggesting that reporting would be required for significant releases from covered processes of any extremely hazardous substance, not just a substance listed under CAA section 112(r) ("regulated substances"). A number of comments argued that EPA had overstated the scope of the existing reporting requirement.

EPA has considered the comments and further studied existing requirements for accident reporting and follow-up. The Agency continues to believe that more timely reporting of significant accidents in RMPs is worthwhile. Although there are a number of other Federal, State and local requirements for accident reporting, the data collected for accident reporting in RMPs are uniquely useful and accessible. RMP accident history reporting provides more than basic information about an accident; it also covers the cause of the release and measures taken to reduce the risk or consequences of a reoccurrence. The data consequently help in understanding the reason(s) for a release and safety measures that have been taken in response. Moreover, the RMP accident histories are available by law to Federal, State and local officials and the public, including other chemical sources.

EPA believes significant benefits will accrue as accident histories are reported on a more timely basis, as lessons learned are more promptly shared and acted upon to prevent similar occurrences. Implementing agencies will be able to better identify the need for technical assistance, and more timely accident information will help in identifying trends and providing timely

outreach to prevent similar incidents. As noted above, more timely reporting was also recommended by the CSB. Those recommendations were particularly aimed at improving our understanding of the frequency, nature, and causes of reactive chemical incidents, and ultimately to promote safer management of reactive chemicals. EPA believes more timely reporting of accident history information, along with other modifications made in today's final rule, will allow the Agency, other government agencies, members of the public, and other interested parties to better understand and prevent chemical accidents, including those resulting from reactive chemicals.

While EPA is establishing a requirement for more timely reporting of significant accidents, it is not adopting the proposed requirement that RMPs be fully updated and resubmitted within six months of an accident. The Agency understands the concern that a full update of an RMP may not be possible within six months of an accident, as a thorough investigation of a major accident, implementation of any new safety measures and updating of the entire RMP could take longer, particularly for larger sources. EPA also agrees with the comments that existing requirements for incident investigations already accomplish the Agency's primary purpose in proposing a full update and re-submission requirement—assurance that lessons learned are applied. EPA further recognizes that updating an RMP in full may make little sense where an accident involves only one process at sources with other, different processes. The Agency has accordingly decided not to require a full update and re-submission of an RMP following an accident.

At the same time, EPA is requiring that information about reportable accidents be added to RMPs within six months of the accident (unless an RMP update is required sooner). The Agency continues to believe that facilities will be more likely to recall and report accurate accident history information if that information is recorded within six months of an accident. Under the previous reporting requirement facilities were asked to include in their RMPs detailed information about an accident that occurred as long as five years ago. While some comments expressed concern that accident investigations and implementation of corrective actions could take longer than six months in some cases, the existing accident history data elements take into account that a source may not have complete information at the time a report is made. Section 68.42(b) of the RMP rule requires information about weather conditions, offsite impacts, initiating event and contributing factors "if known" and only an "estimate" of the quantity of chemical released. To the extent complete information about these matters is not available six months after a reportable accident occurs (or by the time an RMP update is due, if earlier), the source need only provide the information it does have. When the source is next required to update and resubmit its entire RMP, it can and must provide any additional or more accurate information at that time.

The Agency recognizes that § 68.42(b)(11) as originally drafted required a source to report "operational or process changes that resulted from investigation of the release," and that a source may not have made all such changes by the time it must submit information about the accident. EPA is thus revising that data element to require reporting of only those changes the source has made by the time it submits the accident information as part of accident reporting or an RMP update. EPA recognizes that providing a longer time frame for accident reporting would make it more likely that complete information would always be available at the time a report is made. But the Agency believes it is important to collect accident information as soon as reasonably practicable, even if that information is not always complete, in view of the benefit such information may provide to other entities that could learn from the accident. A six-month deadline for reporting accident information is a reasonable compromise between the time facilities generally need to investigate and learn from an accident and the public interest in obtaining accident information quickly. Sources that make additional accident-related changes after submitting accident information can and must report on those changes when the their next scheduled RMP update is submitted.

Relatedly, the Agency is requiring that the addition of new accident history information to an RMP be accompanied with corrections to two other RMP data elements: the date of the source's most recent incident investigation and the expected date of completion of any changes resulting from the investigation (§§ 68.170(j) and 68.175(l)). As noted above, a number of comments pointed out that requiring a full update and re-submission of an RMP was not necessary to ensuring that lessons learned from an accident were applied, given the existing requirement that sources investigate and learn from any incident that "resulted in or could reasonably have resulted in a catastrophic release." EPA agrees with this comment and its premise—that accidents subject to the reporting requirement of the RMP rule trigger the incident investigation requirements of the rule. As described above, those requirements ensure that significant incidents are thoroughly investigated and documented, and any lessons learned identified and applied. EPA therefore expects that a source experiencing a reportable accident will follow-up with an incident investigation that may in turn lead to changes that address the cause or consequences of the accident. Six months following the accident, the source should be able to provide accident history information as well as the date of its incident investigation and the expected date of completion of any changes. A source need not be sure of when changes will be complete or even if particular changes will ultimately be made to provide a reasonable "expected" date for completion of "any" changes.

The Agency also agrees with the comment that an incident investigation may well trigger existing requirements for an update and re-submission of the RMP under § 68.190 of the rule, and that this would then be the appropriate route for a facility update in the aftermath of an accidental release. Other avenues or types of reporting that were suggested (*i.e.*, 8-hour reporting, accident reports, accident fact sheets, separate accident databases, attachments to current RMPs) where all focused on avoiding a full RMP update and re-submission. The Agency believes that by not requiring a full update and instead requiring only submission of new accident information, it has addressed the concern behind those suggestions.

The Agency also agrees with the comments preferring a specified time frame (such as six months) following an accident over a fixed date for sources to submit new accident information. A fixed calendar date could result in sources being required to submit information shortly after an accidental release, before they have had time to investigate or make any changes in response to the accident. That approach would not be advantageous either for the sources or for those interested in the accident data.

The Agency acknowledges the concerns raised about the preamble statement that accident history reporting is required for significant releases from covered processes for all extremely hazardous chemicals, not just chemicals listed under CAA section 112(r). EPA notes that the relevant regulatory language can be interpreted to reach

accidents involving extremely hazardous substances in addition to those listed. Section 68.42 of the RMP rule requires reporting of "accidental releases" meeting certain criteria, and section 112(r)(2)(A) of the CAA and § 68.3 of the rule define an "accidental release" as a release of a substance regulated under CAA section 112(r) "or any other extremely hazardous substance." The Agency recognizes, however, that its "General Guidance" for meeting RMP rule requirements has specified that reportable accidents are those involving regulated substances. Interpreting the rule to require reporting of all releases of extremely hazardous substances from covered process would allow the Agency and others to look at trends with respect to chemicals, and provide information that could be useful in amending the list of regulated substances. An example of how broader reporting could be useful was highlighted by a comment that concerned catastrophic reactive/dust explosion accidents, not currently covered by the RMP rule because the involved substances are not listed. However, in light of the guidance provided previously and in order to avoid confusion, the Agency agrees it is best to retain for now the current interpretation for reporting only accidents involving regulated substances. EPA, however, may revisit this issue in a future rulemaking.

This final rule establishes a new schedule for any source experiencing a reportable accident to include in its RMP information for all the elements of the five-year accident history as set forth in § 68.42 of the RMP rule, as well as the date of an incident investigation and the expected date of completion of any changes triggered by an incident investigation as required by §§ 68.170(j) and 68.175(l) of the RMP rule. Because the Agency is no longer requiring a full update and re-submission of the RMP, these requirements should not significantly change the associated burden. If a source had a reportable accident, it would need to revise those elements of its RMP within six months; the source would not need to update its entire RMP unless the accident led to a change triggering the existing update requirement.

2. Emergency Contact Information

EPA is amending the RMP rule to require that facilities correct their emergency contact information within one month of a change in the information.

The RMP database has become an important source of information for Federal, State and local government efforts in the homeland security area. Many RMP sources are considered part of the nation's critical infrastructure or are otherwise important to protecting homeland security. All levels of government use the database to help assess security needs and to obtain emergency contact information.

Under current requirements, a change may occur in a facility's emergency contact information (for example, the emergency contact's phone number is changed or the emergency contact leaves the position), and the facility may have up to five years to report these changes in its RMP. Implementing agencies that have audited RMPs report that much of the information for emergency contacts is outdated or otherwise inaccurate. In light of the importance of this information, EPA proposed to require that facilities correct their emergency contact information within one month of a change in the information.

Seventeen comments indicated support for this proposal, while 12 comments opposed all or part of it. Supporters argued that keeping emergency contact information current was valuable to ensuring a timely response to an accidental release, and was particularly critical to emergency planning and response. Some comments also suggested similar correction requirements for other administrative information in the RMP. Comments highlighted how emergency responses are less efficient without current emergency contact information, how any delay in access to current facility information can have catastrophic impacts on first responders, and how this requirement would not pose an undue burden on reporting facilities.

While some comments opposing this requirement argued that corrections to contact information were unnecessary, most were focused on the timing of these corrections, arguing for the most part for a longer period of time. These comments stated that it can take longer than 30 days to assign new staff to vacancies, that the proposal would be unduly burdensome and would subject facilities to possible non-compliance with every personnel change, and that the facility contact person can actually change routinely based on employee turnovers, promotions, and relocations, making the administrative burden and potential liability of the current proposal outweigh its benefits. Arguments were made for alternative means of correcting this information, for example through a secure internet-based site. Some comments also urged that EPA require reporting of only the emergency contact position versus the name of the individual filling that position.

The Agency agrees with comments that RMP emergency contact information is important to emergency planning and response efforts at the Federal, State and local levels, particularly for facilitating the work of first responders and safeguarding the community. It is therefore important that the information be kept as up-to-date as possible.

The Agency appreciates that, currently, even small corrections of RMPs require sources to send EPA a diskette containing the entire RMP (with the corrected information) and a certification letter attesting to the accuracy of the corrected information. To ease the burden of making such changes, including changes to emergency contact information, EPA is working to make available a secure means for making administrative corrections over the Internet. Sources that need to make such corrections will be allowed secured access to non-sensitive pieces of RMP information, including much of the information in the registration part of the RMP (section 1).

As this electronic system for making corrections to emergency contact information is made available, the time and resources needed to make a correction should not be significant. Although timely updates to all basic registration information would be beneficial as well, the need for updates is most urgent in the case of emergency contact information. EPA encourages sources to update all of the information in their RMPs as changes are made, but the Agency does not want to add unduly to the reporting burden of the program. Sources' efforts are best focused on maintaining the accuracy of key information in their RMPs, so EPA is not adding other data elements to the requirement to correct emergency contact information.

The Agency disagrees with the comment that some emergency contact information, including the name of the emergency contact person, need not be reported at all. The Agency believes that action at the local level is most important in preparing for, preventing, and responding to accidents, and that the name of the emergency contact person, as opposed to the name of the position or more general corporate information, is a key piece of information for such local efforts. Common sense suggests that it is easier to reach a named individual than an unknown person filling a particular position. Unless whoever answers the phone or e-mail at a source knows who

fills the emergency contact position, it could take several more phone calls to reach the emergency contact person himself. In the event of an accidental release or other emergency, the extra time required to reach the emergency contact person could be costly. EPA is thus retaining the requirement that sources supply the name of the emergency contact person and is requiring the correction of that name within one month of a change. The Agency recognizes that personnel changes may sometimes take longer than a month, but in that event it expects the source to have assigned the responsibility to someone in the interim. Given the electronic means of correcting such information expected to be available, EPA believes it is reasonable to require facilities to keep this information relatively current, even if that means supplying the name of an interim emergency contact person until a permanent person is in place.

Even with a requirement to correct emergency contact information within one month of a change, that still leaves RMP emergency contact information potentially outdated for as much as a month. EPA is concerned that the 24-hour emergency phone number provided in the RMP is a key element of emergency contact information that should be corrected as soon as possible after it changes. The Agency strongly encourages sources to ensure that their 24-hour emergency number continues to reach someone able to address emergencies even after an emergency contact person leaves that position. Ideally, the 24-hour emergency number would remain the same indefinitely, regardless of who fills the emergency contact position or any other position at the facility.

This final rule establishes a new requirement to correct the emergency contact information within one month of a change in the information. The Agency expects that while changes are ongoing at the facility, the basic phone number information provided should continue to be available, routed as appropriate, so that facilities always have a current 24-hours-a-day, 7-days-a-week means for emergency contact.

B. Changes to Executive Summary

EPA is amending the RMP rule to remove the requirement for sources to briefly describe the off-site consequence analysis (i.e., worst-case accidental release scenario(s) and the alternative accidental release scenario(s)) within the executive summary of the RMP.

CAA section 112(r)(7) and the chemical accident prevention regulations require sources subject to the RMP rule to conduct an off-site consequence analysis (OCA) for one or more hypothetical accidental worst case and alternative release scenarios and report the results of the analysis in the RMP. The Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA) of 1999 governs the distribution of "off-site consequence [OCA] information," defined as those portions of an RMP, excluding the executive summary, that contain the results of the OCA for the source submitting the RMP. Under CSISSFRRA, EPA and the Department of Justice jointly issued regulations at 40 CFR part 1400 restricting public access to OCA information and certain related information to government reading rooms.

Section 68.155(c) of the RMP rule as originally drafted required sources to briefly describe in their RMP executive summary "the worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario." EPA, along with federal law enforcement agencies, now believes that due to its sensitive nature, this information should no longer be included in executive summaries, which are not subject to the access restrictions of the CSISSFRRA regulations. Consequently, EPA proposed to remove the requirement to summarize OCA results in the executive summary.

Forty comments supported removing this requirement, several noting national and facility security concerns. Several comments opined that the information is too sensitive to be easily accessible to the public. Four comments opposed the proposal as written, noting that more ready public access to OCA information would help stimulate greater safety efforts on the part of facilities and the communities in which they are located. Eight comments presented recommendations, requested clarification, or had other comments about the proposed changes.

The Agency continues to believe that the requirement for briefly describing OCA in executive summaries should be removed in the face of ongoing concerns about the potential misuse of such information by terrorists, particularly if the information can be easily and anonymously accessed. Removing this requirement will not affect the controlled public access currently available to OCA information under the CSISSFRRA regulations. Sources must continue to provide details of their OCA in sections 2 through 5 of the RMP, and the public will continue to have the access to OCA information afforded by the regulations at 40 CFR part 1400. The Agency also agrees with the comment that removing OCA data from executive summaries would reduce or eliminate any risk that Internet posting of executive summaries might pose.

The Agency agrees that OCA information provides a context for each RMP submission by providing a rough estimate of the risk the facility could pose to the community in the event of an accidental release. But EPA disagrees that this information would be lost over the years if it is removed from executive summaries. Complete OCA results are reported in sections 2 through 5 of facilities' RMPs, and the Agency maintains a database including all RMPs submitted since 1999 (except for RMPs submitted and then withdrawn by facilities that were never subject to the program). As noted above, the public will continue to have access to OCA information in RMPs in the manner provided by the CSISSFRRA regulations.

The Agency disagrees with the comment that executive summaries are not available to the public. CSISSFRRA and its implementing regulations impose restrictions on sections 2 through 5 of the RMP only, and expressly exclude executive summaries from the portions of RMPs that can be restricted. CSISSFRRA was enacted several years after EPA issued the RMP regulations requiring a brief description of OCA in executive summaries, so Congress was presumably aware that executive summaries would contain some OCA data when it excluded executive summaries from the information that CSISSFRRA regulations could restrict. At the same time, EPA disagrees that Congress' decision to exclude executive summaries from coverage by CSISSFRRA precludes EPA from removing the regulatory requirement to include a brief description of OCA in executive summaries. Congress' exclusion of executive summaries from CSISSFRRA restrictions does not amount to a congressional directive for EPA to continue requiring OCA descriptions in executive summaries. CSISSFRRA was enacted prior to the September 11, 2001, terrorist attacks, which heightened concerns about the potential misuse of detailed OCA data found in some executive summaries. The Departments of Justice and Homeland Security have advised against the continued inclusion of OCA data in executive summaries, and EPA agrees that recent events make it imperative to remove the requirement for including this information.

One comment suggested that instead of removing the requirement altogether, EPA provide guidance on how to briefly describe OCA in executive summaries without including sensitive information. EPA agrees that such guidance could help, but believes that removing the requirement altogether will be more effective in removing sensitive information from the summaries. Any guidance EPA could issue would not necessarily come to the attention of, or be followed by, every RMP facility, thus risking the continued inclusion of OCA data in executive summaries. Another comment suggested including a summary of OCA results in the restricted OCA sections of the RMP, but EPA believes little would be accomplished by including a summary there. The OCA sections of the RMP are designed to be easily understood and reviewed, so providing a summary within those sections would serve little purpose. EPA intended executive summaries to provide an overview of the entire RMP, including the OCA sections. Since EPA has judged OCA descriptions in executive summaries to be unwise, there is no point in including a summary of OCA results in any other part of the RMP.

EPA is not forbidding sources from including OCA data in executive summaries, as some comments suggested. The Agency expects, however, that in view of the concerns cited, sources will not include any OCA data in their executive summaries.

The Agency agrees with comments that the OCA information should continue to be made readily available to covered persons, an important group of which are state and local emergency responders. This information will continue to assist in developing effective plans for accident prevention and emergency response. The Agency continues to work closely with the Department of Justice and with the Department of Homeland Security to ensure the best balance between providing public information and protecting national security.

This final rule removes the requirement for sources to briefly describe the OCA conducted for their facilities in the executive summary of the RMP.

C. New Data Elements

1. Emergency Contact's E-mail Address

EPA is amending the RMP rule by adding a mandatory data element to the RMP for sources to provide the e-mail address (if any) for the emergency contact.

Under § 68.160(b)(6) of the RMP rule as originally drafted, sources were required to provide the name, title, telephone number, and a 24-hour telephone number of the person who serves as the source's emergency contact, with no provision, optional or otherwise, for sources to provide an e-mail address for that person. Having an e-mail address for the emergency contact would allow the Agency to quickly and directly communicate hazard information, improving sources' access to critical process safety information. Additionally, it might become necessary for an RMP implementing agency to communicate directly and on short notice with sources subject to the RMP program, or with a portion of that universe, as RMPs have become a critical source of information for the federal government's homeland security efforts. For these reasons EPA proposed that sources provide the e-mail address for the source's emergency contact when available, and that any change to the e-mail address be followed by a correction to the source's RMP within a month of the address change.

Twenty-two comments supported adding a mandatory data element for emergency contact e-mail addresses. A number of comments noted that this requirement would enhance communication between implementing agencies and reporting facilities and facilitate coordination and training with first responders without posing an undue burden on the reporting facilities. Comments suggested that similar access to the e-mail address of the person at the source with overall risk management program responsibility would also be helpful to agencies. Ten comments opposed adding this as a mandatory data element. Arguments included the fact that not all facilities have e-mail; that e-mail may not be the most reliable means of communicating with a facility, particularly in emergency situations; and that this field would be very cumbersome to maintain as an updated distribution list.

The Agency believes that access to emergency contact e-mail information will provide an advantage to the regulated community, implementing agencies, and emergency planners and responders alike. Improved communications, and a variety of avenues to facilitate them, will allow for improved exchange of critical emergency planning and accident prevention and hazard information of benefit to all. E-mail is an excellent tool for distributing information to a large audience quickly. Although keeping e-mail address information up-to-date will require some effort from all parties involved, the benefits of having that information will outweigh the effort. The Agency agrees with comments that e-mail should not be the only vehicle that the Agency relies upon, particularly in cases of emergencies. However, it is certainly one of the most immediate and common means of communications used today, and will serve as an important component for information dissemination, along with mail and telephone communications. Since not every source has e-mail, the Agency is requiring only those sources with existing e-mails to submit this information. It is not the intent of this requirement to allow for unnecessary use of the e-mail address. To guard against the use of the address for distribution of spam or junk mail, the Agency does not plan to issue a list of facilities' e-mails.

The Agency agrees that e-mail to a single emergency contact may not be appropriate for all communications; other forms of communications, such as mail, phone, or through trade groups, will continue to be used by the Agency and other implementing agencies. The current RMP rule also requires the e-mail address for the source or parent company. This address, in conjunction with the emergency contact e-mail address and the optional RMP responsible person e-mail address, will provide additional means to quickly contact RMP facilities. In response to suggestions that EPA obtain the e-mail address for the person responsible for the source's RMP as a better choice for receiving e-mailed information, the Agency will provide a field in RMP*Submit for facilities that have such an e-mail address to provide that information at their option.

This final rule, therefore, requires that RMP facilities provide the e-mail address for the facility emergency contact, and that this information is corrected within one month of a change. The e-mail address for the person responsible for the facility RMP will be an optional field in RMP*Submit. As with the other emergency contact information correction requirements, the Agency intends to implement a system that would allow facilities to correct this and other administrative information via a secure web site, and is working to implement such a system as soon as practicable.

2. Purpose of Subsequent RMP Submissions

EPA is amending the RMP rule to add a mandatory data element for sources to identify the purpose of submissions that

revise or otherwise affect their previously filed RMPs.

As noted above, sources are required to submit, update and resubmit their RMP by the schedule specified in § 68.190 of the RMP rule. Since the initial June 1999 reporting deadline, EPA has received thousands of submissions containing corrections, re-submissions, de-registrations (revised registrations) or withdrawals of previously submitted RMPs. However, the RMP electronic submission program has not had an entry that provides the reason for the submission. To assist EPA and other implementing agencies in understanding the reason for a submission, EPA proposed a new data element in the RMP for sources to indicate what they are submitting and why. The Agency also requested comment on whether to replace the term *revised registrations* with *de-registration*, which more clearly conveys the action being taken and is the term used in the implementation materials for the RMP rule.

Twenty-five comments indicated support for the proposal, and four comments raised objections to it. Comments in support argued this data element would streamline the submission process by expediting the review and evaluation of the RMP by both EPA and state and local implementing agencies. Comments in support argued this requirement would enable all users of RMP data to understand and track information in the system for trends while posing little in the way of additional costs to registered parties. Comments also supported the idea of menu options provided as part of RMP*Submit, to ease data entry and ensure consistency of reporting, and were generally in support of changing the term revised registration to de-registration. Comments questioning the proposed data element argued that the proposal fell short of explaining how it would enable EPA to know if facilities had adopted inherently safer or alternative technologies because it failed to distinguish between facilities that actually reduce hazards and facilities that merely recalculate vulnerabilities using different methodologies.

The Agency has decided to adopt the proposed data element because it will result in expedited review and evaluation of submitted RMP data, as well as better understanding and tracking of industry trends in the area of accident prevention and process safety, at very little cost to RMP sources. Certainly sources submitting a change to their RMP know the reason for the change; the new data element only requires them to specify that reason so implementing agencies need not review all the changes themselves to infer the reason. EPA also plans to develop a pop-up menu listing the typical reasons for RMP changes (*e.g.*, new submission; correction of the emergency contact or facility ownership data elements; update triggered by revised process hazards analysis; de-registration as a result of no longer using regulated substances at all or above threshold quantities) so that sources can easily indicate the reason for their change. To the extent the pop-up menu does not include a source's particular reason for a change, the source need only briefly state the reason for the change. In developing the pop-up menu, EPA plans to incorporate some of the specific suggested elements to better reflect the reasons behind RMP submissions and changes. In addition, EPA is changing the term revised registration to de-registration as comments agreed that this would be a useful clarification.

Although the Agency believes information about the reasons for changes will help identify and track industry trends, it does not intend to pressure industries to adopt particular changes. Facilities are in the best position to assess their hazards and how to address them. The Agency may choose to provide industry with analyses of the data so that it can be taken into account as individual facilities determine their best approach to process safety.

3. Contractor Information

EPA is amending the RMP rule by adding a mandatory data element for sources that use a contractor to prepare their RMPs to so indicate.

Through RMP audits, implementing agencies have learned that many RMPs have been prepared in large part by contractors. Use of contractors for this purpose is allowed under the RMP rule. However, some implementing agencies have noted potential systemic errors in the way some contractors prepare RMPs. Concern has also been raised that, in some cases, sources whose RMPs are largely prepared by contractors have not properly implemented accident prevention program elements at the source and are not sufficiently familiar with the contents of their RMPs. EPA proposed to require an additional data element in the RMP for sources who use a contractor to prepare their RMP to provide the name, address and phone number of that contractor, so that implementing agencies can more easily identify potential issues and provide appropriate follow-up.

Twelve comments indicated support for the proposal, while 16 opposed it. Supportive comments stated that this element would provide additional information that may help identify systematic or recurring errors in risk management programs and plans. A few state and local implementing agencies commented that they were aware of some contractors completing RMPs and supplying information to the facility without fully explaining the accident prevention program requirements or failing to even provide the facility with all of the required plan information. These agencies argued that knowing whether a contractor had assisted in RMP preparation and the name of that contractor would assist auditors in prioritizing inspections.

Other comments urged that enforcement actions related to RMP errors should be directed to the facility and not the contractor since facilities are responsible for the content of their RMPs whether the program is developed "in-house" or through use of a contractor. Concerns were also raised that EPA would assess and advertise the Agency's judgement of specific technical consultants, or that somehow facility information or business relationships would be compromised if the Agency came between a client facility and its contractor.

The Agency agrees that adding the contractor information data element will provide valuable information to implementing agencies in identifying possible systemic errors without imposing significant burden on the reporting facility. The Agency also agrees with the comments that the facility owner or operator is ultimately responsible for the RMP, whether or not it has been prepared by a contractor. However, implementing agencies have seen cases where contractors have been used to develop RMPs where no accident prevention program actually existed at the facility, or was not understood by personnel responsible for its implementation. Implementing agencies have also seen systemic errors in RMP submissions that can be linked to the same contractor. EPA believes it is important to require this piece of information to facilitate the review of RMPs by the implementing agencies, as well as to provide another measure of accountability on the part of the facility. The Agency is therefore adopting its proposal to require sources that use a contractor prepare their RMP to provide the name, address and phone number of that contractor. EPA recognizes that some sources utilize contract services to assist in developing portions of their risk management program, such as the process hazards analysis. The requirement to supply contractor

information does not apply to such services; it applies only to contractors that prepare RMP submissions.

Contractor information will be used by implementing agencies to conduct further outreach and compliance assistance efforts. To the extent EPA identifies systemic errors or other problems potentially associated with a contractor, the Agency plans to contact the affected sources to alert them to the problem. EPA may also contact the contractor to discuss systemic problems and how to correct them; such discussions would focus not on particular RMP facilities but on the contractor's understanding and implementation of RMP requirements generally. The Agency would not enforce RMP requirements against a contractor, since those requirements apply only to owners and operators of covered sources. Also, EPA has no intention of listing or rating contractors in any way. The Agency considered the suggestion of making contractor information an optional element, but it believes that a mandatory requirement will ensure the availability of useful information for program implementation, data quality, outreach and compliance assistance.

*D. Revisions to RMP*Submit Format*

Uncontrolled/Runaway Reactions

*EPA is revising the RMP submission format (RMP*Submit) to expand the list of possible causes of accidental releases reported as part of a source's five-year accident history so an owner or operator can indicate whether an accident involved an uncontrolled/runaway reaction.*

In its report, *Improving Reactive Hazard Management* (December 2002), the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended that EPA

> "[m]odify the accident reporting requirements * * * to define and record reactive incidents. Consider adding the term "reactive incident" to the four existing "release events" in EPA's current 5-year accident reporting requirements (Gas Release, Liquid Spill/Evaporation, Fire, and Explosion). Structure this information collection to allow EPA and its stakeholders to identify and focus resources on industry sectors that experienced the incidents; chemicals and processes involved; and impact on the public, the workforce, and the environment" (CSB recommendation 2001–01–H–R4).

EPA, in agreement with the Board's recommendation, proposed to revise RMP reporting of the five-year accident history (40 CFR 68.42) to allow the owner or operator to indicate whether the accident involved an uncontrolled/runaway reaction.

A total of 16 comments indicated support for expanding the list of possible causes of accidental releases included in a source's five-year accident history so an owner or operator could indicate whether an accident involved an uncontrolled/runaway reaction. Comments suggested that the proposed change would allow sources to more accurately characterize an accident and would allow for a more detailed analysis of accident data. Comments supporting this data collection argued that not enough attention is being given to reactive chemical hazards and that the additional element would be an important, low-cost step towards accident prevention.

Twenty-three comments supported expanding the list of possible causes but recommended that EPA use a term other than uncontrolled/runaway reaction because the term could be subjectively interpreted, leading to inconsistent reporting and irrelevant data. Comments also recommended that the term be added to the drop-down menu already available under RMP*Submit. Two comments opposed the proposed change, arguing that the proposed term is not consistent with the current list.

Overall, the comments confirm EPA's view that adding a new term for uncontrolled reactions will provide sources with an additional choice to more accurately report information about accidents and that this new information will provide a better understanding of the types of accidents occurring at regulated sources. This information will help the Agency identify incidents involving reactive chemicals and offer insights on how best to address that hazard category.

The Agency disagrees with comments that the new term is inconsistent with the current ones (gas release, liquid spill/evaporation, fire, and explosion), but does acknowledge that more than one term may describe a particular incident. In an effort to capture more specific accident cause information, the Agency will modify RMP*Submit to allow sources reporting accident information to select more than one of the categories from the list of accident causes.

The Agency recognizes the concern that the term uncontrolled/runaway reaction may perhaps be open to subjective interpretations. In response to this comment, the Agency will include a help function for this menu, with examples of the types of incidents that the Agency expects to be reported as uncontrolled/runaway chemical reactions. This revision to the RMP*Submit format will provide the opportunity to gather more data on reactive incidents, in that way informing any future actions the Agency may take.

III. Other Issues

Collection of OSHA Occupational Injury and Illness Data in Conjunction With the RMP Filing Required Under 112(r) of the CAA

EPA and others use the information reported in RMP accident histories in combination with other data to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors. Health and safety indicators could also provide information to industry, government, and other researchers in understanding the factors that affect chemical accident prevention. Under 29 CFR part 1904, the Occupational Safety and Health Administration (OSHA) requires employers to maintain logs of employee reportable injury and illness statistics (OII) for every calendar year. EPA considered of special interest three of these records: (1) Total Incidence Rate, (2) Workdays Lost to Injuries, and (3) Illness and Workdays Under Restricted Duties. EPA requested comments on the practicability and burden of future RMP submissions if including data for these three records, aggregated for five most recent calendar years should be required. EPA did not propose this element.

Four comments indicated that they would support such a proposal, while 48 comments indicated that they would oppose it. Those in support of the additional elements argued that this information would enable EPA to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors, and that the ability to link employee illness with risks at the facility can lead to better prevention programs as well as providing data on safety standards. The comments opposing the collection of this data in conjunction with the RMP questioned both EPA's need for, and use of, the data. Comments argued that these OSHA reportable injuries are not necessarily or typically related to RMP chemicals or processes, and that because of this, misrepresentations and errors would result when trying to apply this data to EPA risk factors. The comments explained that injury and illness rates at a facility mostly involve ergonomic conditions, slips, trips and falls, hand lacerations, and automobile work-related accidents, which have no

relation to RMP-listed chemicals. In short, OSHA data covers all accidents and illnesses, not just those related or located near an RMP-covered chemical process. Comments argued that the OSHA data would thus not aid in identifying safety trends or in statistical analyses of use to EPA. The argument was also made that OII data is already reported to the Federal government and available to EPA and further, that the collection of OSHA data does not fall within EPA's jurisdiction or authority under CAA section 112(r). Issues regarding the implementation of the proposed changes were also raised, including concerns that OII data may not be readily available for all facilities, that it would be time-consuming and that it would impose an undue burden on facilities.

The Agency recognizes the multiple issues that are associated with the collection of OSHA injury and illness data in conjunction with the RMP and appreciates the very detailed comments received. As this was not a proposed element, the Agency will reserve judgement on whether and how to gather additional data, and will consider all comments if at a later time, it decides to propose additional RMP data elements for such information.

IV. Effective Date, Update Clarification and Compliance Schedule

Today's rule is being made effective immediately in order to relieve sources of the requirement to include an OCA description in the executive summaries of their RMPs. As explained previously, homeland security and law enforcement concerns have been raised about continuing to include OCA data in RMP executive summaries, which are not subject to the public access restrictions under CSISSFRRA. Some sources may be in the process of updating or otherwise revising their RMPs, and EPA wants every source to be able to remove the OCA data in their executive summaries as soon as possible. The Agency finds good cause to make the rule effective upon promulgation because the rule relieves regulated entities from a requirement that has become problematic—describing OCA results in RMP executive summaries.

The rule's new reporting requirements apply as of June 21, 2004, the five-year anniversary for RMPs initially submitted by June 21, 1999. As an initial matter, EPA wants to make clear that sources that submitted their initial RMPs before the original June 21, 1999 deadline are required to submit the 5-year update of their RMPs by June 21, 2004, not before. (Sources that previously updated their RMPs as a result of a change at the facility will not be required to update their RMPs again until five years from the last update.) The 5-year update requirement in the RMP rule was written with the expectation that sources would submit their initial RMPs on or shortly before June 21, 2004. In reality, hundreds of sources submitted their initial RMPs months early, and may now be proceeding to update their RMPs by the five-year anniversary of their original submission. EPA applauds early compliance with its requirements. However, in this instance, sources that complied early would be put at a disadvantage if their five-year update requirement were based on the date of their initial submission. Such sources could be faced with submitting an updated RMP that still includes OCA data and that lacks some of the newly required data elements. If these sources submitted such an RMP, they would have to submit revised RMPs that removed the OCA data (unless they chose to retain it) and included the new data under the today's rule. Any OCA data that had been submitted as part of the update, moreover, would remain part of EPA's official records. The Agency is therefore clarifying that the rule's 5-year update provision requires that RMPs initially due on June 21, 1999 be updated by June 21, 2004, not before. Early filers that received an EPA letter acknowledging receipt and indicating an update deadline prior to June 21, 2004, should disregard that date, which was calculated without consideration of potential early filings, and instead submit their 5-year update by June 21, 2004.[1]

In light of the clarification above, EPA anticipates that the vast majority of RMPs initially submitted by June 21, 1999 will be updated and submitted to the Agency on or close to June 21, 2004. EPA has therefore selected June 21, 2004, as the start date for complying with the new reporting requirements established by today's rule. Accordingly, as of June 21, 2004, all current RMPs on file with EPA must include the new emergency contact, contractor, and RMP submission information required by today's rule. EPA therefore recommends that RMP updates now being prepared include this information by the time they are submitted on or before June 21, 2004. RMP updates submitted prior to June 21, 2004, without this information will have to be corrected to include this information by June 21, 2004. RMPs not being updated by June 21, 2004, will also have to be corrected to include this information by the June 21, 2004, deadline. As discussed above, EPA plans to have in place an Internet-based system for adding this information that should reduce the burden of having to supply the information separate from any RMP update.

The June 21, 2004, start date also applies to the new requirement to include in RMP accident histories information about reportable accidents within six months of the accident. Any accidental release meeting accident history reporting criteria and occurring after promulgation of this rule will need to be added to the source's RMP accident history within six months of the accident or by the time the source is required to update its RMP (which requires an update of the source's accident history), whichever is earlier.

[1] Any source that has submitted an update prior to issuance of today's rule may request to have its update returned and may use the June 21, 2004, date as the deadline for its update. An update that is returned upon such a request would not be retained as part of EPA's official records.

V. Technical Corrections

The original RMP rule published in January of 1994 contains a provision, § 68.2, effectively staying the rule for several years for certain types of sources. EPA later amended the rule to exclude these types of sources from the rule's coverage altogether. *See* 61 FR 31731 (June 20, 1996), and 64 FR 29170 (May 28, 1999). The time period of the stay lapsed in 1997 and 1999 (depending on the type of source affected). Moreover, the need for a stay was eliminated with the rule changes. EPA is therefore rescinding § 68.2, since its presence in the regulations continues to cause confusion about their applicability.

Several provisions of the original RMP rule refer to June 21, 1999 for purposes of identifying the correct method and format for submitting RMPs to EPA (*see* §§ 68.150(a) and 68.190(a)). That date was appropriate for initial RMPs that were due on June 21, 1999, but with today's rule it no longer makes sense. EPA is thus changing those provisions to reflect that sources should use the method and format for submitting RMPs that EPA has specified by the date of submission.

VI. Summary of the Final Rule

EPA is amending several sections of part 68 of title 40 of the Code of Federal Regulations.

Section 68.2 is deleted as the period for these stayed provisions has expired and final actions on these were taken at 61 FR 31731 on June 20, 1996, and at 64 FR 29170 on May 28, 1999.

Section 68.150, Submission, is amended to reflect the new reporting schedule requirements.

Section 68.155, Executive Summary, is amended to remove the requirement for sources to briefly describe the off-site consequence analysis (*i.e.*, worst-case accidental release scenario(s) and the alternative accidental release scenario(s)) within the executive summary of the RMP.

Section 68.160, Registration, is amended to require reporting of (1) the e-mail address for the emergency contact, if such an address exists, (2) the name, address and phone number of any contractor who helped in preparing the source's RMP; and (3) the type of and reason for any RMP submission changing or otherwise affecting the previously submitted RMP. The section is also amended to allow for optional reporting of the e-mail address of the person responsible for the RMP elements and implementation.

Section 68.190 is amended to clarify that sources that submitted their RMPs prior to June 21, 1999 (the initial deadline for submitting RMPs) are not required to submit a five-year update of their RMPs before June 21, 2004; to reflect the periodic nature of the five-year update requirement; and to change the *revised registration* reference to *de-registration*.

Section 68.195, Corrections, is added. This new section requires sources to submit revised RMP accident history and incident investigation elements within six months of an accidental release that meets the five-year accident history reporting criteria. Sources are also required to submit a correction to the RMP emergency contact information within one month of any changes.

VII. Judicial Review

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considered this a "significant regulatory action" within the meaning of the Executive Order. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document has been assigned EPA ICR number 1656.11.

EPA is modifying the re-submission schedule under the risk management program for sources who have significant accidents and for those who change the information for the emergency contacts. EPA is adding three mandatory data elements and an optional data element to the RMP. EPA is removing the regulatory requirement to discuss the off-site consequence analysis (OCA) data in the executive summary of the RMP.

Two commenters opposed Agency's estimates in the ICR (1656.10) developed for the proposed rule (68 FR 45124). Commenters argued that EPA underestimated the burden associated with one of the elements proposed, the re-submission of the RMP within six months of the date of the accident. Based on the data included in the 1999 RMP submissions from 15,000 facilities, only 55 facilities have reported multiple accidents in the five-year accident history section of their RMPs. EPA assumed that only these facilities will be affected by the re-submission schedule due to frequent accidents. Most of these 55 are facilities with Program 3 processes, which are already covered by the OSHA Process Safety Management (OSHA PSM) Program. OSHA already requires facilities under the PSM program to conduct accident investigation. There is no additional burden under the risk management program for conducting accident investigations for these facilities, except for reporting the accident history elements specified in the risk management plan. The recent ICR renewal approved by OMB (ICR No. 1656.09) already accounted burden estimates for resubmitting RMP in June 2004. The estimates in the ICR developed for this final rule is only for the changes made to the regulations.

EPA has made reasonable estimates for the changes made in this final rule. To become familiar with this rule, it is estimated that it will take only 2.0 hours for each facility. To report new data elements, EPA estimates that it will take 0.25 hours for each facility. To report accident history elements within six months of the accident, the burden is estimated to range from 3.0 hours for wholesale to 9.0 hours for large chemical manufacturers. For those facilities that may have changes in their emergency contact information, the reporting burden is estimated to be 0.10 hours for each facility. For 14,930 facilities that are currently subject to part 68, this rule change will increase a burden of 33,943 hours annually (101,829 hours for three years) at a cost of $992,400 annually ($2,997,200 for three years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Since today's rule only revises several reporting requirements of the RMP rule, its economic impact on regulated entities is addressed by the Paperwork Reduction Act section of this document. After considering the relatively minor economic impacts of the final rule on small entities, we have concluded that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule would not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The nationwide capital cost for these rule amendments is estimated to be zero and the annual nationwide costs for these amendments are estimated to be less than $1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act. EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The new data elements and submission requirements would impose only minimal burden on these entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation.

This final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule focuses on requirements for regulated facilities without affecting the relationships between governments in its implementation. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials and implementing agencies in developing this rule. EPA held a RMP Implementing Agency meeting in Atlanta, October 21 and 22, 2002. State and local implementing agencies in attendance included representatives from Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, and South Carolina. Participants were invited to provide feedback regarding the program and related software, as well as suggestions for improvements.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. The final rule focuses on requirements for all regulated sources without affecting the relationships between tribal governments in its implementation, and applies to all regulated sources, without distinction of the surrounding

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

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not involve regulatory decisions that are based on public health or safety risks, nor would it establish environmental standards intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. 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 final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

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). This rule will be effective April 9, 2004.

Lists of Subjects in 40 CFR Part 68

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

Authority: Sec. 112(r) of the Clean Air Act.

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 68 of the Code of Federal Regulations is amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

■ 1. The authority citation for part 68 is revised to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

Subpart A—[Amended]

■ 2. Section 68.2 is removed.

Subpart B—[Amended]

■ 3. Section 68.42 is amended to revise paragraph (b)(11) to read as follows:

§ 68.42 Five-year accident history.

* * * * *

(b) * * *

(11) Operational or process changes that resulted from investigation of the release and that have been made by the time this information is submitted in accordance with § 68.168.

* * * * *

Subpart G—[Amended]

■ 4. Section 68.150 is amended to redesignate paragraphs (c) through (e) as paragraphs (d) through (f), to add a new paragraph (c), and to revise paragraph (a) and newly designated paragraph (d) to read as follows:

§ 68.150 Submission.

(a) The owner or operator shall submit a single RMP that includes the information required by §§ 68.155 through 68.185 for all covered processes. The RMP shall be submitted in the method and format to the central point specified by EPA as of the date of submission.

* * * * *

(c) The owner or operator of any stationary source for which an RMP was submitted before June 21, 2004, shall revise the RMP to include the information required by § 68.160(b)(6) and (14) by June 21, 2004 in the manner specified by EPA prior to that date. Any such submission shall also include the information required by § 68.160(b)(20) (indicating that the submission is a correction to include the information required by § 68.160(b)(6) and (14) or an update under § 68.190).

(d) RMPs submitted under this section shall be updated and corrected in accordance with §§ 68.190 and 68.195.

* * * * *

§ 68.155 [Amended]

■ 5. Section 68.155 is amended to remove paragraph (c) and redesignate paragraphs (d) through (g) as paragraphs (c) through (f).

■ 6. Section 68.160 is amended to revise paragraphs (b)(5) and (b)(6), redesignate paragraphs (b)(14) through (b)(18) as paragraphs (b)(15) through (b)(19), and to add new paragraphs (b)(14) and (b)(20) to read as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation, and (optional) the e-mail address for that person or position;

(6) The name, title, telephone number, 24-hour telephone number, and, as of June 21, 2004, the e-mail address (if an e-mail address exists) of the emergency contact;

* * * * *

(14) As of June 21, 2004, the name, the mailing address, and the telephone

number of the contractor who prepared the RMP (if any);

* * * * *

(20) As of June 21, 2004, the type of and reason for any changes being made to a previously submitted RMP; the types of changes to RMP are categorized as follows:

(i) Updates and re-submissions required under § 68.190(b);

(ii) Corrections under § 68.195 or for purposes of correcting minor clerical errors, updating administrative information, providing missing data elements or reflecting facility ownership changes, and which do not require an update and re-submission as specified in § 68.190(b);

(iii) De-registrations required under § 68.190(c); and

(iv) Withdrawals of an RMP for any facility that was erroneously considered subject to this part 68.

■ 7. Section 68.190 is amended to revise paragraphs (a), (b)(1) and (c) to read as follows:

§ 68.190 Updates.

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in the method and format to the central point specified by EPA as of the date of submission.

(b) * * *

(1) At least once every five years from the date of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later. For purposes of determining the date of initial submissions, RMPs submitted before June 21, 1999 are considered to have been submitted on that date.

* * * * *

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a de-registration to EPA within six months indicating that the stationary source is no longer covered.

■ 8. Section 68.195 is added to subpart G to read as follows:

§ 68.195 Required corrections.

The owner or operator of a stationary source for which a RMP was submitted shall correct the RMP as follows:

(a) New accident history information—For any accidental release meeting the five-year accident history reporting criteria of § 68.42 and occurring after April 9, 2004, the owner or operator shall submit the data required under §§ 68.168, 68.170(j), and 68.175(l) with respect to that accident within six months of the release or by the time the RMP is updated under § 68.190, whichever is earlier.

(b) Emergency contact information—Beginning June 21, 2004, within one month of any change in the emergency contact information required under § 68.160(b)(6), the owner or operator shall submit a correction of that information.

[FR Doc. 04–7777 Filed 4–8–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[DA 04–687]

Non-Substantive Revision to the Table of Frequency Allocation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's Table of Frequency Allocations. Specifically, it reinstates a revised version of footnote US269. The reinstated footnote serves a valuable informational purpose in that it will alert the public as to the locations of radio astronomy observatories and will provide contact information so that reasonable steps may be taken to protect these observatories from harmful interference.

DATES: Effective April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, DA 04–687, adopted March 15, 2004, and released March 16, 2004. The full text of this document is available on the Commission's Internet site at *www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th St., SW., Room CY-B402, Washington, DC 20554; telephone (202) 863–2893; fax (202) 863–2898; e-mail *qualexin@aol.com*.

Summary of the Order

1. On November 4, 2003, the Commission released a Report and Order in ET Docket No. 02–305, FCC 03–269, 68 FR 74322, December 23, 2003, that removed in its entirety footnote US269 from the Table of Frequency Allocations in the Commission's rules (47 CFR 2.106, footnote US269). The National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce requested, in a letter dated March 12, 2004, that we reinstate a revised version of footnote US269 in the Commission's rules. We agree with NTIA that reinstatement of the footnote, as amended, serves a valuable informational purpose; that is, the footnote would alert the public as to the locations of radio astronomy observatories that observe in the band 2655–2690 MHz on a secondary basis and would provide contact information so that reasonable steps may be taken to protect these observatories from harmful interference.

2. Consequently, footnote US269 is added to the United States Table of Frequency Allocations for the band 2655–2690 MHz, as described in the rules. This change is informational, and not substantive, in nature.

3. Pursuant to sections 0.31 and 0.241 of the Commission's rules on delegated authority, 47 CFR 0.31 and 0.241, footnote US269 is added to the Table of Frequency Allocations, 47 CFR 2.106, as stated in the Order, effective April 9, 2004.

List of Subjects in 47 CFR Part 2

Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 53.

■ b. In the list of United States (US) Footnotes, add footnote US269.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

2655-3700 MHz (UHF/SHF) — Page 53

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
2655-2670 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.412 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2670 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING- SATELLITE 5.413 5.416 Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.420	2655-2690 Earth exploration-satellite (passive) Radio astronomy US269 Space research (passive)	2655-2690 FIXED US205 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Radio astronomy Space research (passive)	Domestic Public Fixed (21) Instructional TV Fixed (74)
2670-2690 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420	2670-2690 FIXED 5.409 5.411 FIXED-SATELLITE (Earth-to-space) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (Earth-to-space) Earth exploration-satellite (passive) Radio astronomy Space research (passive) 5.149 5.419 5.420 5.420A	US205	US269	
2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) 5.340 5.421 5.422			2690-2700 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
2700-2900 AERONAUTICAL RADIONAVIGATION 5.337 Radiolocation 5.423 5.424			2700-2900 AERONAUTICAL RADIO- NAVIGATION 5.337 METEOROLOGICAL AIDS Radiolocation G2 5.423 US18 G15	2700-2900 5.423 US18	

UNITED STATES (US) FOOTNOTES

* * * * *

US269 In the band 2655–2690 MHz, radio astronomy observations are performed at the locations listed in US311. Licensees are urged to coordinate their systems through the Electromagnetic Spectrum Management Unit, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Blvd., Arlington, VA 2230.

* * * * *

[FR Doc. 04–8050 Filed 4–8–04; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 69
Friday, April 9, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO–368–A29; DA–01–06]

Milk in the Pacific Northwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on Tuesday, November 19, 2002, concerning pooling provisions of the Pacific Northwest Federal milk order. This document also sets forth the final decision of the Department and is subject to approval by producers. Specifically, this final decision would adopt amendments that would continue to amend the *Pool plant* provision; which established a "cooperative pool manufacturing plant" provision and established system pooling for cooperative manufacturing plants. Additionally, this final decision would adopt a previously amended *Producer milk* provision which established a standard for the number of days during the month that the milk of a producer would need to be delivered to a pool plant in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants. A year-round diversion limit of 80 percent of total receipts for pool plants previously established and authority granted to the market administrator to adjust the touch-base standard is adopted on a permanent basis.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

At the time of the hearing, May 2002, there were 972 producers pooled on, and 86 handlers regulated by, the Pacific Northwest order. Based on these criteria, 596 producers or 61 percent of producers and 49 handlers or 57 percent of handlers would be considered small businesses. The adoption of the proposed pooling standards service to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Pacific Northwest milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and that determine those that are eligible to share in the revenue which arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, record keeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued November 14, 2001; published November 19, 2001 (66 FR 57889).

Tentative Final Decision: Issued August 30, 2002; published September 6, 2002 (67 FR 56942).

Interim Final Rule: Issued November 8, 2002; published November 19, 2002 (67 FR 69668).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreement and the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR 900) at Seattle, Washington, on December 4, 2001, pursuant to a notice of hearing issued November 14, 2001, and published November 19, 2001 (66 FR 57889). Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 30, 2002, issued a tentative final decision containing notice of the opportunity to file written exception thereto.

The material issues, finding, conclusions, and rulings of the tentative final decision are hereby approved and adopted and are set forth herein. The material issues on the record of hearing relate to:

1. Standards for Producer Milk.

2. Standards for Pool Plants.

3. Determining if emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Standards for Producer Milk—The Touch Base Standard

A proposal seeking to change certain standards and features of the *Producer milk* provision of the order was adopted in the tentative final decision and is adopted in this final decision. The changes include: (1) Establish a year-round standard for the number of days in each month that a dairy farmer's milk production needs to be delivered to a pool plant in order for the rest of the milk of that dairy farmer to be eligible for diversion to nonpool plants. This standard is often referred to as a "touch-base" provision. A 3-day touch-base standard is adopted in this decision. (2) Set a limit on the amount of milk that can be diverted from pool plants to nonpool plants in each month of the year. A diversion limit of 99 percent had been applicable in each of the months of March through August, while a diversion limit of 80 percent had been applicable for each of the months of September through February. The adopted year-round diversion limit is 80 percent of all milk receipts, including diversions, and continues the current diversion limits that were adjusted by the Market Administrator. (3) Provide authority to the Market Administrator to adjust the touch-base standard.

Proposal 2, offered by Northwest Milk Marketing Federation (NMMF), Northwest Dairy Association (NDA), and Tillamook County Creamery Association (TCCA), seeks to modify the order's pooling standards by establishing a 6-day touch-base standard during the month in order for the rest of the milk of a dairy farmer to be eligible to be diverted to nonpool plants and by establishing an 80 percent year-round limit on the amount of milk received by a pool plant that can be diverted to nonpool plants. NMMF, NDA, and TCCA are organizations owned by dairy-farmer members that supply a significant portion of the milk needs of the Pacific Northwest marketing area and whose milk is pooled on the Pacific Northwest order.

NDA, a proponent of Proposal 2, testified that pooling standards must be changed in order to prevent what they described as "artificial" pooling or "pool loading" that has been occurring in the Pacific Northwest order since the implementation of Federal order reform. The NDA witness noted that when milk is pooled on the order but never physically received, service to the Class I market is not demonstrated. To allow the pooling of milk which does not provide service to the Class I needs of the market only lowers returns to dairy farmers whose milk is actually supplying the local Class I market. The witness asserted that this occurs because the order's pooling standards are inadequate.

According to the NDA witness, pooling provisions that were once applicable in Federal orders more accurately identified the milk of producers serving the Class I market. These provisions included a touch-base standard that specified the minimum number of days during the month that a dairy farmer's milk needed to be received at a pool plant in order to be eligible to divert to nonpool plants the rest of the milk of that dairy farmer. In addition, the witness noted that the "dairy farmers for other markets" provision, that was applicable prior to order reform, provided that a dairy farmer would not be considered a producer on the order unless all of the farmer's milk was pooled on the order during the month. Also, the witness noted, milk was valued and priced by its relative location to the market prior to order reform. Milk farther from plants in the marketing area would have a lower value than milk located nearer to plants located in the marketing area, stressed the witness.

The NDA witness testified that provisions prior to Federal order reform deterred milk that did not serve the Order's Class I market from being pooled on the Pacific Northwest order. The witness explained that milk located outside of the marketing area and pooled on the order received the Pacific Northwest blend price minus the applicable location adjustment specified in the order. This measure, the witness said, made it unprofitable for milk located far from the marketing area to be pooled on the Pacific Northwest order. However, the witness emphasized that Federal order reform adopted a Class I price surface that does not provide for location adjustments in determining a relative value for milk to the market. According to the witness, the newly adopted Class I price surface establishes fixed values for milk regardless of its use for fluid or manufactured products. The witness characterized that this change effectively created a "backward incentive" to move milk from one order's bottling plant to a manufacturing plant located farther away in another marketing order.

The NDA witness referred to a Cornell University economic model that was used in formulating the current Class I

price surface. The model, according to the witness, produced a price surface map that valued milk in the east higher than milk in the west, inferring that milk should move from west to east. The witness asserted that when establishing the new Class I price surface, the Department did not take into account the variable price surface used by the model for manufactured products. The witness noted that while the Class I differential at Salt Lake City, Utah, is the same as in Seattle, Washington ($1.90 per hundredweight), the Pacific Northwest order blend price is often higher than the Western order blend price. According to the witness, the combined effect of fixed Class I differential values and blend price differences causes milk from Utah to move west to the Pacific Northwest, instead of moving east as predicted in the Cornell model.

The witness concluded that this movement of milk has resulted in disorderly market conditions in the Pacific Northwest and Western orders because the price surface provides an inappropriate incentive to move milk to manufacturing plants in the Pacific Northwest order where a higher Class I value prevails, rather than to bottling plants in the Western order where a lower Class I value prevails. The witness testified that the pooling provisions of the Pacific Northwest order need revision to correct disorderly market conditions.

NMMF's witness, testifying in support of Proposal 2, stated that the proposal is designed to correct unintended consequences generated by Federal order reform regarding the manner in which the producer location value of milk is determined. The witness testified that prior to order reform, location adjustments also acted as an effective means of identifying the producers who consistently served the Class I needs of the market. The witness testified that Federal order reform also established a new Class I price structure that reflected supply and demand conditions for fluid milk in every county of the United States. The witness asserted that this new structure uses the same Class I pricing locations to adjust pool draws on all milk regardless of how that milk is utilized.

According to the NMMF witness, under the new pricing system, milk that is diverted from plants in the marketing area and delivered hundreds of miles away can be valued at the same price as milk at the plant from which the milk was diverted. Value is then adjusted, the witness said, by differences in the level of the Class I differentials where the milk is actually delivered. According to the witness, this demonstrates a lack of economic consistency.

The NMMF witness also testified that millions of dollars have been transferred from dairy farmers who actually supply the fluid needs of the Pacific Northwest order to dairy farmers located in Southern Idaho and Utah who do not supply the local Class I market. Also, data was presented by the witness to demonstrate that when the milk of producers distant to the market is pooled on the Pacific Northwest order but never physically received at a Pacific Northwest pool plant, the milk of those distant producers receives a share of the Class I proceeds without the producers ever actually supplying milk to meet the Class I needs of the market.

According to the NMMF witness, the 80 percent diversion limit recommended in Proposal 2 would permanently continue the Market Administrator's February 2001 temporary revision to the marketing order. According to the witness, the 80 percent diversion limit has been operating well and should become the order's adopted standard for producer milk.

The NMMF witness also spoke on the merits of instituting a 6-day touch-base standard. The witness was of the opinion that producer milk standards should be linked to the order's supply plant performance standard of 20 percent. According to the witness, 6 days of a dairy farmer's milk production per month is equal to 20 percent of monthly production and is consistent with the 20 percent performance standard applicable for pool supply plants.

Exceptions to the tentative final decision from NMMF expressed overall satisfaction with the decision in its ability to correctly identify those producers who demonstrate service to the Pacific Northwest Class I market. However, NMMF continued to express its support for the adoption of a 6-day touch-base standard, instead of the 3-day touch-base standards that were adopted in the tentative final decision. NMMF maintained that a 6-day touch-base standard would require all producers to deliver the same percentage of milk to Pacific Northwest pool plants.

Dairy Farmers of America (DFA), a supporter of Proposal 2, testified about changes in the marketplace resulting from the new Class I price surface implemented under Federal order reform. It was DFA's opinion that the pooling of milk not serving the Class I market is inconsistent with Federal order policy. Returns to producers who regularly supply the Class I market are unnecessarily reduced when milk that does not service the Class I market is pooled, said the witness.

The DFA witness also testified that milk not actually supplying the Class I needs of the market but sharing in the revenue generated from fluid milk sales is an indicator of faulty pooling provisions. The witness asserted that if the current pooling standards are not amended, local dairy farmers who are actually supplying the local Class I market will continue to receive lower returns.

The DFA witness testified that the Pacific Northwest order's current diversion limit standard of 99 percent for certain months is inadequate because of the potential volume of milk that could be pooled on the order. According to the witness, it is this shortcoming of the current pooling provisions that has allowed milk which performs no reasonable service in meeting fluid milk demands to be pooled on the Pacific Northwest order. In this regard, DFA thought it was appropriate to set a limit on the amount of producer milk that pool plants can divert to nonpool plants consistent with the Market Administrator's temporary revision. The DFA witness indicated that a year-round diversion limit of 80 percent would be reasonable in light of the marketing area's Class I use of milk. The witness also supported the 6-day touch-base provision of Proposal 2 because it would better identify the milk of those producers that actually serve the Class I needs of the market.

Two Washington State dairy farmers also testified in support of Proposal 2. One dairy farmer asserted that Proposal 2 would correct what the witness described as a loophole in the Pacific Northwest pooling provisions that allows milk which does not serve the fluid market to be pooled on the Pacific Northwest order. The witness maintained that current provisions are contributing to the loss of millions of dollars to Washington State dairy farmers. The witness also stated that adopting Proposal 2 would provide for restoring the orderly marketing of milk in the Pacific Northwest and promote trust in the Federal milk order program. A second dairy farmer testified that disorderly marketing conditions are demonstrated when the blend price is reduced through what the witness described as manipulation of the order's pooling standards.

2. Standards for Pool Plants—Cooperative Pool Manufacturing Plant

Several amendments to the *Pool plant* provision of the Pacific Northwest order were adopted in the tentative final

decision and are adopted in this final decision. Certain inadequacies and unneeded features of the *Pool plant* provision contributed to disorderly marketing conditions and unwarranted erosion of the blend price received by those producers who actually supply milk to satisfy the fluid demands of the Pacific Northwest marketing area. Specifically, the following changes to the *Pool plant* provision were adopted in the tentative final decision and are adopted in this final decision: (1) Eliminate a supply plant feature applicable to cooperative supply plants; (2) establish a "cooperative manufacturing plant" provision; and (3) provide for two or more cooperative manufacturing plants to operate as a "system" for the purpose of meeting applicable performance standards.

A cooperative manufacturing plant is a type of pool supply plant and will be defined as a manufacturing plant, operated by a cooperative association or a wholly owned subsidiary, that delivers at least 20 percent of producer-member milk shipments either directly from farms or supply plants owned by the same cooperative association and is located within the marketing area. A cooperative manufacturing plant will have the same performance standards applicable to a supply plant specifying that 20 percent of total milk receipts must be supplied to a pool distributing plant in order to pool all other physical receipts and diversions of milk.

The Pacific Northwest marketing order *Pool plant* provision contained a feature applicable for supply plants operated by a cooperative association to include deliveries to distributing plants directly from the farms of their producer members as qualifying shipments for pooling.

Proposal 1, offered by NMMF, NDA, and TCCA seeks to establish a "cooperative manufacturing plant" provision as a type of pool supply plant, and also to provide that two or more cooperative manufacturing plants may operate as a "system" of supply plants for the purpose of meeting pooling performance standards. According to the witnesses, the proposal eliminates the need for the current provision for cooperative associations that operate supply plants.

A witness for NMMF testified that the adoption of a provision providing for a cooperative manufacturing plant as a type of supply plant is predicated on the adoption of a touch-base standard contained in Proposal 2. According to the witness, if a touch-base standard is adopted, certain accommodations for cooperative manufacturing plants should be provided to prevent the inefficient movement of milk. A provision for a "system" of cooperative manufacturing plants should be made, noted the witness, so that the system of plants could qualify to have their combined milk receipts pooled when a single plant of the system meets all of the performance standards for the system of plants. The witness noted that providing this flexibility in the movement of milk will enable cooperative manufacturing plants to minimize transportation costs while still meeting the established touch-base standard. The witness noted that a similar provision for cooperative manufacturing plants is currently a feature of the Arizona-Las Vegas and Western milk marketing orders and would be beneficial for the Pacific Northwest order.

The NMMF witness predicted that the adoption of a cooperative manufacturing plant provision would encourage all supply plants in the Pacific Northwest to change their pooling status to this new type of pool supply plant because all supply plants in the Pacific Northwest are owned by cooperative associations. According to the witness, the proposed changes contained in Proposals 1 and 2 would serve to deter supply plants located far from the Pacific Northwest marketing area from inappropriately pooling milk on the Pacific Northwest order because these changes eliminate the ability to pool milk that is not physically received at the plants which actually provide milk to satisfy the marketing area's Class I demands.

A witness appearing on behalf of NDA, also a proponent of Proposal 1, agreed with the NMMF witness' conclusion that pooling provisions should ensure that only milk which actually performs in supplying the market's Class I needs would prevent the "artificial" pooling of milk. The witness stressed that NDA does not object to milk located outside of the order that regularly serves the fluid needs of the market receiving the order's blend price.

The adoption of the proposed cooperative manufacturing plant provision, according to the NDA witness, would provide producers who regularly serve the fluid needs of the market more flexibility in meeting the touch-base standard contained in Proposal 2. The witness was in agreement with NMMF that the proposal would prevent the inappropriate pooling of milk that is located at plants far from the marketing area that does not actually supply the fluid needs of the market. The NDA witness asserted that these changes to the order would ensure that only milk actually available to meet the market's fluid needs would be pooled.

A witness representing the TCCA also testified in support of Proposal 1. The witness presented an analysis on the loss of income to dairy farmers in Tillamook County, Oregon, due to the pooling of milk on the order that does not actually serve the Class I needs of the market. The impact of inappropriate pooling standards to Pacific Northwest dairy farmers, according to the witness' calculations, showed an average monthly decrease in revenue of $755 per farm. The witness testified that the adoption of Proposal 1 would correct the disorderly marketing conditions in the Pacific Northwest order by only allowing milk that actually serves the fluid needs of the market to receive the order's blend price.

The witness representing DFA testified in support of Proposal 1. According to the witness, two primary benefits of the Federal order program are allowing producers to benefit from the orderly marketing of milk and the marketwide distribution of revenue that results mostly from Class I milk sales. Orderly marketing influences milk to move to the highest value use when needed and to clear the market when not used in Class I, noted the witness. The witness testified that marketwide pooling allows qualified producers to equitably share in the returns from the market in a manner that provides incentives for supplying the market in the most efficient manner. The witness insisted that the pooling of milk which does not service the Class I market is inconsistent with Federal order policy.

The DFA witness asserted that Proposal 1 properly addresses the problem associated with what the witness described as the near "open pooling" of milk on the Pacific Northwest order. Specifically, the witness testified that the proposal would establish appropriate pooling performance standards for producer milk and handlers that are consistent with the objectives of the Federal milk order program.

Two members of the Washington State Dairy Federation also testified in support of Proposal 1. One witness indicated that when milk not serving the fluid needs of the Pacific Northwest market is pooled, returns that should be received by producers serving the Class I needs of the market are "siphoned" away. Another witness testified that dairy producers in Washington have lost millions of dollars in revenue as a result of the "loopholes" in the order's pooling provisions. The adoption of Proposal 1 would, according to the witness, make

needed changes to the pooling standards and re-establish orderly marketing conditions for the Pacific Northwest marketing area.

All milk marketing orders, including the Pacific Northwest, provide standards for identifying producers and the milk of producers that supply the market's Class I needs. The pooling standards of an order serve to assure that an adequate supply of fluid milk is delivered to the market. Pooling standards also act to identify the milk of those producers that actually meets this need. Some milk orders have touch-base standards to determine which dairy farmers and the milk of those dairy farmers who perform in the market by delivering a certain amount of production to pool plants. When such standards are met, the milk not needed to meet fluid demands becomes eligible to be diverted to a nonpool plant but still be pooled and priced by the order.

It is largely the revenue from Class I sales that provides additional returns to milk being pooled which is reflected in the order's blend price. Accordingly, the Federal order system consistently has stressed actual performance in meeting pooling standards designed to ensure an adequate supply of Class I milk for the market as a condition for receiving the order's blend price.

The pooling standards of an order are designed to identify those producers and the milk of those producers that demonstrate service to the Class I market. A touch-base standard serves to identify the producers and the milk of those producers who actually supply milk to the market in a specified minimum amount. Markets that exhibit a higher percentage of milk in fluid use typically have touch-base standards specifying more frequent physical milk deliveries to pool plants than in markets where Class I use is lower, When a touch-base standard is too low, the potential for disorderly marketing conditions arise on two fronts. First, pool plants are less assured of milk supplies. Second, and most germane to the Pacific Northwest marketing area, the lack of a touch-base standard provides a way for the milk of producers not serving the fluid needs of the market to be pooled on the order while not actually supplying milk to the market's pool plants. This reduces the blend price paid to producers who are actually incurring the costs of supplying the Class I needs of the market.

A significant portion of the testimony received at the hearing placed blame on the current Class I price structure as the root cause of the inappropriate pooling of milk on the Pacific Northwest order. The current price structure was faulted specifically as not providing location adjustments for milk as had been the case prior to the implementation of milk order reform.

Testimony indicated that the lack of location adjustments effectively undermines the pooling standards of the order. The decision to pool milk was once based on the economics of transporting milk—comparing the costs of transporting milk to the benefit of receiving the order's blend price. Testimony indicates this factor is as important as the pooling standards of the order. Hearing participants were of the opinion that placing a relative value on milk based on its distance from the market provided appropriate pooling discipline and fostered orderly marketing conditions. Some participants indicated disappointment by asserting that the Department did not offer a recommended decision in order reform from which to provide comments on the Class I pricing structure.

The reform of milk orders, contained in the recommended decision (63 FR 4802) and final decision (64 FR 16026), made purposeful changes to the Class I pricing structure. In this regard, a fixed adjustment for Class I milk prices was provided for every county location in the 48 contiguous states to create a national Class I pricing surface for the system of milk marketing orders. Changing this characteristic of the pricing structure ensured handlers that regardless of the marketing order by which regulated, the applicable prices would be the same.

Such change made a more clear distinction between the value milk has at a location from the pooling standards of any individual marketing order. Location adjustments were never a part of the pooling standards of the Pacific Northwest order or any other milk marketing order. Instead, location adjustments were an integral part of the pricing provisions of the order. However, it should be noted that location adjustments tended to strengthen the effectiveness of the order's pooling standards. Location adjustments determined the relative value of milk to the market. The pooling standards established the criteria for pooling milk on the order. With the Class I price surface adopted by order reform, more direct reliance is placed on pooling standards to identify the milk that should be pooled on the order.

Pooling provisions of all orders, including the Pacific Northwest, are intended to define appropriate standards for the prevailing marketing conditions in assuring that the marketing area would be supplied with a sufficient supply of milk for fluid use and to identify those producers—and the milk of those producers—that actually service the Class I needs of the market. Taken as a whole, the pooling provisions of milk orders, including the Pacific Northwest order, are contained in the *Pool plant, Producer, and Producer milk* provisions. The intent of these pooling provisions prior to reform and after reform has not changed.

The issue before the Department is to consider amendments to standards of the order that currently allow milk to be pooled on the Pacific Northeast order without such milk being regularly and consistently supplied to pool plants within the marketing area in order to supply the market's Class I needs. On the basis of the record, the pooling standards of the order need to be reconsidered.

It is the pooling standards of the order that identifies those producers who are relied upon to supply the Class I needs of the marketing area. As specified in the tentative final decision, the record evidence indicates that milk is being pooled on the Pacific Northwest order which does not demonstrate any reasonable association with the market and which is not actually received at pool plants that supply the Class I demands of the market. Instead, the milk being pooled is physically retained at plants located in another marketing area for manufacturing lower valued Class III or Class IV dairy products. This is causing producers who actually supply the market to receive a lower blend price.

On the basis of the record evidence, together with analysis performed by the Department, the tentative final decision and this final decision find reason to support adopting a 3-day touch-base standard. Analysis was performed using officially noticed Market Administrator data from June 2001 through April 2002. This time period was selected because of the change in Commodity Credit Corporation (CCC) purchase prices for butter and nonfat dry milk that occurred on May 31, 2001, as part of the price support program. This change in the CCC support purchase prices has caused the price gap between Class III and Class IV milk to be significantly reduced. This change in CCC purchase prices has had a noticeable effect on the total value of the marketwide pool for both the Pacific Northwest and Western orders.

Hypothetical blend prices were computed for the Pacific Northwest order marketing area, absent the Class III and Class IV milk physically located in areas within the Western Order milk marketing area. Milk from this area had not historically been pooled on the Pacific Northwest. Additionally, blend

prices were computed for the Western Order that assumed the Class III and Class IV milk pooled on the Pacific Northwest Order would instead be pooled on the Western order. The results indicated that the blend prices received by dairy farmers pooled in the Pacific Northwest would increase, while the blend prices received by dairy farmers pooled on the Western order would decrease.

Analysis of the newly derived blend price differences was performed to determine how many days of a dairy farmers' production could seek to be received at a pool plant in the Pacific Northwest so that the costs of shipping milk to the market would not exceed the benefits of being pooled. The results of this analysis ranged from a low of 1 day's milk production in the month of February 2002 to a high of 5 day's milk production in June 2001.

On average the milk of a dairy farmer could be received at a pool plant in the Pacific Northwest order 3 days per month to adequately demonstrate that the milk of a producer is actually providing a reasonable and consistent service in meeting the fluid needs of the marketing area.

Providing a higher (3-day) touch-base standard requires milk located outside the marketing area to demonstrate its availability to service the Class I needs of the Pacific Northwest marketing area. While this standard should continue to assure an adequate supply of Class I milk, it also will serve as a safeguard against the unwarranted erosion of blend prices caused by the pooling of milk which could not reasonably be determined as bearing the cost associated with serving the fluid needs of the market.

The establishment of a touch-base standard also reinforces the integrity of the order's other performance standards. Together with providing for a cooperative manufacturing plant and their system pooling, reasonable assurance is provided that milk which does not regularly service the fluid needs of the market will not receive the Pacific Northwest order's blend price. Additionally, this decision provides authority for the Market Administrator to adjust the touch-base standard in the same way the order currently provides authority for the Market Administrator to adjust the performance standards for supply plants and diversion limits for all pool plants.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk not needed for fluid use. When producer milk is not needed by the market for Class I use, some provision should be made for milk to be diverted to nonpool plants for use in manufactured products but still be pooled and priced under the order. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received by the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting plant and should not be pooled.

A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant. With regard to the pooling issues of the Pacific Northwest order, the record reveals that high diversion limits contributed to the pooling of large volumes of milk on the order that may not have serviced to the Class I market needs. Therefore, lowering the order's diversion limit standard would be appropriate.

Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the blend price paid to dairy farmers who service the market's Class I needs. Without reasonable diversion limits, the order's ability to provide for effective performance standards and orderly marketing is weakened.

Diversion limit standards that are too high can open the door for pooling more milk on the market, as seen with the 99 percent diversion limit that had been applicable for the months of March through August prior to the adjustments made by the Market Administrator in February 2001. With respect to the marketing conditions of the Pacific Northwest marketing area evidenced by the record, the tentative final decision and this final decision find good reason to continue with the diversion limits on producer milk set by the Market Administrator at 80 percent of total receipts as the order's diversion limit standard for every month of the year.

Therefore, an 80 percent diversion limit standard for producer milk in each month of the year is adopted in this final decision. To the extent that this diversion limit standard may warrant future adjustments, the order already provides the Market Administrator authority to adjust these diversion standards as marketing conditions may warrant.

The tentative final decision and this final decision find that several changes to the pooling standards contained in the *Producer milk* definition of the order are needed to reinforce the integrity of the other changes made in this decision that affect supply plants. As indicated earlier, the record indicates that the pooling provisions of the Pacific Northwest order were inadequate. This tentative final decision and this final decision find that the absence of a touch-base standard result in the inability to adequately and properly identify the milk of those producers who should be pooled. The lack of a touch-base standard together with a 99 percent diversion limit applicable in the months of March through August resulted in the pooling of more milk than could reasonably be considered as actually serving the market's Class I needs. These inadequacies of the Pacific Northwest order resulted in pooling milk which can not demonstrate actual service in supplying the Class I needs of the market. Such inadequacies contribute to the unnecessary erosion of the order's blend price to those producers who do demonstrate such service.

Lastly, the tentative final decision and this final decision find agreement with the proponents of Proposal 1 that a cooperative manufacturing plant provision will provide flexibility in qualifying milk to be pooled. Allowing cooperative manufacturing plants the option to function as part of a pooling system will assist producers and handlers in transporting milk in the most cost-efficient manner. This provision gives the cooperatives operating manufacturing plants the ability to supply milk to distributing plants from a plant of the system located nearer a distributing plant without causing disruption to the market. System pooling allows cooperative manufacturing plants to make more cost-effective decisions in transporting milk while still satisfying the Class I demands of the order without disruption.

3. Emergency Marketing Conditions

Evidence presented at the hearing establishes that the pooling standards of the Pacific Northwest order are inadequate and were resulting in a significant present and ongoing erosion of the blend price received by producers who actually demonstrate performance by supplying the Class I needs of the market. This unwarranted erosion of blend prices stemmed from the lack of a reasonable and effective standard to ensure that the milk of the producer being pooled was actually being

delivered to pool plants that supply milk to meet the Class I needs of the market. The erosion of the blend price received by producers was also compounded by an unnecessarily high diversion limit standard for the months of March through August. These shortcomings had allowed milk that had not provided a reasonable expectation of or demonstration of service in meeting the Class I needs of the marketing area to be pooled on the order. Consequently, it was determined that emergency marketing conditions exist in the Pacific Northwest marketing area, and the issuance of a recommended decision was therefore omitted.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, the one exception received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exception, such exception is hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The order amending the order regulating the handling of milk in the Pacific Northwest marketing area was approved by producers and published in the **Federal Register** on November 19, 2002 (67 FR 69668), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

December 2003, is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on November 19, 2002 (67 FR 69668), regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1124

Milk Marketing order.

Dated: April 5, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Pacific Northwest Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, in sure a sufficient quantity of pure and wholesome milk, and by in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on November 8, 2002, and published in the **Federal Register** on November 19, 2002 (67 FR 69668), are

adopted without change and shall be and are the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1124.1 to 1124.86 all inclusive, of the order regulating the handling of milk in the Pacific Northwest marketing area (7 CFR part 1124) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of December 2003, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature By (Name)
(Title)
(Address)
(Seal)
Attest

[FR Doc. 04–8070 Filed 4–8–04; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2004–8]

Contributions and Donations by Minors

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed amendments to its rules governing contributions and donations by minors to candidates and political committees. These proposed rules would conform to the Supreme Court's decision in *McConnell* v *FEC* finding unconstitutional section 318 of the Bipartisan Campaign Reform Act of 2002. BCRA section 318 had forbidden contributions to candidates and contributions or donations to political party committees by individuals 17 years old or younger. The Commission rules at 11 CFR 110.19 implement BCRA section 318. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 10, 2004. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to John C. Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *Minors04@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its web site. If the Commission decides that a hearing is necessary, the hearing will be held in its ninth floor meeting room, 999 E. St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Mr. Steve N. Hajjar, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002) ("BCRA"), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* One of those amendments, BCRA section 318, codified at 2 U.S.C. 441k, prohibited minors from making contributions to candidates or from making contributions or donations to political party committees. In 2002, the Commission promulgated rules at 11 CFR 110.19 implementing section 318. 67 FR 69,928 (Nov. 19, 2002). In *McConnell* v. *FEC*, 540 U.S.__, 124 S.Ct. 619 (2003), the Supreme Court, however, found unconstitutional section 318, necessitating these proposed amendments to 11 CFR 110.19. The cumulative effect of these proposed changes to 11 CFR 110.19, governing contributions and donations by minors, would be essentially to return these rules to their state prior to BCRA.

Former 11 CFR 110.1(i)(2) (2002) provided that individuals under 18 years of age ("minors") could make contributions to candidates or political committees in accordance with the limits of the Act so long as the minor knowingly and voluntarily made the decision to contribute, and the funds, goods, or services contributed were owned or controlled exclusively by the minor. Additionally, the contributions must not have been made from the proceeds of a gift given to the minor for the purpose of making a contribution or in any other way controlled by an individual other than the minor. The proposed rules at 11 CFR 110.19 would return to the former regulations at 11 CFR 110.1(i)(2). The only difference between the pre-BCRA rules and the Commission's proposed rules would be to substitute "an individual who is 17 years old or younger" or "individual" for "minor" or "child."

The Commission proposes to remove paragraphs (a) and (b) of current 11 CFR 110.19, which implement the prohibitions of 2 U.S.C. 441k. Paragraph (a) of 11 CFR 110.19 prohibits contributions by minors to Federal candidates and specifies that this

prohibition encompasses contributions to a candidate's principal campaign committee, any other authorized committee of that candidate, and any entity directly or indirectly established, financed, maintained, or controlled by one or more federal candidate. Paragraph (b) of 11 CFR 110.19 prohibits minors from making contributions and donations to national, State, district, and local party committees. Because the Supreme Court struck down 2 U.S.C. 441k in its entirety, *McConnell*, 540 U.S. at ____, 124 S.Ct. at 711, the statutory basis for these paragraphs no longer exists, and the Commission proposes to eliminate them.

Current paragraph (c) specifies that minors may make contributions to political committees not described in current paragraphs (a) and (b) as long as the minor voluntarily and knowingly makes the decision to contribute; the funds, goods or services contributed are owned or controlled exclusively by the minor; the contribution is not made from the proceeds of a gift given to the minor to make a contribution or is not in any way controlled by an individual other than the minor; and the contribution is not earmarked or otherwise directed to one or more Federal candidates, political committees, or organizations described in current paragraphs (a) and (b). 11 CFR 110.19(c)(1) through (c)(4).

Because the Commission proposes to eliminate current paragraphs (a) and (b), which prohibit minors from making contributions to candidates or from making contributions or donations to political party committees, the resulting proposed § 110.19 would differ from current 110.19(c) in two respects. First, proposed § 110.19 would allow minors to make contributions that do not exceed the Act's limitations to any candidate or political committee. Second, proposed § 110.19 would eliminate current paragraph (c)(4), which prohibits minors from making contributions that are earmarked or otherwise directed to entities described in current paragraphs (a) and (b). The provisions of current paragraphs (c)(1) through (c)(3) would be renumbered as paragraphs (a) through (c) of proposed section 110.19 and would apply to all contributions and donations by minors. The Commission seeks comment on whether the requirement in current paragraph (c)(2), proposed paragraph (b), that the funds, goods, and services contributed be owned or controlled exclusively by the minor is permissible in light of *McConnell*. Should the Commission require exclusive ownership or control at all considering that in many jurisdictions a minor may not be able, for example, to open a bank account without a parent's or guardian's signature or manage an investment account without adult direction?

The Commission also proposes to remove paragraphs (d) and (e) of current § 110.19. Paragraph (d) provides that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other party committees, notwithstanding BCRA's restrictions on political giving by minors. Because the prohibitions at 2 U.S.C. 441k no longer exist, *McConnell*, 540 U.S. at ____, 124 S.Ct. at 711, the rationale for this paragraph has also ceased to exist, and the Commission proposes to eliminate it.

Current paragraph (e) defines an entity "directly or indirectly established, financed, maintained, or controlled" by a candidate for purposes of the prohibition on contributions by minors to candidates as one that meets the definition of "directly or indirectly establish, finance, maintain or control" at 11 CFR 300.2(c). Because the Supreme Court has struck down the prohibition on minors contributing to candidates, this provision is no longer necessary and the Commission proposes to eliminate paragraph (e).

The Commission seeks comment regarding whether it has authority to establish a minimum age, lower than had been set by BCRA section 318, for the making of contributions. If so, should the Commission prohibit individuals below a certain age from making contributions, recognizing that those individuals lack the capacity to manage their finances and dispose of property and therefore could not knowingly and voluntarily contribute on their own behalf? What would be the appropriate minimum age? Should the Commission instead establish a rebuttable presumption that individuals below a certain age could not make contributions? If the Commission chooses this approach, what should the Commission require from that individual and his or her parents or guardian to rebut that presumption? Or should the Commission combine a categorical prohibition with a rebuttable presumption similar to the approach adopted by some jurisdictions with regard to the tort liability of children? *See, e.g.*, Restatement (Third) of Torts § 10 cmt. b (Tentative Draft No. 1, 2001) ("[F]or children above 14 there is a rebuttable presumption in favor of the child's capacity to commit negligence; for children between seven and 14, there is a rebuttable presumption against capacity; children under the age of seven are deemed incapable of committing negligence").

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these proposed rules would only apply to individuals age 17 years old or younger. Such individuals are not small entities. Moreover, these rules remove existing restrictions in accordance with controlling Supreme Court precedent and do not impose any additional costs on contributors, candidates, or political committees. Therefore these proposed rules would impose no further economic burdens on them.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set forth in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for Part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, and 441h.

2. Section 110.19 would be revised to read as follows:

§ 110.19 Contributions and donations by minors.

An individual who is 17 years old or younger may make contributions to any candidate or political committee which in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(a) The decision to contribute is made knowingly and voluntarily by that individual;

(b) The funds, goods, or services contributed are owned or controlled exclusively by that individual, such as income earned by that individual, the proceeds of a trust for which that individual is the beneficiary, or a savings account opened and maintained exclusively in that individual's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be

contributed, or is not in any other way controlled by another individual.

Dated: April 5, 2004.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 04–8064 Filed 4–8–04; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–08–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to check the airplane logbook to determine whether certain inboard and outboard flap flexshafts have been replaced with parts of improved design. If the parts of improved design are not installed, you would be required to replace certain inboard and/or outboard flap flexshafts with the parts of improved design. The pilot is allowed to do the logbook check. If the pilot can positively determine that the parts of improved design are installed, no further action is required. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to prevent rupture of the flap flexshafts due to corrosion, which could result in failure of the flap system. This failure could lead to loss of control of the airplane.

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

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–08–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–08–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–08–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–08–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

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

Discussion

What Events Have Caused This Proposed AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Models PC–12 and PC–12/45 airplanes equipped with an inboard and/or outboard flap flexshaft, part numbers (P/N) 945.02.02.203 and/or 945.02.02.204. The FOCA reports several occurrences of corrosion found on the inner drive cables of these flap flexshafts.

The FOCA determined that moisture from the pressurized cabin could enter the flap flexshafts through the fittings of the protection hose causing corrosion. This corrosion could cause the flap flexshafts to rupture.

What Are the Consequences if the Condition Is Not Corrected?

If not prevented, corrosion on the flap flexshafts could cause the flap system to fail. This failure could result in loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Pilatus has issued Pilatus PC12 Service Bulletin No. 27–015, Rev. No. A, dated November 13, 2003.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for replacing the inboard and outboard flap flexshafts, P/N 945.02.02.203 and P/N 945.02.02.204, with parts of improved design, P/N 945.02.02.205 and P/N 945.02.02.206.

What Action Did the FOCA Take?

The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB–2004–068, dated March 4, 2004, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA Inform the United States Under the Bilateral Airworthiness Agreement?

These Pilatus Models PC–12 and PC–12/45 airplanes are manufactured in Switzerland and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

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

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are equipped with an inboard and/or outboard flap flexshaft, P/N 945.02.02.203 and/or P/N 945.02.02.204, and are registered in the United States, we are proposing AD action to prevent failure of the flap system.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 260 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed replacement:

Labor cost per flap flexshaft	Parts cost per flap flexshaft	Total cost per airplane per flap flexshaft	Total cost on U.S. operators
2 workhours per flap flexshaft (4 flap flexshafts per airplane) × $65 per hour = $130 per flap flexshaft.	$750 per flap flexshaft (4 flap flexshafts per airplane).	$130 + $750 = $880 per flap flexshaft. $880 × 4 flap flexshafts = $3,520 to replace all 4 flap flexshafts.	Maximum cost for replacing all 4 flap flexshafts on all 260 airplanes = $3,520 × 260 = $915,200.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of the proposed replacement that would be required by this proposed AD is "within the next 30 days after the effective date of this AD."

Why Is This Proposed Compliance Time Presented in Calendar Time Instead of Hours TIS?

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time. a compliance time of calendar time is utilized.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–08–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. 2004–CE–08–AD.

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

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

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model PC–12 and PC–12/45 airplanes, all serial numbers, that are:

(1) equipped with an inboard and/or outboard flap flexshaft, part number (P/N) 945.02.02.203 and/or P/N 945.02.02.204; and

(2) certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent rupture of the flap flexshafts due to corrosion, which could result in failure of the flap system. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following. If you already replaced both the inboard and outboard flap flexshafts with P/N 945.02.02.205 and P/N 945.02.02.206 following Pilatus PC12 Service Bulletin No. 27–015, dated June 4, 2003, then paragraph (e)(5) of this AD is the only paragraph that applies to you:

Actions	Compliance	Procedures
(1) For affected airplanes with a manufacturer serial number (MSN) of 489 or lower, check the airplane logbook to determine if the inboard and outboard flap flexshafts have been replaced with P/N 945.02.02.205 and P/N 945.02.02.206.	Within the next 30 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(2) For affected airplanes with a MSN of 490 and above, check the airplane logbook to determine if the inboard and outboard flap flexshafts, P/N 945.02.02.205 and P/N 945.02.02.206 have been replaced since delivery.	Within the next 30 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.
(3) If you can positively determine that both inboard and outboard flap flexshafts, P/Ns 945.02.02.205 and 945.02.02.206 are installed, no replacement is required.	Not applicable	Not applicable.
(4) If you cannot positively determine that both inboard and outboard flap flexshafts, P/N 945.02.02.205 and P/N 945.02.02.206 are installed, you must replace either one or both with P/N 945.02.02.205 and P/N 945.02.02.206, as applicable.	Before further flight after the logbook checks required in paragraph (e)(1) and (e)(2) of this AD.	Follow Pilatus PC12 Service Bulletin No. 27–015 as specified in paragraph (f) of this AD.
(5) Install only inboard and outboard flap flexshafts, P/Ns 945.02.02.205 and 945.02.02.206.	As of the effective date of this AD	Not applicable.

What Revision Levels do the Affected Service Bulletin Incorporate?

(f) The service bulletin required to do the actions required in this AD incorporate the following pages:

Affected pages	Revision level	Date
1 and 2	A	November 13, 2003.
3 through 11	Original Issue	June 4, 2003.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

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

(h) You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilaltus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(i) Swiss AD Number HB–2004–068, dated March 4, 2004, also addresses the subject of this AD.

Issued in Kansas City, on April 1, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8054 Filed 4–8–04; 8:45 am]

BILLING CODE 4916–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko" Model SZD–50–3 "Puchacz" Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko" (PZL-Bielsko) Model SZD–50–3 "Puchacz" sailplanes. This proposed AD would require you to inspect the

airbrake torque tube for cracks, distortion, and corrosion (herein referred to as damage). This proposed AD would also require you to replace or repair any damaged airbrake torque tube. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and correct damage on the airbrake torque tube, which could result in failure of the airbrake system. This failure could lead to loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by May 9, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2003–CE–66–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Allstar PZL Glider Sp. z o.o., ul. Cieszyńska 325, 43–300 Bielsko-Biala.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–66–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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

Discussion

What events have caused this proposed AD? The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on all PZL-Bielsko Model SZD–50–3 "Puchacz" sailplanes. The GICA reports several instances of the airbrake torque tube breaking and separating from the fuselage during flight, which makes it impossible to retract the airbrake.

An investigation revealed damage at the welded joint between the airbrake torque tube and the fuselage. The damage was caused by material fatigue due to frequent striking load that exceeds the recommended allowances and/or corrosion.

What are the consequences if the condition is not corrected? This condition, if not detected and corrected, could cause the airbrake system to fail. Failure of the airbrake system could result in loss of control of the sailplane.

Is there service information that applies to this subject? Allstar PZL Glider Sp. Z o.o. has issued Mandatory Bulletin No. BE–052/SZD–50–3/2003 "Puchacz", dated July 22, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the airbrake torque tube for crack, distortion, and corrosion (damage); and

—Replacing or repairing any damaged airbrake torque tube.

What action did the GICA take? The GICA classified this service bulletin as mandatory and issued Republic of Poland AD Number SP–0052–2003–A, dated July 22, 2003, to ensure the continued airworthiness of these sailplanes in Poland.

Did the GICA inform the United States under the bilateral airworthiness agreement? These PZL-Bielsko Model SZD–50–3 "Puchacz" sailplanes are manufactured in Poland and are type-certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This Proposed AD

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

Since the unsafe condition described previously is likely to exist or develop on other PZL-Bielsko Model SZD–50–3 "Puchacz" sailplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct damage in the airbrake torque tube, which could result in failure of the airbrake system. This failure could lead to loss of control of the sailplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 8 sailplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
5 workhours × $65 per hour = $325	Not applicable	$325	$2,600

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

Labor cost	Parts cost	Total cost per sailplane
5 workhours × $65 per hour = $325	$294	$325 + $294 = $619.

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–66–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa "PZL-Bielsko": Docket No. 2003–CE–66–AD

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

(a) We must receive comments on this proposed airworthiness directive (AD) by May 9, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model SZD–50–3 "Puchacz" sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this proposed AD to detect and correct cracks in the airbrake torque tube, which could result in failure of the airbrake system. This failure could lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Using a fluorescent dye-penetrant or dye-check method, inspect the airbrake torque tube for cracks and corrosion pits. Visually inspect for permanent distortions and surface corrosion (damage).	Within the next 25 hours time-in-service (TIS) after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 12 calendar months or 100 hours TIS, whichever occurs later.	Follow Allstar PZL Glider Sp. Z o.o. Mandatory Bulletin No. BE–052/SZD–50–3/2003 "Puchacz", dated July 22, 2003.
(2) Based on the results of the inspection: (a) Repair the airbrake torque tube if slight, uniform corrosive deposits are found during the inspection required in paragraph (e)(1) of this AD by removing the corrosive deposits with a fine abrasive paper; and (b) Replace the airbrake torque tube if any other damage is found during the inspection required in paragraph (e)(1) of this AD.	Prior to further flight after the inspection in which the damage is found. Continue with the repetitive inspections required in paragraph (e)(1) of this AD after each repair or replacement is made.	Follow Allstar PZL Glider Sp. Z o.o. Mandatory Bulletin No. BE–052/SZD–50–3/2003 "Puchacz", dated July 22, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

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

(g) You may get copies of the documents referenced in this AD from Allstar PZL Glider Sp. z o.o., ul. Cieszyńska, 43–300 Bielsko-Biala. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) Republic of Poland AD Number SP–0052–2003–A, dated July 22, 2003.

Issued in Kansas City, Missouri, on April 2, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8055 Filed 4–8–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–502, AT–502A, AT–502B, AT–503A, AT–602, AT–802, and AT–802A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2002–19–10, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes. AD 2002–19–10 currently requires you to repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks and contact the manufacturer for a repair scheme if cracks are found. This proposed AD is the result of reports of the same cracks recently found on AT–500 series airplanes. The manufacturer has also issued new and revised service information that incorporates a modification to terminate the repetitive inspection requirements. Consequently, this proposed AD would retain the inspection actions required in AD 2002–19–10, would add certain AT–500 series airplanes to the applicability section, would change the compliance times, and would incorporate new and revised manufacturer service information that contains a terminating action for the repetitive inspection requirement. We are issuing this proposed AD to detect and correct cracks in the upper aft longeron, which could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

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

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–05–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–05–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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

Discussion

Has FAA taken any action to this point? We received reports of cracks found on the left hand upper longeron and upper diagonal support tubes where they intersect on the left hand side of the fuselage frame just forward of the vertical fin front spar attachment point on Air Tractor Model AT–602 airplanes. Additional cracking was later reported on AT–400, AT–602, and AT–802 series airplanes.

Air Tractor started installing extended reinforcement gussets on AT–402 and AT–802 series airplanes at the factory to alleviate the crack condition from occurring. The extended reinforcement gussets were intended to transfer the loads away from the joint. However, an AT–802 airplane with the extended reinforcement gusset installed during factory production was discovered cracked in service at the forward end of the gusset.

These conditions caused us to issue AD 2002–19–10, Amendment 39–12890 (67 FR 61481, October 1, 2002). AD 2002–19–10 currently requires you to do the following on certain Air Tractor Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A airplanes:

—Repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks; and

—Contact the manufacturer for a repair scheme if cracks are found.

What has happened since AD 2002–19–10 to initiate this proposed action? We have received additional reports of the same cracks found on an Air Tractor Model AT–502 and AT–502A airplane.

The manufacturer has also issued new and revised service information. The new service information contains procedures for replacing and modifying the upper aft longeron as a terminating action for the repetitive inspection requirement.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

Is there service information that applies to this subject? Snow

Engineering Co. has issued the following Service Letters:

—Service Letter #195, reissued: November 10, 2003;
—Service Letter #195A, revised: November 10, 2003;
—Service Letter #195B, dated November 10, 2003;
—Service Letter #213A, dated November 10, 2003;
—Service Letter #213B, revised November 10, 2003;
—Service Letter #217A, dated November 10, 2003;
—Service Letter #217B, revised November 10, 2003;
—Service Letter #218A, dated November 10, 2003; and
—Service Letter #218B, revised November 10, 2003.

What are the provisions of this service information? These service letters include procedures for:

—Service Letter #195 specifies inspecting the upper longeron in the aft fuselage structure on all the affected model airplanes;
—Service Letter #195B, Service Letter #213A, Service Letter #217A, and Service Letter #218A provides the inspection requirements for all affected model airplanes; and
—Service Letter #195A, Service Letter #213B, Service Letter #217B, and Service Letter #218B give the procedures for replacing and modifying the upper aft longeron if cracks are found for all affected model airplanes and is the terminating action for the repetitive inspection requirements.

FAA's Determination and Requirements of This Proposed AD

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

What would this proposed AD require? This proposed AD would supersede 2002–19–10 with a new AD that would require you to repetitively inspect the upper longeron and upper diagonal tube on the left hand side of the aft fuselage structure for cracks. If cracks are found, this proposed AD would also require you to replace and modify the upper aft longeron. Replacing and modifying the upper aft longeron would terminate the repetitive inspection requirement.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 1,194 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No parts required	$65	$65 × 1,194 = $77,610.

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

Labor cost	Parts cost	Total cost per airplane
27 workhours × $65 per hour = $1,755	For AT–400, AT–500, and AT–600 series airplanes: $35. For AT–800 series airplanes: $45	For AT–400, AT–500, and AT–600 series airplanes: $1,755 + $35 = $1,790. For AT–800 series airplanes: $1,755 + $45 = $1,800.

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2002–19–10? The difference is the addition of certain Model AT–501, AT–502, AT–502A, AT–502B, and AT–503A airplanes to the applicability section of this proposed AD and the cost of replacing any cracked upper aft longeron. There is no difference in cost to perform the proposed inspection.

Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004–CE–05–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–19–10, Amendment 39–12890 (67 FR 61481, October 1, 2002), and by adding a new AD to read as follows:

Air Tractor, Inc.: Docket No. 2004–CE–05–AD.

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

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

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2002–19–10.

What Airplanes Are Affected by This AD?

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

Model	Serial Nos.
AT–401, AT–401B, AT–402, AT–402A, and AT–402B.	0716 through 1144.
AT–501, AT–502, AT–502A, AT–502B, and AT–503A.	0037 through 0658.
AT–602	0337 through 0664.
AT–802 and AT–802A.	0001 through 0139.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of cracks in the aft fuselage upper longeron, originally detected as excessive movement in the empennage due to the loss of fuselage torsional rigidity. The actions specified in this AD are intended to detect and correct cracks in the upper aft longeron, which could cause the fuselage to fail. Such failure could result in loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must inspect the upper longeron and upper diagonal tube on the left hand side of the fuselage frame just forward of the vertical fin front spar attachment for cracks at the times specified below. You must also replace and modify any cracked upper and diagonal longerons found during any inspection required by this AD before further flight after the inspection in which cracks are found.

Affected models and serial numbers	Inspection compliance times	Procedures
(1) AT–401, AT–401B, AT–402, AT–402A, and AT–402B: serial numbers (S/Ns) 0716 through 1144.	Initially inspect upon the accumulation of 1,250 total hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #218A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #218B, dated November 10, 2003.
(2) AT–501, AT–502, AT–502B, and AT–503A, S/Ns 0037 through 0658.	Initially inspect upon the accumulation of 4,800 total hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #218A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #195A, revised November 10, 2003.
(3) AT–502A, S/Ns 0037 through 0658.	Initially inspect upon the accumulation of 2,800 total hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #195B, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #195A, revised November 10, 2003.
(4) AT–602, S/Ns 0337 through 0661.	Initially inspect upon the accumulation of 700 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #213A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #218B, dated November 10, 2003.

Affected models and serial numbers	Inspection compliance times	Procedures
(5) AT–602, S/Ns 0662 through 0664.	Initially inspect upon the accumulation of 1,750 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #213A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #213B, revised November 10, 2003.
(6) AT–802 and AT–802A, S/Ns 0001 through 0004 and 0012 through 0118.	Initially inspect upon the accumulation of 250 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, revised November 10, 2003.
(7) AT–802 and AT–802A, S/Ns 0005 through 0011.	Initially inspect upon the accumulation of 900 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, dated November 10, 2003.
(8) AT–802 and AT–802A, S/Ns 0119 through 0139.	Initially inspect upon the accumulation of 1,750 total hours TIS or within the next 100 hours TIS after the last inspection required by AD 2002–19–10, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until the upper and diagonal longerons are replaced and modified. Replacing and modifying the upper and diagonal longerons is the terminating action for the repetitive inspection requirement in this AD.	Inspect following Snow Engineering Co. Service Letter #217A, dated November 10, 2003, as specified in Snow Engineer Co. Service Letter #195, reissued November 10, 2003. Replace and modify following Snow Engineering Co. Service Letter #217B, revised November 10, 2003.

(f) You may replace and modify the upper and diagonal longeron at any time as a terminating action for the repetitive inspection requirement in this AD. However, you must replace and modify the upper and diagonal longeron before further flight after any inspection in which cracks are found.

May I Request an Alternative Method of Compliance?

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth ACO, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

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

(h) You may get copies of the documents referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 1, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–8056 Filed 4–8–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 316

[Project No. R411008]

RIN 3084–AA96

Definitions, Implementation, and Reporting Requirements Under the CAN–SPAM Act

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of period to submit comments in response to advance notice of proposed rulemaking.

SUMMARY: In a **Federal Register** document published March 11, 2004, the FTC requested comment on various topics related to §§ 3(2)(C), 3(17)(B),

5(c)(1), 5(c)(2), and 13 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN–SPAM Act" or "the Act"). In addition, the FTC requested comment on topics relevant to certain reports to Congress required by additional provisions of the CAN–SPAM Act. In response to a request for an extension of the comment period received April 1, 2004, the Commission has extended the comment period until April 20, 2004.

DATES: Comments addressing any aspect of the CAN–SPAM Act (except the Do Not Email Registry Report the FTC must prepare and submit to Congress pursuant to section 9 of the CAN–SPAM Act) must be submitted on or before April 20, 2004. (The deadline for receipt of comments on the Do Not Email Registry Report was March 31, 2004.)

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "CAN–SPAM Act Rulemaking, Project No. R411008" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, CANSPAM Act, Post Office Box 1030, Merrifield, VA 22116–1030. Please note that courier and overnight deliveries cannot be accepted at this address. Courier and overnight deliveries should be delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form. An electronic comment can be filed by (1) clicking on *http://www.regulations.gov;* (2) selecting "Federal Trade Commission" at "Search for Open Regulations;" (3) locating the summary of this Notice; (4) clicking on "Submit a Comment on this Regulation;" and (5) completing the form. For a given electronic comment, any information placed in the following fields—"Title," "First Name," "Last Name," "Organization Name," "State," "Comment," and "Attachment"—will be publicly available on the FTC Web site. The fields marked with an asterisk on the form are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Goodman, Staff Attorney, (202) 326–3071; or Catherine Harrington-McBride, Staff Attorney, (202) 326–2452; Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The CAN-SPAM Act directs the Commission to issue regulations, not later than 12 months following the enactment of the Act, "defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message."[1] The CAN-SPAM Act also provides discretionary authority for the Commission to issue regulations concerning certain of the Act's other definitions and provisions. Specifically, the Commission is authorized to:

- modify the definition of the term "transactional or relationship message" under the Act "to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the] Act;"[2]
- modify the 10-business-day period prescribed in the Act for honoring a recipient's opt-out request;[3]
- specify activities or practices as aggravated violations (in addition to those set forth as such in section 5(b) of the CAN-SPAM Act) "if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection [5(a) of the Act]";[4] and
- "issue regulations to implement the provisions of this Act."[5]

On March 11, 2004 the Commission published an advance notice of proposed rulemaking ("ANPR") to initiate the mandatory "primary purpose" rulemaking proceeding by soliciting comment on issues relating to that term and its use in the Act.[6] In addition, the ANPR solicited comments on the several areas of discretionary regulation listed above. Finally, the Commission also solicited comment in this ANPR on a variety of topics relevant to certain reports that, pursuant to the mandate of the CAN-SPAM Act, the Commission must issue within the coming two years.[7]

On April 1, 2004 the Commission received a letter from Ronald L. Plesser of Piper Rudnick requesting, on behalf of the American Association of Advertising Agencies, the Association of National Advertisers, the Consumer Bankers Association, the Direct Marketing Association, and the Magazine Publishers of America, that the Commission extend the comment period to April 20, 2004. In support of this request, the letter states that an extension of time would allow the requesting entities more time to contact their members to further evaluate the ANPR. The letter also explains that, in light of upcoming religious holidays, a short extension of time is needed for the requesting entities to adequately present their views.

In response to this request, the Commission has determined to extend the comment period on all topics set forth in the Advance Notice of Proposed Rulemaking, except the Do Not Email Registry report, until April 20, 2004.[8]

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 04–8088 Filed 4–8–04; 8:45 am]

BILLING CODE 6750–01–P

[1] CAN-SPAM Act, section 3(2)(C). The term "the primary purpose" is incorporated in the Act's definition of the key term "commercial electronic mail message." Specifically, "commercial electronic mail message" encompasses "any electronic mail message the *primary purpose* of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose.)" CAN-SPAM Act, § 3(2)(A) (emphasis supplied).

[2] CAN-SPAM Act, section 3(17)(B).

[3] CAN-SPAM Act, section 5(c)(1)(A)–(C).

[4] CAN-SPAM Act, section 5(c)(2).

[5] CAN-SPAM Act, section 13.

[6] 69 FR 11776 (Mar. 11, 2004).

[7] CAN-SPAM requires the Commission to prepare and submit to Congress four separate reports within the next two years: A report on establishing a "Do Not Email" Registry to be submitted by June 16, 2004; a report on establishing a system for rewarding those who supply information about CAN-SPAM violations by September 16, 2004; a report setting forth a plan for requiring commercial email to be identifiable from its subject line by June 16, 2005: and a report on the effectiveness of CAN-SPAM by December 16, 2005.

[8] The deadline for comments on the Do Not Email Registry report was March 31, 2004. The parties that requested extension of the ANPR comment period did not request extension of the comment period on the Do Not E-mail Registry report.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA215–4228; FRL–7644–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Warren County SO_2 Nonattainment Areas and the Mead and Clarendon Unclassifiable Areas to Attainment and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to redesignate the Warren County sulfur dioxide (SO_2) nonattainment areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania to attainment of the national ambient air quality standards (NAAQS) for SO_2. The EPA is also proposing to approve a maintenance plan for these areas as a SIP revision which would put in place a plan for maintaining the NAAQS for SO_2 for the next ten years. In addition, EPA is proposing to approve a request to change the status of Mead Township and Clarendon Borough in Warren County from unclassifiable to attainment of the NAAQS for SO_2. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before May 10, 2004.

ADDRESSES: Submit your comments, identified by PA215–4228 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. PA215–4228. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

EPA originally designated Conewango Township in Warren County, Pennsylvania as nonattainment for SO_2 on March 3, 1978 (43 FR 8962), based upon modeled exceedances in the area of the Warren Generating Station. The CAA, as amended by the 1990 Amendments, provided designations of SO_2 areas based on their status immediately before enactment of the 1990 Amendments. Any area designated as not attaining the NAAQS for SO_2 as of the date of enactment of the 1990 Amendments, was designated nonattainment for SO_2 by operation of law. In addition, any area designated as attainment or unclassifiable immediately before the enactment of the 1990 Amendments, was also designated as such upon the enactment of the amendments. As a result, Conewango Township in Warren County was designated nonattainment for SO_2 by operation of law.

The City of Warren and Pleasant Township were originally designated unclassifiable for the NAAQS for SO_2. Pursuant to section 107(d)(1)(C) of the 1990 CAA amendments, these areas were designated unclassifiable by operation of law. On September 22, 1992 (57 FR 43846), EPA proposed the redesignation of part of Warren County as nonattainment for SO_2. Specifically, the proposed nonattainment area included Glade and Pleasant Townships, and the City of Warren. This proposed redesignation was based upon modeled exceedances of the short-term SO_2 standards at the United Refining Company. In a final rulemaking on December 21, 1993 (58 FR 67334), as amended on September 21, 1994 (59 FR 48405), EPA redesignated Glade Township, Pleasant Township, and the City of Warren as nonattainment for SO_2. Clarendon Borough and Mead Township in Warren County were designated unclassifiable by operation of law pursuant to section 107(d)(1)(C) of the 1990 CAA amendments. These designations are codified in 40 CFR 81.339.

II. Summary of the March 15, 2004 Submittal From Pennsylvania

On March 15, 2004, the Commonwealth of Pennsylvania submitted redesignation requests and a proposed SIP revision consisting of a proposed maintenance plan. The Commonwealth's submittal requested that EPA redesignate the Warren County SO_2 nonattainment areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania to attainment of the NAAQS for SO_2. The March 15, 2004 submittal also requested that EPA parallel process its approval of the proposed maintenance plan associated with the redesignation request as a SIP revision concurrent with the Commonwealth's process for amending its SIP. The proposed maintenance plan is for the Warren County SO_2 nonattainment areas of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania. The submittal also requested that the status of Mead Township and Clarendon Borough in Warren County be changed from unclassifiable to attainment of the NAAQS for SO_2.

Under the CAA, EPA may redesignate nonattainment areas to attainment if

sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3)(E). This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A.

III. Redesignation Criteria

Section 107(d)(3)(E) of the CAA, as amended, specifies five requirements that must be met to redesignate an area to attainment. They are as follows:

(1) The area must meet the applicable NAAQS.

(2) The area must have a fully approved SIP under section 110(k).

(3) The area must show improvement in air quality due to permanent and enforceable reductions in emissions.

(4) The area must meet all relevant requirements under section 110 and part D of the Act.

(5) The area must have a fully approved maintenance plan pursuant to section 175A. The EPA has reviewed the redesignation request submitted by the Pennsylvania Department of Environmental Protection (PADEP) for the Warren County SO_2 nonattainment areas. EPA finds that the request meets the five requirements of section 107(d)(3)(E).

A. The Data Shows Attainment of the NAAQS for SO_2 in the Warren County SO_2 Nonattainment Areas

A review of the ambient air quality data demonstrates that the NAAQS have been achieved in the Warren County SO_2 nonattainment areas (Conewango Township, Pleasant Township, Glade Township, and the City of Warren). This data demonstrates that the ambient air quality attains the annual and 24-hour health-based primary standards, and the 3-hour secondary standard. The primary standards are an annual mean of 0.030 parts per million (ppm), not to be exceeded in a calendar year, and a 24-hour average of 0.14 ppm, not to be exceeded more than once per calendar year. The secondary standard is a 3-hour average of 0.5 ppm, not to be exceeded more than once per calendar year. The PADEP have quality-assured SO_2 ambient air monitoring data showing that the Warren County SO_2 nonattainment areas have attained the NAAQS for SO_2.

The redesignation request for the Warren County SO_2 nonattainment areas is based upon air quality data for the most recent three whole calendar years (2000–2002). The data was collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). This data demonstrates that the ambient air quality attains the annual and 24-hour health based primary standards and the 3-hour secondary standard. The basis of Pennsylvania's original recommendation of nonattainment for this area was dispersion modeling conducted in 1976. No exceedances of the standard have occurred since remedies to correct the SO_2 problem were implemented. A table summarizing the monitoring data that has been collected in Warren County by PADEP since 1987 can be found in the formal submittal and is available for review in the rulemaking docket. The County is currently operating two monitors within the nonattainment areas, the Warren High School monitor, and the Warren Overlook monitor. Both of the monitors meet the requirements of 40 CFR parts 53 and 58, and are representative of the highest ambient concentrations.

On January 17, 2003 (68 FR 2454), EPA fully approved a modeled attainment demonstration for the Warren County SO_2 nonattainment areas consisting of Conewango Township, Pleasant Township, Glade Township, and the City of Warren. This dispersion modeling was based upon enforceable SO_2 emission limits of sources amended through operating permits, in addition to a representative background, and demonstrated that the maximum SO_2 impacts do not violate the NAAQS for SO_2. The maintenance plan submitted as a SIP revision, and the fully approved attainment demonstration (68 FR 2454) show that the ambient air quality in the Warren County SO_2 nonattainment areas meets the national standards for SO_2.

B. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA fully approved the modeled attainment demonstration for the Warren County SO_2 nonattainment areas and permit emission limits for two individual sources in Warren County as a SIP revision for the area through a direct final rule published on January 17, 2003 (68 FR 2454), effective March 18, 2003. Pennsylvania's Prevention of Significant Deterioration (PSD) program was approved by EPA on August 21, 1984 (49 FR 33128). The PSD program requires any new source to implement Best Available Control Technology (BACT) and limits a new source's allowable impact on the environment. EPA granted "limited" approval of Pennsylvania's revised New Source Review (NSR) program and published a final rule on December 7, 1997 (62 FR 64722). On October 19, 2001 (66 FR 53904), EPA converted the limited approval to "full" approval for all areas of the Commonwealth except the five-county Philadelphia area (Bucks, Chester, Delaware, Montgomery, and Philadelphia counties). Therefore, the NSR program is currently fully approved for the areas being redesignated and the fully approved PSD program would apply in these areas immediately upon redesignation.

C. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality in the Warren County SO_2 areas is due to permanent and enforceable emissions reductions. Pennsylvania has submitted and EPA has approved all of the required enforceable measures applicable to this area. Sulfur dioxide emissions from the United Refinery are capped by federally-enforceable permit conditions. The Reliant Energy power station has shutdown and banked emission reduction credits (ERCs). The SO_2 ERCs generated by Reliant Energy, reduced by the 1.3 to 1 offset ratio, represent the maximum allowable emissions that could be permitted for any new source. The attainment demonstration emission rate used in the modeling translates into a rate limitation as required under the NSR regulations.

The emissions that could be permitted with the use of the ERCs are preserved in the SIP inventory for the area and are required to be counted as actual emissions for planning purposes until the area is redesignated to attainment, after which the ERCs will become moot.

If a new source is constructed after EPA redesignates the area to attainment, a PSD permit analysis and permit will limit emissions to a level below that needed to assure attainment of the NAAQS for SO_2 and protection of all applicable PSD increments. On or after the date the area is redesignated to attainment, any new stationary source constructed or existing stationary source that is modified would be subject to the Pennsylvania SIP-approved minor and major source permitting requirements, including those for PSD. Those requirements include provisions for implementation of BACT and the performance of ambient air quality analyses to ensure the protection of the NAAQS and PSD increments. As previously stated, Pennsylvania's PSD program was approved by EPA on August 21, 1984 (49 FR 33128). Furthermore, even if the new stationary source constructed or existing stationary source that is being modified is defined as "minor" under the Pennsylvania SIP, if emissions or stack configurations

differ from those of the modeled attainment demonstration such that it no longer can be relied upon as the technical basis to ensure protection of the NAAQS, the SIP provides the Commonwealth the authority to require the applicant to perform ambient air quality analyses to ensure the protection of the NAAQS.

D. The State Has Met All Applicable Requirements for the Area Under Section 110 and Part D of the CAA

The Warren County SO_2 nonattainment areas have met all applicable and necessary requirements of section 110 and subchapter 1, of part D of the CAA. As mentioned previously, the modeled attainment demonstration for the Warren County SO_2 areas and permit emission limitations for the two stationary sources in Warren County, were fully approved by EPA as a SIP revision for the area, and Pennsylvania's PSD and NSR programs were approved by EPA. EPA approval of a transportation conformity SIP revision for the area is not required for redesignation because the nature of the areas' previous SO_2 nonattainment problem has been determined to be overwhelmingly attributable to stationary sources. The modeling demonstration submitted with the attainment demonstration SIP revision contained a detailed emissions inventory of the allowable emissions for all of the sources of SO_2 in the area. That inventory was found to be acceptable by EPA. Sulfur dioxide emissions from area and mobile sources are insignificant in comparison to the emissions from stationary sources and estimated background concentrations used in the attainment modeling approved by EPA.

E. The Area Has a Fully Approved Maintenance Plan Under Section 175A of the CAA

Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The proposed maintenance plan for the Warren County SO_2 areas is being submitted to EPA for approval via parallel-processing as a SIP revision concurrently with the request for redesignation. The proposed maintenance plan shows that the NAAQS for SO_2 will be maintained for at least 10 years after redesignation in the Warren County area. The proposed plan also includes contingency measures to address any violation of the NAAQS. The proposed maintenance plan also states that eight years following redesignation, the Commonwealth will submit a revised plan that ensures attainment through 2025.

IV. Description of the Proposed Maintenance Plan

Section 107(d)(3)(E) of the CAA requires that a maintenance plan be fully approved by EPA before an area can be redesignated as attainment. The maintenance plan is considered a SIP revision under section 110 of the CAA. Under section 175A(a) of the CAA, the maintenance plan must show that the NAAQS for SO_2 will be maintained for at least 10 years after redesignation. The maintenance plan must also include contingency measures to address any violation of the NAAQS.

To show that future emissions over the 10-year period of analysis will not lead to any exceedances of the standard, allowable emission inventories for 2003 and 2015 have been developed. Sulfur dioxide levels from the United Refinery facility are capped by federally enforceable permit conditions. Significant permanent reductions have occurred that were not included in the modeled attainment demonstration, due to the Reliant Energy power station having shutdown and generated ERCs. If these ERCs were used to offset emissions for a new unit, the emission rate limit in the attainment SIP modeling demonstration would be applicable. The total potential SO_2 emission rates in the area are, therefore, capped at the attainment demonstration levels.

The Commonwealth of Pennsylvania determined the year 2015 to be the appropriate year for preparation of this maintenance plan through consultation with EPA. Eight years following redesignation, the Commonwealth will submit a revised plan that ensures attainment through 2025, pursuant to section 175A(b) of the CAA. The major elements of the proposed maintenance plan are described in the following sections A–D.

A. Maximum Potential Emissions: 2003 and 2015

The proposed plan contains the detailed SO_2 emissions data for 2003 and 2015. No growth in emissions is possible owing to the caps on existing stationary sources that are contained in the SIP revision approved by EPA, effective March 18, 2003, and the permitting requirements for potential new sources that would require NSR offsets. After redesignation to attainment, a PSD evaluation would require emission limits sufficient to ensure continued attainment and protection of any applicable PSD increments. Sulfur dioxide emissions from area and mobile sources are not included because the cause of the air quality formerly being nonattainment was due to emissions of stationary sources. Mobile and area emissions were and remain insignificant in comparison to the point source inventory and the estimated background concentrations used in the attainment modeling demonstration.

1. 2003 Base Year Emissions (Emissions Used in the Attainment Demonstration)

Reliant Energy emissions = 5197 tons per year (TPY)/4620 lbs/hr

United Refining permitted allowable = 3946 TPY/903 lbs/hr maximum rate

Total emissions = 9143 TPY/5523 lbs/hr

2. 2015 Projected Emissions

The maximum projected emissions are quantified below, and are considerably lower than the level of emissions used in the attainment demonstration. The Reliant Energy facility has been permanently shutdown since September 28, 2002, and no new SO_2 emitting plants are anticipated. However, if a major modification were proposed prior to redesignation, and within the five-year netting window, the maximum emissions allowable would be limited to 3998 TPY, based on the following: The Reliant Energy emission reductions or ERCs amount to 5197 TPY. At an offset ratio of 1.3 to 1 for flue emissions, the maximum amount of emissions that could be permitted by the use of these ERCs as offsets would be 3998 TPY at a maximum rate of 583 g/s or 2.31 tons/hr (the rate used in the attainment modeling). These are the only ERCs available for use in the area. As required under 25 Pa. Code section 127.206(f), the ERCs expire for use as offsets ten years from shutdown date or five years from shutdown if the emission reductions are utilized in an applicability determination ("netting" analysis). Again, after redesignation to attainment, a PSD evaluation would require emission limits sufficient to ensure continued attainment and protection of any applicable PSD increments.

Reliant Energy ERCs = 3998 tons/yr @ 4620 lbs/hr

United Refining—total emissions = 3946 tons/year @ 903 lbs/hr

Maximum total emissions = 7944 tons/yr @ 5523 lbs/hr

B. Attainment Emissions Inventory

The proposed plan explains that emission levels from the attainment demonstration were used as the 2003 base year emissions, and that this data,

along with the control measures factors was also used to estimate SO_2 emissions in 2015.

C. Permanent and Enforceable Control Measures

The proposed plan describes the permanent and enforceable adopted control measures that are in effect that will prevent emissions growth. Pennsylvania has submitted and EPA has approved all of the required enforceable measures applicable to this area. The NSR requirements applicable in SO_2 nonattainment areas will remain in effect until the effective date of the redesignation of the area to attainment.

1. Permit Limits on Existing Sources

a. United Refining—The emissions listed for United Refining are the maximum allowable emissions contained in the federally enforceable Title V permit and which were submitted as a part of the attainment demonstration SIP revision and are thereby permanent and federally enforceable control measures.

b. Reliant Energy Warren ERCs—The SO_2 ERCs generated by Reliant Energy, reduced by the 1.3 to 1 offset ratio, represent the maximum allowable emissions that could be permitted for any new source. The attainment demonstration emission rate used in the modeling translates into a rate limitation as required under the NSR regulations. The emissions that could be permitted with the use of the ERCs are preserved in the SIP inventory for the area and are required to be counted as actual emissions for planning purposes until the area is redesignated to attainment, after which the ERCs will become moot.

2. Prevention of Significant Deterioration and Minor NSR for New Sources

If a new major source or major modification is constructed after EPA redesignates the area to attainment, a PSD permit analysis and permit will limit emissions to a level below that needed to assure attainment of the NAAQS for SO_2 and protection of all applicable PSD increments. On or after the date the area is redesignated to attainment, any new stationary source constructed or existing stationary source that is modified would be subject to the Pennsylvania SIP-approved minor and major source permitting requirements, including those for PSD. Those requirements include provisions for implementation of BACT and the performance of ambient air quality analyses to ensure the protection of the NAAQS and PSD increments. Furthermore, even if the new stationary source constructed or existing stationary source that is being modified is defined as "minor" under the Pennsylvania SIP, if emissions or stack configurations differ from those of the modeled attainment demonstration such that it no longer can be relied upon as the technical basis to ensure protection of the NAAQS, the SIP provides the Commonwealth the authority to require the applicant to perform ambient air quality analyses to ensure the protection of the NAAQS.

D. Contingency Measures

The proposed maintenance plan states that emissions monitoring will continue throughout the term of the maintenance plan. The Commonwealth will also continue to operate the air monitoring network in accordance with 40 CFR part 58, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA. The Commonwealth will track the attainment status of the NAAQS for SO_2 in the Warren County area by reviewing air quality and emissions data during the maintenance period. If an exceedance of the NAAQS for SO_2 occurs, the Commonwealth will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation and enforce any SIP or permit limit that is violated. In the event that all sources are found to be in compliance with applicable SIP and permit emission limits, the Commonwealth shall perform the necessary analysis to determine the cause(s) of the exceedance, and determine what additional control measures are necessary to impose on the area's stationary sources to continue to maintain attainment of the NAAQS. The Commonwealth shall inform any affected stationary source(s) of SO_2 of the potential need for additional control measures. If there is a violation of the NAAQS for SO_2, the Commonwealth shall, within six months of the violation, issue a permit(s) imposing additional control measures on those stationary sources and requiring compliance with those additional control measures no later than 18 months from the date of the recorded violation. The additional control measures will be submitted to EPA for approval and incorporation into the SIP.

V. Proposed Action

EPA is proposing to approve the Commonwealth of Pennsylvania's March 15, 2004 request that the Warren County SO_2 nonattainment areas, consisting of Conewango Township, Pleasant Township, Glade Township, and the City of Warren in Warren County, Pennsylvania be redesignated to attainment of the NAAQS for SO_2 because all requirements for approval have been satisfied. EPA is also proposing to approve the associated maintenance plan for these areas submitted by the Commonwealth, as required under section 175A of the CAA, as a revision to the Pennsylvania SIP. Because these nonattainment areas have satisfied all of the requirements for redesignation to attainment, the adjacent areas of Mead Township and Clarendon Borough in Warren County, currently designated as unclassifiable for SO_2, are also eligible to be redesignated to attainment. Therefore, EPA is also proposing to approve the Commonwealth of Pennsylvania's request that Mead Township and Clarendon Borough in Warren County be redesignated from unclassifiable to attainment of the NAAQS for SO_2.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its SIP. If the proposed revision is substantively changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantive changes are made to the currently proposed SIP revision, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

This rule, proposing to approve the redesignation of the Warren County SO_2 nonattainment areas to attainment, and to approve the associated maintenance plan, and to change the status of Mead Township and Clarendon Borough in Warren County from unclassifiable to attainment, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: April 1, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–8097 Filed 4–8–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–51; FCC 04–46]

Amendment of the Commission's Rules Regarding the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes revisions to the Commission's rules regarding the Emergency Alert System (EAS) and seeks comment on these proposed revisions to the Commission's rules, some of which were set forth in a petition for rulemaking filed by the Wireless Cable Association International, Inc. (WCA). The proposed revisions are intended to reduce burdens on EAS participants and improve the overall performance of the EAS.

DATES: Comments are due May 10, 2004, and reply comments are due May 24, 2004.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Bonnie Gay, Enforcement Bureau, Office of Homeland Security, at (202) 418–1228, or via the Internet at *bonnie.gay@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM),* in EB Docket No. 04–51, FCC 04–46, adopted March 4, 2004, and released March 12, 2004. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to EB Docket No. 04–51. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is EB Docket No. 04–51. Parties may also submit an electronic comment by Internet e-mail. To get filing instruction for e-mail comments, commenters should send an e-mail to *ecfshelp@fcc.gov*, and should include the following words in the regarding line of the message: "get form<your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail).

For hand deliveries, the Commission contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 2002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings

must be addressed to the Commission Secretary, Office of the Secretary, Federal Communications Commission.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. The Commission also strongly encourages that parties track the organization set forth in this *NPRM* in order to facilitate the Commission's internal review process.

Synopsis of the Notice of Proposed Rulemaking

1. In this *NPRM,* the Commission proposes revisions to part 11 of the Commission's rules regarding the EAS and seeks comment on these proposed revisions to part 11 of the Commission's rules, some of which were set forth in a petition for rulemaking filed by the WCA.

2. The Commission's EAS rules are designed to ensure that individual TV viewers, including viewers of wireless cable TV systems, receive all EAS alerts, no matter what channel the viewer may be watching. Section 11.11(a) of the Commission's rules requires wireless cable providers serving more than 5,000 subscribers to install special equipment sufficient to display the audio and video EAS message on every channel in their systems. Systems serving fewer than 5,000 subscribers are required to display the audio and video EAS message only on one channel, but must provide a video interrupt and an audio alert on every channel. Under the WCA proposal, a wireless cable operator would install EAS equipment for one channel only at the headend of the system. In the event of an EAS alert, the system would automatically force each subscriber set-top box to tune to the channel carrying the EAS alert. WCA argues that "force tuning" would allow wireless cable providers to deliver EAS alerts to all viewers in a more technologically and economically efficient manner. As proposed, the rule revision would provide the greatest economic benefit to systems with over 5,000 subscribers by obviating the need for special signal conversion for all channels, but also would provide a benefit to those systems with fewer than 5,000 subscribers.

3. Under WCA's proposed software based "force tune" solution, the video/audio output of the EAS equipment will be connected to an encoder for a channel selected to carry EAS messages. Upon EAS activation, the EAS equipment will send a trigger signal to the system headend which then forwards the trigger to the subscriber's set-top box as part of the control data included in every multiplexed program stream transmitted by the system. The software in the set-top box will recognize the trigger and "force tune" the set-top box to the selected EAS message channel. WCA represents that a reasonable cost estimate for this alternative is $46,000.00 or about 2% of the cost of channel by channel implementation.

4. The Commission proposes to amend part 11 of the rules to allow wireless cable television systems to comply with the Commission's EAS requirements by installing only one set of EAS equipment at the headend of their systems. Under this proposed rule revision, wireless cable television providers will be able to "force tune" all channels in their systems to the channel carrying an EAS alert. Small wireless cable systems serving fewer than 5,000 subscribers currently are required to display audio and video EAS messages on one channel, and video interrupt and audio alert on all other channels. The Commission seeks comment on how the proposal would affect these systems.

5. The Commission also proposes to expand WCA's proposal to allow "force tuning" for systems with more than 5,000 subscribers, which currently are required to place EAS messages on all program channels. The Commission seeks comment on whether it should adopt "force tuning" for all wireless cable systems, or whether "force tuning" should be limited to systems of a certain size and, if so, what size would be appropriate. The Commission seeks comment on the pros and cons of "force tuning," as proposed by WCA and the *NPRM,* and whether there is another approach which is a better alternative, technically and/or financially, than the one proposed, or whether compliance with the current requirements is most appropriate. Information is requested from system operators, industry associations, equipment suppliers and all other interested parties.

6. The Commission notes that it requires certification of EAS equipment in accordance with the procedures set forth in subpart J of part 2 of the Commission's rules. It appears that the WCA proposal is software driven, that it requires the use of approved EAS equipment at the headend, and that no changes to approved equipment are required. For these reasons, the Commission does not propose new authorization standards for equipment used to implement the proposed "force tune" procedure. Rather, the Commission proposes to require that the operators of systems using this "force tune" technology develop procedures to ensure that the process works and that subscriber equipment, such as set-top boxes, does, in fact, tune to the EAS alert/message channel when instructed to do so by the headend equipment. The Commission seeks comment on its proposal not to require new equipment authorization. The Commission also requests recommendations as to procedures to be followed by operators to ensure that required EAS notices are delivered to subscribers. Finally, the Commission invites comment on what effects the proposals and issues addressed in this *NPRM* may have on consumer equipment.

Initial Regulatory Flexibility Analysis

7. With respect to this *NPRM,* an Initial Regulatory Flexibility Analysis (IRFA) is contained in Appendix A. As required by section 603 of the Regulatory Flexibility Act (RFA), the Commission has prepared an IRFA of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* specified in paragraph 9 of the *NPRM.* The Commission will send a copy of the *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

8. In this *NPRM,* the Commission solicits comment on a petition for rulemaking filed by the Wireless Cable Association International, Inc. requesting revisions to the part 11 rules governing the Emergency Alert System ("EAS"). The requested revisions are intended to reduce burdens on EAS participants and improve the overall performance of the EAS.

Legal Basis

9. Authority for the actions proposed in this *NPRM* may be found in sections 1, 4(i), 4(j), 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

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

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The arts, entertainment, and recreations sector had 96,497 small firms.

11. *Multipoint Distribution Systems.* The proposed rules would apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees.

12. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, Cable and Other Subscription Programming, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, the Commission finds that there are approximately 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules proposed herein.

13. *Instructional Television Fixed Service.* The proposed rules would also apply to Instructional Television Fixed Service (ITFS) facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, the Commission does not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, the Commission tentatively concludes that at least 1,932 ITFS are small businesses and may be affected by the proposed rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

14. There are no reporting or recordkeeping requirements proposed in this *NPRM.* The proposals set forth in the *NPRM* are, for the most part, intended to enhance the performance of the EAS while reducing the burden on digital wireless cable systems. The Commission emphasizes that participation in state and local EAS activities remains voluntary and that it does not wish to impose additional costs or burdens on entities that choose not to participate in state and local area EAS plans. The *NPRM* seeks comment on proposed implementation of new equipment capabilities and new policies with regard to method of delivery of EAS messages to viewers for all EAS alerts, national, state and local. These proposals would lessen cost and operational burdens on digital wireless cable system EAS participants.

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

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

16. In setting forth the proposals contained in this *NPRM,* the Commission has attempted to minimize the burdens on all entities. The Commission seeks comment on the impact of its proposals on small entities and on any possible alternatives that would minimize the impact on small entities.

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

17. None.

Ex Parte Rules

18. These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

Ordering Clauses

19. Accordingly, pursuant to the authority contained in sections 1, 4(i), 4(j), and 4(o), 303(r), 624(g) and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 154(o), 303(r), 544(g) and 606, notice is hereby given of the proposals described in this *Notice of Proposed Rulemaking.*

20. The Reference Information Center, Consumer and Governmental Affairs Bureau, shall send a copy of this *Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–8049 Filed 4–8–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–780; MB Docket No. 04–79, RM–10873, RM–10874; MB Docket No. 04–80, RM–10875; MB Docket No. 04–81, RM–10876; MB Docket No. 04–82, RM–10877; MB Docket No. 04–83, RM–10878; MB Docket No. 04–84, RM–10879; MB Docket No. 04–85, RM–10880, RM–10881; MB Docket No. 04–86, RM–10882, RM–10883, RM–10884, RM–10885; MB Docket No. 04–87, RM–10886; MB Docket No. 04–88, RM–10887; MB Docket No. 04–89, RM–10888; MB Docket No. 04–90, RM–10889; MB Docket No. 04–91, RM–10890, RM–10891; MB Docket No. 04–92, RM–10892, RM–10893; MB Docket No. 04–93, RM–10894; MB Docket No. 04–94, RM–10895; MB Docket No. 04–95, RM–10896]

Radio Broadcasting Services; Anniston, AL, Asbury, IA, Horseshoe Beach, FL, Keosauqua, IA, Live Oak, FL, Moville, IA, Olathe, CO, Patagonia, AZ, Pima, AZ, Rudd, IA, St. Florian, AL, Somerton, AZ, Sutter Creek, CA, Weiser, ID, Westley, CA, and Willcox, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth seventeen reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Anniston, Alabama, Asbury, Iowa, Horseshoe Beach, Florida, Keosauqua, Iowa, Live Oak, Florida, Moville, Iowa, Olathe, Colorado, Patagonia, Arizona, Pima, Arizona, Rudd, Iowa, St. Florian, Alabama, Somerton, Arizona, Sutter Creek, California, Weiser, Idaho, Westley, California, and Willcox, Arizona. The Audio Division requests comment on petitions filed by American Family Association and Jimmy Jarrell Communications Foundations Inc. proposing the reservation of vacant Channel 261C3 at Anniston, Alabama for noncommercial use. The reference coordinates for Channel *261C3 at Anniston are 33–40–51 North Latitude and 85–48–56 West Longitude. The Audio Division requests comment on petitions filed by American Family Association proposing the reservation of vacant Channel 274A at St. Florian, Alabama and vacant Channel 268A at Rudd, Iowa for noncommercial use. The reference coordinates for Channel *274A at St. Florian are 34–57–8 North Latitude and 87–39–30 West Longitude. The reference coordinates for Channel *268A at Rudd are 43–7–34 North Latitude and 92–54–20 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before May 17, 2004, and reply comments on or before June 1, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Patrick J. Vaughn, General Counsel, American Family Association, Post Office Drawer 2440, Tupelo, MS 38803; David A. O'Connor, Esq., c/o Calvary Chapel of Tucson, Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006; William J. Byrnes, Esq., c/o Radio Bilingue, Inc. 7921 Old Falls Road, McLean, VA 22102; David A. O'Connor, Esq., c/o Calvary Chapel of Amador County, Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006; Mark Follett, Starboard Media Foundation, Inc., 2300 Riverside Drive, Green Bay, WI 54301; Theodore D. Frank, Esq. and Maureen R. Jeffreys, Esq., c/o KQED, Inc., Arnold & Porter, 555 12th Street, NW., Washington, DC 20004–1206; Harry C. Martin, Esq. and Lee G. Petro, Esq., c/o Calvary Chapel of Montrose, Fletcher, Heald & Hildreth PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209; Harry C. Martin, Esq. and Lee G. Petro, Esq., c/o Living Proof, Inc, Fletcher, Heald & Hildreth PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209; Todd D. Gray, Esq., Margaret L. Miller, Esq. and Barry S. Persh, Esq., c/o University of Iowa, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, Suite 800, Washington, DC 20036; and Jeff Abrams, Chairman, Boise Community Radio Project, Inc., 4370 Kitsap Way, Boise, Idaho 83703.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–79, 04–80, 04–81, 04–82, 04–83, 04–84, 04–85, 04–86, 04–87, 04–88, 04–89, 04–90, 04–91, 04–92, 04–93, 04–94, and 04–95 adopted March 24, 2004 and released March 26, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Audio Division requests comment on petitions filed by Calvary Chapel of Tucson proposing the reservation of vacant Channel 251A at Patagonia, Arizona, vacant Channel 296A at Pima, Arizona, and vacant Channel 223C3 at Willcox, Arizona for noncommercial use. The reference coordinates for Channel *251A at Patagonia are 31–33–05 North Latitude and 110–44–45 West Longitude. The reference coordinates for Channel *296A at Pima are 32–53–36 North Latitude and 109–49–42 West Longitude. The reference coordinates for Channel *223C3 at Willcox are 32–16–22 North Latitude and 109–48–14 West Longitude.

The Audio Division requests comment on a petition filed by Radio Bilingue, Inc. proposing the reservation of vacant Channel 260C3 at Somerton, Arizona for noncommercial use. The reference coordinates for Channel *260C3 at Somerton are 32–35–0 North Latitude and 114–35–5 West Longitude.

The Audio Division requests comment on petitions filed by American Family Association and Calvary Chapel of Amador County proposing the reservation of vacant Channel 298A at Sutter Creek, California for noncommercial use. The reference coordinates for Channel *298A at Sutter Creek are 38–23–30 North Latitude and 120–48–06 West Longitude.

The Audio Division requests comment on petitions filed by American Family Association, Radio Bilingue, Inc., Starboard Media Foundation, Inc., and KQED, Inc. proposing the reservation of vacant Channel 238A at Westley, California for noncommercial use. The reference coordinates for Channel *238A at Westley are 37–28–13 North Latitude and 121–11–14 West Longitude.

The Audio Division requests comment on petitions filed by Calvary Chapel of Montrose proposing the reservation of vacant Channel 270C2 and Channel 293C at Olathe, Colorado for noncommercial use. The reference coordinates for Channel *270C2 at Olathe are 38–36–18 North Latitude and 107–58–54 West Longitude. The reference coordinates for Channel *293C at Olathe are 38–37–3 North Latitude and 107–58–33 West Longitude.

The Audio Division requests comment on a petition filed by Living Proof, Inc. proposing the reservation of vacant Channel 234C3 at Horseshoe Beach, Florida for noncommercial use. The reference coordinates for Channel

*234C3 at Horseshoe Beach are 29–26–28 North Latitude and 83–17–15 West Longitude.

The Audio Division requests comment on petitions filed by Starboard Media Foundation, Inc. proposing the reservation of vacant Channel 259A at Live Oak, Florida and vacant Channel 246A at Moville, Iowa for noncommercial use. The reference coordinates for Channel *259A at Live Oak are 30–13–12 North Latitude and 82–54–0 West Longitude. The reference coordinates for Channel *246A at Moville are 42–29–11 North Latitude and 96–0–36 West Longitude.

The Audio Division requests comment on petitions filed by American Family Association and Starboard Media Foundation, Inc. proposing the reservation of vacant Channel 238A at Asbury, Iowa for noncommercial use. The reference coordinates for Channel *238A at Asbury are 42–30–18 North Latitude and 90–40–46 West Longitude.

The Audio Division requests comment on petitions filed by University of Iowa and Starboard Media Foundation, Inc. proposing the reservation of vacant Channel 271C3 at Keosauqua, Iowa for noncommercial use. The reference coordinates for Channel *271C3 at Keosauqua are 40–43–48 North Latitude and 91–57–48 West Longitude.

The Audio Division requests comment on a petition filed by Boise Community Radio Project, Inc. proposing the reservation of vacant Channel 280C1 at Weiser, Idaho for noncommercial use. The reference coordinates for Channel *280C1 at Weiser are 44–20–39 North Latitude and 117–7–14 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel *261C3 and by removing Channel 261C3 at Anniston; and by adding Channel *274A and by removing Channel 274A at Saint Florian.

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel *251A and by removing Channel 251A at Patagonia; by adding Channel *296A and by removing Channel 296A at Pima; by adding Channel *260C3 and by removing Channel 260C3 at Somerton; and by adding Channel *223C3 and by removing Channel 223C3 at Willcox.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel *298A and by removing Channel 298A at Sutter Creek; and by adding Channel *238A and by removing Channel 238A at Westley.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel *270C2 and by removing Channel 270C2 at Olathe; and by adding Channel *293C and by removing Channel 293C at Olathe.

6. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel *234C3 and by removing Channel 234C3 at Horseshoe Beach; and by adding Channel *259A and by removing Channel 259A at Live Oak.

7. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel *280C1 and by removing Channel 280C1 at Weiser.

8. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Channel *238A and by removing Channel 238A at Asbury; by adding Channel *271C3 and by removing Channel 271C3 at Keosauqua; by adding Channel *246A and by removing Channel 246A at Moville; and by adding Channel *268A and by removing Channel 268A at Rudd.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 04–8048 Filed 4–8–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: NHTSA–2004–17217]

RIN 2127–AJ29

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 2001 calendar year before October 25, 2004. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than June 8, 2004. Insurers listed in the appendices are required to submit reports on or before October 25, 2004.

ADDRESSES: You may submit comments, identified by docket number: NHTSA–2004–17217 and/or RIN number: 2127–AJ29, by any of the following methods:

- Federal eRulemaking Protal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://dms.dot.gov* Follow the instructions for submitting comments on the Docket Management System.
- Fax: (202) 493–2251
- Mail: Dockets, 400 7th Street, SW., Washington, DC 20590
- Hand Delivery/Courier: Plaza Level Room 401, (PL #401), of Nassif Building, 400 7th Street, SW., Washington, DC 20590. Telephone: 1–800–647–5527

You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail to *rproctor@nhtsa.dot.gov*. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best,[1] publishes in its *State/Line Report* each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, *i.e.*, any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). Under 49 U.S.C. 33112(e)(1) and (2), NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and 33112(e)(1) and (2),

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in appendix A, NHTSA included, in appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates appendix C based primarily on information from *Automotive Fleet Magazine* and *Business Travel News*.[2]

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 14, 2003 (68 FR 59132). Based on the 2001 calendar year data market shares from A.M. Best, we propose to make no changes to appendix A.

Each of the 19 insurers listed in appendix A are required to file a report before October 25, 2004, setting forth the information required by part 544 for each State in which it did business in the 2001 calendar year. As long as these 19 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 2001, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 2001 calendar year data for market shares from A.M. Best, we propose to make no changes to appendix B.

The eight insurers listed in appendix B are required to report on their calendar year 2001 activities in every State where they had a 10 percent or greater market share.

These reports must be filed by October 25, 2004, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent

[1] A.M. Best Company is a well-recognized source of insurance company ratings and information. 49 U.S.C. 33112(i) authorizes NHTSA to consult with public and private organizations as necessary.

[2] Automotive Fleet Magazine and Business Travel News are publications that provide information on the size of fleets and market share of rental and leasing companies.

October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in *Automotive Fleet Magazine* and *Business Travel News* for 2000, NHTSA proposes to add ANC Rental Corporation and remove Associates Leasing Inc., and the Consolidated Service Corporation. Each of the 17 companies (including franchisees and licensees) listed in appendix C would be required to file reports for calendar year 2001 no later than October 25, 2004, and set forth the information required by part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2003 (*see* http://www.bls.gov/cpi), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $92,000 for any insurer added to appendix A, $36,800 for any insurer added to appendix B, and $10,616.80 for any insurer added to appendix C. If this proposed rule is made final, for appendix A, the agency would propose no change; for appendix B, the agency would propose no change; and for appendix C, the agency would propose to add one company and remove two companies. The agency estimates that the net effect of this proposal, if made final, would be a cost decrease to insurers, as a group of approximately $10,616.80.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through July 31, 2006, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail:* Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: rproctor@nhtsa.dot.gov*; or

c. *Fax:* (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our

stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above, in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was "NHTSA 1998–1234," you would type "1234." After typing the docket number, click on "search."

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The "pdf" versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend appendices A, B, and C of 49 CFR part 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (*e.g.*, the report due by October 25, 2004 will contain the required information for the 2001 calendar year).

* * * * *

3. Appendix A to part 544 is proposed to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group
CNA Insurance Companies
Erie Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group
Nationwide Group
Progressive Group
SAFECO Insurance Companies
State Farm Group
Travelers/Citigroup Company
USAA Group
Farmers Insurance Group

4. Appendix B to part 544 is proposed to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 is proposed to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ANC Rental Corporation [3]
ARI (Automotive Resources International)
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services/PHH Arval
Ryder TRS
Thrifty Rental Car System Inc.
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

[3] Indicates a newly listed company, which must file a report beginning with the report due October 25, 2004.

Issued on: April 1, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–7794 Filed 4–8–04; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 69, No. 69
Friday, April 9, 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

Forest Service

Allegheny National Forest, Bradford Ranger District; Environmental Impact Statement: Willow Creek All-Terrain Vehicle (ATV) Trail Expansion Project

AGENCY: Bradford Ranger District, Allegheny National Forest, Forest Service (USFS), Department of Agriculture (USDA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture (USDA) Forest Service, Allegheny National Forest (ANF), Bradford Ranger District is issuing this notice to advise the public that the agency intends to prepare an Environmental Impact Statement (EIS) for the proposed Willow Creek All-Terrain Vehicle (ATV) Trail Expansion Project (WCATEP). The proposed trail improvements and expansion would be located on the Bradford Ranger District of the ANF in northwestern Pennsylvania. Trail construction and associated activities are being considered and analyzed within a project area of approximately 18,163 acres located both the Willow Creek and Sugar Run Watersheds in Corydon Township within McKean County. The purpose of this proposed project is to implement management direction as outlined in the ANF Land and Resource Management Plan by addressing site-specific needs and opportunities to expand the forest's 108-mile existing ATV/OHM trail system. The proposed project is under consideration to respond to a fast growing recreation activity on the forest, the high use on the existing ATV/OHM trails system, and the demand for more ATV trail miles.

Description of the Proposed Action: The USDA Forest Service, ANF, Bradford Ranger District is proposing rehabilitation work on the existing 10.8-mile Willow Creek ATV/OHM Trail and development of approximately 44 miles of additional ATV trail within the Marshburg/Stickney Intensive Use Area (Management Areas 2.0, 3.0, and 6.1). The current trail system does not provide adequate trail riding opportunities for families seeking multiple day riding experiences with direct access camping. New trail development would focus on family oriented trail riding at the beginner/intermediate level. Camping opportunities would include seven designated dispersed sites with direct access to the trail system, plus the development of four staging areas. These areas would provide families with overnight camping, hardened parking areas, toilet facilities, and information kiosks. At project completion, there would be two trailhead facilities in the project area for day use parking. An existing trailhead in the north would be expanded, and a new trailhead facility would be constructed in the south. The following activities would be proposed in the project area:

- Reconstruct 10.8 miles of existing trail;
- Construct 44 miles of new trail;
- Utilize 0.6 miles of existing Allegheny Snowmobile Loop (ASL) for summer ATV season;
- Utilize 5.7 miles of existing gated Forest Road for summer ATV season;
- Develop two trailhead parking areas for day use (50 vehicles with trailers per trailhead);
- Develop four staging areas with overnight camping opportunities (5–10 acres each);
- Implement approximately 1,800 feet of joint use (ATV/motor vehicle) on Forest Roads 176, 173, and 435 to utilize existing stream crossings;
- Connect seven dispersed camping sites to the ATV trail system;
- Construction of .7 miles of new road from FR 176a to proposed staging areas off of FR 679.

Construction of this project is expected to occur during the construction seasons of 2006–2007, provided that funding is available.

Scoping Process: As advertised in *The Bradford Era (March 26, 2004),* the USDA Forest Service will host a public scoping meeting in Bradford, PA, on April 27, 2004, from 7 to 9 p.m., for the proposed Willow Creek ATV Trail Expansion Project. The meeting will be held at the University of Pittsburgh at Bradford (300 Campus Drive, Bradford, PA 16701) in the University Room, which is a fully accessible facility. The purpose of the public scoping meeting is to provide the opportunity for the public to participate in the National Environmental Policy Act (NEPA) process and for the USDA Forest Service to present the history of the proposed project and the proposed action; solicit information, concerns, and recommendations from the public; and begin an open dialogue with the public regarding this proposed project. For planning purposes, we ask that parties interested in speaking at the public scoping meeting notify the USDA Forest Service no later than 4 p.m. on April 26, 2004, by calling Mr. Mark Conn at the telephone number below. All remarks will be limited to a single 3- to 5-minute time frame. Comment cards also will be provided at the meeting to allow interested parties to submit written comments.

Interested parties also are invited to provide written comments on the proposed project via post or electronic mail. Written comments must be postmarked or received within 30 days beginning the day following publication of this notice. Comments should be sent to: Bradford Ranger District, 29 Forest Service Drive, Bradford, PA 16370. Telephone: (814) 362–4613; fax: (814) 362–2761.

Oral or hand-delivered comments are acceptable. Comments may be mailed electronically in a common digital format to our office at: *comments-eastern-alleghenybradford@fs.fed.us.* When commenting by e-mail, please list "Willow Creek EIS" on the subject line and include your name and mailing address.

Background Information: Demand for OHV trails is at an all time high across the United States. There are few legal riding areas in the eastern United States, even though demand for such opportunities is high. The ANF trail system is well known nationally with riders coming from as far away as Colorado, Florida, and Texas. However, the majority of users originate from the northeast and Mid-Atlantic States (Pennsylvania, Ohio, and New York). In Pennsylvania, there are (234) miles of trail on State Forest Land, 150 acres of

open riding (no trails) on U.S. Army Corps of Engineers land, and 108 miles on the ANF. Ohio offers (116) miles of ATV trail (Wayne National Forest). New York has no public ATV trails.

The ANF has offered OHV trails since the late 1970s. ATVs were developed in the 1980s and sales in Pennsylvania significantly increased with time (registered ATVs in Pennsylvania number approximately 180,000, unregistered exceeds approximately 485,000). Pennsylvania leads the eastern United States in ATV sales and ranks third nationally. Demand for more OHV trail miles on the forest is high.

ANF personnel have observed sharp increases in ATV riding over the last decade. The ANF Recreation Strategy (2002) identified ATV riding as the fastest growing recreation activity on the forest. The 1986 ANF Forest Plan lists a goal of 350 miles of summer motorized ATV/OHM trails by 2006. The current trail system totals 108 miles. There are five separate trails within four Intensive Use Areas (IUAs) throughout the forest. The Forest Plan limits designation of summer-motorized trails to the five IUAs, which encompass approximately 20 percent of the ANF's land base.

The USDA Forest Service identified the Marshburg/Stickney IUA as a priority for managing ATV recreational opportunities to meet the growing demand while assuring protection of natural resources. The existing 10.8-mile Willow Creek ATV Trail is located within this IUA. It is classified as "More Difficult," which is recommended for intermediate riders. The trail was not designed for riders of various skill levels and does not provide a full day riding opportunity. A contract trail assessment completed in 2000 by Trails Unlimited of Arcadia, California, determined that the Marshburg/Stickney IUA had the capability of providing a multiple mile trail system.

The proposed project would be a cooperative effort, made possible by a 2003 is being made possible through a multiple partnership grant agreement from the Pennsylvania Department of Conservation and Natural Resources to McLean County and administered by the U.S. Forest Service. Partners are looking forward to the expected economic development that this project should provide to the local communities.

FOR FURTHER INFORMATION CONTACT: For more information about the public scoping meeting or the proposed project in general, please visit our Web site (*http://www.fs.fed.us/r9/forests/allegheny*) or contact: Mr. Mark Conn, Forest Trails Planner/Coordinator, Allegheny National Forest, Warren, PA 16365, E-mail: *mwconn@fs.fed.us,* phone: (814) 723–5150.

Dated: March 31, 2004.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 04–7703 Filed 7–8–04; 8:45 am]

BILLING CODE 3416–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shady/Highbush Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Rescind notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, is issuing this notice to advise the public that we are rescinding an Environmental Impact Statement (EIS) for timber harvest in the Shady Highbush Timber Sale project area, Wrangell Ranger District, Tongass National Forest.

FOR FURTHER INFORMATION CONTACT: Chip Weber, District Ranger, or Randy Hojem, IDT Leader, Wrangell Ranger District, Tongass National Forest, P.O. Cox 51, Wrangell, AK 99929, telephone (907) 874–2323.

SUPPLEMENTARY INFORMATION: The Department of Agriculture, Forest Service, is rescinding the NOI to prepare an EIS for timber harvest in the Shady Highbush Timber Sale project area, Wrangell Ranger District, Tongass National Forest. The NOI was published on Friday, March 8, 2002, and can be found in the **Federal Register** vol. 67, no. 46, page 10661. The NOI is being rescinded because the Department of Agriculture, Forest Service, has substantially reduced the scope of the project, and in so doing, has determined that an environmental assessment will be prepared for the project.

RESPONSIBLE OFFICIAL: Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official.

Dated: March 22, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–8038 Filed 4–8–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) NRCS Representative Dave Rose, (5) Report from Monitoring Sub-Committee, (6) Doe Peak Project Proposal, (7) Report from The Reno Meeting, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on April 26, 2004, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by March 22, 2004 will have the opportunity to address the committee at those sessions.

Dated: April 5, 2004.

James F. Giachino,

Designated Federal Official.

[FR Doc. 04–8051 Filed 4–8–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

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

ACTION: Additions to Procurement List.

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

EFFECTIVE DATE: May 9, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 13, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 7191) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the government.
2. The action will result in authorizing small entities to furnish the products to the government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: Box, Shipping, Foam Cushioned:
8115–01–015–1312;
8115–01–015–1315;
8115–01–094–6520.
NPA: Tarrant County Association for the Blind, Fort Worth, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Dual Action Dish Wand with Brush and Refill:
M.R. 586 (Wand with Brush);
M.R. 587 (Refill).
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.
Product/NSN: Jumbo Butterfly Mop Refill: M.R. 1025.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, VA.

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

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–8079 Filed 4–8–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

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

ACTION: Proposed additions to and deletions from Procurement List.

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

Comments must be received on or before: May 9, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Air Force Physical Training Uniform, Jacket—50% of the Defense Supply Center Philadelphia's requirement.
8415–01–518–4594;
8415–01–518–4599;
8415–01–518–4600;
8415–01–518–4601;
8415–01–518–4603;
8415–01–518–4604;
8415–01–518–4605;
8415–01–518–4607;
8415–01–518–4608;
8415–01–518–4609;
8415–01–518–4610;
8415–01–518–4611;
8415–01–518–4612;
8415–01–518–4613;
8415–01–518–4615;
8415–01–518–4616;
8415–01–518–4617;
8415–01–518–4618;
8415–01–518–4619;
8415–01–518–4620;
8415–01–518–4621;
8415–01–518–4622;
8415–01–518–4623; and
8415–01–518–4647.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland at its facility in Salisbury, Maryland.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Air Force Physical Training Uniform, Pant—50% of the Defense Supply Center Philadelphia's requirement.
8415–01–518–4561;
8415–01–518–4562;
8415–01–518–4563;
8415–01–518–4564;
8415–01–518–4565;
8415–01–518–4566;
8415–01–518–4567;
8415–01–518–4568;
8415–01–518–4570;
8415–01–518–4571;
8415–01–518–4572;
8415–01–518–4573;
8415–01–518–4574;
8415–01–518–4575;
8415–01–518–4576;
8415–01–518–4577;
8415–01–518–4578;
8415–01–518–4579;
8415–01–518–4580;
8415–01–518–4581;
8415–01–518–4582;
8415–01–518–4583;
8415–01–518–4584; and
8415–01–518–4585.
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York.
NPA: El Paso Lighthouse for the Blind, El Paso, Texas.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina at its facility in Louisville, Kentucky.
NPA: Lions Services, Inc., Charlotte, North Carolina.
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

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

Services

Service Type/Location: Wheelchair Maintenance Veterans Affairs Medical Center, Louisville, Kentucky.
NPA: New Vision Enterprises, Inc., Louisville, Kentucky.
Contract Activity: VA Medical Center, Louisville, Kentucky.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 04–8080 Filed 4–8–04; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on April 27, 2004, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda:

1. Introductions and opening remarks by the Chairman.
2. Discussion on process for implementation of new regulations.
3. Discussion on proposed study by the Office of Strategic Industries and Economic Security.
4. Update on Bureau of Industry and Security initiatives.
5. Report from working group on lasers.
6. Report on American Council for Thermal Imaging activities.
7. Presentation of papers and comments by the public.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, BIS/EAMS: 1099D, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 6, 2004.

Lee Ann Carpenter,
Committee Liaison Officer.
[FR Doc. 04–8062 Filed 4–8–04; 8:45 am]
BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta From Italy

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

ACTION: Notice of final results of new shipper antidumping duty review.

SUMMARY: On January 5, 2004, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on certain pasta from Italy. The review covers Pastificio Carmine Russo S.p.A. ("Russo"). The period of review ("POR") is July 1, 2002, through December 31, 2002. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section "Final Results of Review" below. For our final results, we have found that during the POR, Russo sold subject merchandise at less than normal value ("NV").

EFFECTIVE DATE: April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2004, the Department of Commerce ("the Department") published the preliminary results of the new shipper review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy*, 69 FR 319 (January 5,

2004) ("*Preliminary Results*"). We invited parties to comment on our *Preliminary Results*. We received case briefs on February 4, 2004, from petitioners [1] and Russo. On February 9, 2004, Russo submitted a rebuttal brief. As a result of delayed service of Russo's case brief, petitioners requested, and the Department granted, an extension until February 13, 2004, to submit their rebuttal brief. See February 10, 2004, Memorandum to the File from the Team, regarding Extension of Time Limit for Rebuttal Brief for Petitioners which is on file in the central records unit ("CRU"), room B–099 of the main Commerce building.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton, Senior Analyst, Office of AD/CVD Enforcement V, to Richard Moreland, Deputy Assistant Secretary, "Scope Ruling Concerning Pasta from Italy," dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla America, Inc., and Barilla Alimentare, S.p.A. ("Barilla"), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, Office of AD/CVD Enforcement VI, to Richard Moreland, Deputy Assistant Secretary, "Final Scope Ruling," dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A."s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this new shipper review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted-average margin percentage exists for Russo for the period July 1, 2002, through December 31, 2002:

Manufacturer/exporter	Margin (percent)
Russo	10.05

Assessment

The Department shall determine, and the U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we

[1] New World Pasta Company, Dakota Growers Pasta Company, A. Zerega Sons, Inc., and American Italian Pasta Company.

have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total calculated entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above *de minimis*, we will instruct the CBP to assess antidumping duties on that importer's entries of subject merchandise. We will direct the CBP to assess the resulting percentage margins against the entered value of the subject merchandise on each of that importer's entries during the POR. The Department will issue appropriate assessment instructions to CBP within 15 days of publication of the final results of this new shipper review.

Cash Deposit Requirements

The cash deposit rate for Russo will be the rate shown above, and will be effective upon publication of this notice of final results of the new shipper review, for all shipments of pasta produced by Russo entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of antidumping duties increased by the amount of antidumping and/or countervailing duties reimbursed.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

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

Dated: April 1, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

Appendix I—List of Comments and Issues in the Decision Memorandum

List of Comments

Comment 1: Clerical Error Corrections
Comment 2: Unreconciled Difference
Comment 3: Depreciation on Idled Assets
Comment 4: Financial Expense Ratio
Comment 5: Direct Material Yield Losses
Comment 6: Parent Company's G&A Expenses

[FR Doc. 04–8119 Filed 4–8–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of Qingdao Kingking Applied Chemistry Ltd., Co. (Kingking) under the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) for the period August 1, 2002 through July 31, 2003. This rescission is based on the withdrawal of requests for review by the National Candle Association (petitioner) and Kingking.

EFFECTIVE DATE: April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Sebastian Wright (202) 482–0162 and (202) 482–5254, respectively, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 68 FR 45218 (August 1, 2003), and in accordance with section 751(a)(1)(B) of the Act and § 351.213(b) of the Department's regulations, the Department received a timely request by the petitioner to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 23 companies, including Kingking. Kingking also requested a review.

On September 30, 2003, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003) (*Initiation Notice*), initiating on all 23 candle companies for which a review was requested. On December 24, 2003, the Department received a withdrawal from the petitioner of its request for a review of all 23 companies for which it had requested a review. Consequently, on January 27, 2004, the Department rescinded the review, in part, for 21 of the 23 companies; the Department did not rescind the review with respect to Dongguan Fay Candle Co., Ltd. (Fay Candle) or Kingking since these companies had each requested its own review as well. *See Petroleum Wax Candles from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review*, 69 FR 6258 (February 10, 2004). On January 26, 2004, Fay Candle withdrew its request for a review. On March 3, 2004, the Department rescinded the review, in part, for Fay Candle. *See Petroleum Wax candles from the People's Republic of China, Rescission, in Part, of Antidumping Duty Administrative Review*, 69 FR 12302 (March 16, 2004). In a letter dated February 26, 2004, and received by the Department on March 2, 2004, Kingking then withdrew its request for a review.

Rescission of Administrative Review

Pursuant to § 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." The petitioner's request for the withdrawal of the review with respect to Kingking was received within the 90-day period as specified in § 351.213(d)(1). Kingking's request for withdrawal was received after the end of this period. However, the Department is authorized to extend this deadline if it decides that doing so is reasonable. *See* § 351.213(d)(1). Although Kingking submitted its withdrawal request more than 90 days after the initiation publication date, the Department has decided that it is reasonable to extend

the deadline and accept the request. The petitioner and Kingking were the only parties to request this review, and the review has not progressed to a point where it would be unreasonable to allow parties to withdraw their requests for review. *See e.g., Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review,* 68 FR 16764 (April 7, 2003). Additionally, we conclude that this withdrawal does not constitute an "abuse" of our procedures. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27317 (May 19, 1997).

Therefore, we are rescinding this administrative review with respect to Kingking for the period August 1, 2002 to July 31, 2003. Because all of the parties who requested reviews for this review period have now withdrawn their requests for review, the Department with this notice has now rescinded the review with respect to all of the companies on which it initiated an administrative review for the period August 1, 2002 through July 31, 2003.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for Kingking at the cash deposit rate in effect on the date of entry for entries during the period August 1, 2002 through July 31, 2003.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under § 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 351.305(a) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with § 351.213(d)(4) of the Department's regulations and sections 751(a)(1) and 777(I)(1) of the Tariff Act of 1930, as amended.

Dated: March 31, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–8118 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–825]

Stainless Steel Sheet and Strip in Coils from Germany; Notice of Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Stainless steel sheet and strip in coils from Germany; Notice of amended final results of antidumping duty administrative review.

EFFECTIVE DATES: April 9, 2004.

SUMMARY: On February 10, 2004, the Department of Commerce (the Department) published the final results for its review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period July 1, 2001, through June 30, 2002. *See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Germany, (Final Results)* 69 FR 6262 (February 10, 2004). We are amending our final results to correct a ministerial error identified by the Department.

FOR FURTHER INFORMATION CONTACT: Patricia Tran or Robert James, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at 202–482–1121 or 202–482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this administrative review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. This subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. This subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and

[1] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

certified at the time of entry to be used in the manufacture of razor blades. See chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is more commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[3]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strength as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[6]

Amendment of Final Results

On February 10, 2004, the Department of Commerce (the Department) published its final results for its review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period of July 1, 2001 through June 30, 2002. *See Notice of Final Results of Antidumping Duty Administrative: Stainless Steel Sheet and Strip in Coils from Germany, (Final Results)* 69 FR 6262 (February 10, 2004).

The Department is amending the *Final Results* to correct the calculation of the assessment rates for TKN's affiliated U.S. importers. TKN reported the total extended entry value for the variable ENTVALU, instead of a per-unit value. The U.S. program utilized ENTVALU and QTYU to calculate the importer-specific assessment rate. Because ENTVALU reflected the extended entry value, multiplying

[2] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[3] "Gilphy 36" is a trademark of Imphy, S.A.

[4] "Durphynox 17" is a trademark of Imphy, S.A.

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

ENTVALU by QTYU grossly overstated the total entered value for the POR, thus distorting the importer-specific assessment rates. The Department has corrected the ministerial error and revised the assessment rate. the weighted-average dumping margin remains the same. For a detailed explanation, *see* Memorandum to the File from Patricia Tran through Robert James, and U.S. margin program log and output, dated March 3, 2004.

The Department released disclosure materials on March 4, 2004 to interested parties. On March 9, 2004, petitioners submitted comments stating they concurred with the Department's revision. Respondent did not submit any comments.

Therefore, we are amending the *Final Results* to the reflect the correction of the ministerial error described above.

We are issuing and publishing these amended final results and notice in accordance with section 751(a)(1) of the Tariff Act.

Dated: April 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–8120 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032404A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of final determination and discussion of underlying biological analysis.

SUMMARY: NMFS has evaluated the joint resource management plan (RMP) for artificial propagation, research, monitoring, and evaluation of Ozette Lake sockeye salmon provided by the Makah Tribe and, as resource co-manager, the Washington Department of Fish and Wildlife (WDFW), pursuant to the protective regulations promulgated for Ozette Lake sockeye salmon under the Endangered Species Act (ESA). The RMP specifies implementation of artificial propagation, research, monitoring, and evaluation measures that potentially affect listed Ozette Lake sockeye salmon. This document serves to notify the public that NMFS, by delegated authority from the Secretary of Commerce, has determined pursuant to the ESA 4(d) Tribal Rule and the government-to-government processes therein that implementing and enforcing the RMP will not appreciably reduce the likelihood of survival and recovery of the Ozette Lake sockeye salmon Evolutionarily Significant Unit (ESU).

DATES: The final determination on the take limit was made on July 17, 2003.

ADDRESSES: Salmon Recovery Division, National Marine Fisheries Service, 525 N.E. Oregon St., Suite 510, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Tim Tynan at phone number: (360) 753–9579, or e-mail: *tim.tynan@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to the Ozette Lake sockeye salmon (*Oncorhynchus nerka*) Evolutionarily Significant Unit (ESU).

Electronic Access: The full texts of NMFS' determination, and the final Evaluation are available on the Internet at http://www.nwr.noaa.gov/

Background

The Makah Tribe and, as co-managers of the fisheries resource with the Tribe, Washington Department of Fish and Wildlife (WDFW) (Co-managers), provided a joint Resource Management Plan (RMP) for artificial propagation and associated research, monitoring and evaluation actions that will affect listed Ozette Lake sockeye salmon. The joint RMP was prepared and submitted to NOAA Fisheries by the co-managers as a framework through which the tribal and the state jurisdiction will jointly manage sockeye salmon artificial propagation, research, monitoring, and evaluation activities while meeting requirements specified under the Endangered Species Act (ESA). The RMP guides co-manager activities proposed to increase the number of naturally spawning sockeye salmon in Ozette Lake tributaries, and to collect scientific information regarding factors limiting the productivity of listed Ozette Lake sockeye salmon, including the potential effects of hatchery sockeye salmon production. On August 1, 2002, NMFS published notice in the **Federal Register** on its ESA 4(d) Rule evaluation and recommended determination of how the Ozette Lake sockeye salmon RMP addressed the criteria in § 223.203 (b)(5) of the ESA 4 (d) rule of the RMP (67 FR 49905). In response to public requests, on October 4, 2002, NMFS published an additional notice in the **Federal Register** extending the public review and comment period on the ESA 4(d) Rule evaluation and recommended determination regarding the RMP (67 FR 62229).

As required by § 223.203 (b)(6) of the ESA 4 (d) rule, NMFS must determine pursuant to 50 CFR 223.209 and pursuant to the government-to-government processes therein whether the RMP for Ozette Lake sockeye salmon would appreciably reduce the likelihood of survival and recovery of the Ozette Lake sockeye salmon ESU. NMFS must take comments on how the RMP addresses the criteria in § 223.203 (b)(5) in making that determination.

Discussion of the Biological Analysis Underlying the Determination

Implementation of the artificial propagation actions proposed in the RMP is likely to benefit the abundance, productivity, spatial structure, and diversity of Ozette Lake sockeye salmon. Measures based on the best available science are applied in the artificial propagation portion of the RMP to ensure that the program is implemented in a manner that is adequately protective of the listed sockeye salmon ESU. The primary purpose of the proposed hatchery program is the creation of self-sustaining sockeye salmon populations in Ozette Lake tributaries where past sockeye salmon spawning and production may have occurred, and where kokanee (land-locked *O. nerka*) populations are very small. If successful, the tributary stocking program will extend the range of Ozette Lake sockeye salmon within critical habitat for the listed ESU, potentially increasing natural-origin sockeye salmon abundance, the diversity of sockeye salmon life history traits and behavior, and possibly the morphological and genetic characteristics of sockeye salmon included in the ESU. The hatchery program will rely on indigenous stock-origin sockeye salmon adults returning to Ozette Lake tributaries, and extant lake spawning aggregations will not be collected for use as hatchery broodstock. Annual collection of up to 200 sockeye salmon adults from Umbrella Creek will lead to the production of approximately 80,000 unfed and fed sockeye fry for release into Umbrella Creek and approximately 133,000 unfed and fed sockeye fry into Big River. Applying an estimated fry to returning adult survival rate of 0.6% from the RMP to the total fry releases at the two locations, beginning in 2004, 480 adult sockeye may return to Umbrella Creek and 798 adults may return to Big River each year as a direct result of tributary hatchery program juvenile sockeye releases. Additional natural-origin adult fish produced by hatchery program-origin fish that spawn naturally in the

tributaries will return concurrently with the direct hatchery-origin adult sockeye.

The program's 12–year, or three–sockeye salmon generations per release site, duration is intended to address the concern that repeated enhancement of the same population segment might result in a decrease in effective population size of the target population. It also limits the length of time natural-origin sockeye salmon are exposed to potentially deleterious selective effects of hatchery conditions to a few generations, minimizing the likelihood for divergence between hatchery and natural-origin fish within the supplemented stock. Limitation of fish rearing in the hatchery to the fry life stage minimizes the degree of human intervention in the natural life cycle, which also acts to decrease the risk of inadvertent hatchery selection effects.

Actions resulting in removal of listed sockeye salmon adults from the natural environment for artificial propagation are confined to the tributary broodstock collection program (listed NOR tributary-origin fish), and a study addressing beach-spawned egg and fry survival. The actual numbers of adults returning each year to the Ozette Lake sockeye salmon ESU will be substantially higher than total numbers proposed for take through these actions. The tributary broodstock program is focused on hatchery-origin sockeye salmon returns, and will not lead to the take of adult fish from the core, listed lake spawning population. Monitoring programs are implemented to ensure that injury and mortality rates for adult sockeye salmon collected as broodstock are minimized, and that egg-to-release survival rates for sockeye progeny brought into the hatchery are maximized. Proposed listed sockeye salmon removals from the spawning beaches for research purposes will be very low relative to total annual returns to the lake, and unlikely to impair population survival and recovery.

Research, monitoring, and evaluation activities included in the RMP have not been identified as factors for decline of the Ozette Lake sockeye salmon ESU, and are generally considered an essential part of salmon recovery efforts. For these programs, the co-managers worked with NMFS and cooperating agencies to develop projects that will benefit the conservation and recovery of the listed species. The projects will provide information that will enhance the ability to make more effective and responsible decisions to aid listed sockeye salmon. The resulting data will enhance knowledge about Ozette Lake sockeye salmon life history, specific biological requirements, genetic make-up, migration timing, responses to anthropogenic impacts, and survival in various parts of the ESU's range. This information will also benefit scientific understanding of sockeye salmon productivity in Ozette Lake, and of factors limiting sockeye abundance and productivity. The results of the research are essential for making determinations regarding listed sockeye salmon recovery needs. The RMP also includes provisions for annual reports. Annual reports will assess compliance with performance standards established through the RMP. Reporting and inclusion of new information derived from RMP research, monitoring, and evaluation activities provides assurance that performance standards will be achieved in future seasons. NMFS' evaluation is available on the Salmon Recovery Division web site (see Electronic Access, under the heading, **SUPPLEMENTARY INFORMATION**).

Summary of Comments Received in Response to the Proposed Evaluation and Pending Determination

NMFS published notice of its proposed evaluation and pending determination on the RMP for public review and comment on August 1, 2002 (67 FR 49905), and again on October 4, 2002 (67 FR 62229). During the 45 days that the documents were available for public comment, two organizations and one private citizen submitted comments to NMFS. Several comments were addressed in NMFS' final Evaluation and Recommended Determination document, but no substantive changes were required to the RMP. Generally, public comments on both documents concerned clarification of aspects of the analyses, and did not represent objections to the proposed action. The major topics raised involved the relationship between the tributary sockeye salmon populations that are the target of the propagation programs and the ESA-listed beach-spawning populations, and the potential future application of fisheries in the action area. As summarized above, the RMP considered in the NMFS evaluation document does not propose hatchery supplementation of the beach-spawning sockeye salmon population, nor the initiation of any fisheries. Any future proposals regarding these actions will necessitate reinitiation of evaluation and determination processes by NMFS to determine compliance with ESA protective provisions. A detailed summary of the comments and NMFS' responses is also available on the Salmon Recovery Division website. Based on its evaluation and recommended determination and taking into account the public comments, NMFS issued its final determination on the Ozette Lake sockeye salmon RMP.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to actions undertaken in compliance with a RMP developed jointly by the State of Washington and the Tribes and determined by NMFS to be in accordance with the salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000).

Dated: March 30, 2004.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–8113 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040104B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Limited Access; Scoping Meetings

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); notice of scoping meetings; and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) intends to prepare a DSEIS that describes and analyzes management alternatives associated with limiting access in the king mackerel fishery. The purpose of this notice is to solicit public comments on the scope of issues to be addressed in the DSEIS, which will be submitted to NMFS for filing with the Environmental Protection Agency (EPA)

for publication of a Notice of Availability for public comment.

DATES: Written comments must be received by the Council by 5 p.m. on May 7, 2004 (See **ADDRESSES**). A series of scoping meetings will be held in April 2004. See **SUPPLEMENTARY INFORMATION** for specific dates, location and times.

ADDRESSES: Written comments on the scope of the DSEIS should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407- 4699; telephone: 843–571–4366 or toll free 1–866–SAFMC–10; FAX 843–769–4520; email: *mackerelcomments@safmc.net.*

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free 1–866–SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: King mackerel in the South Atlantic are managed jointly with the Gulf of Mexico Fishery Management Council under the Fishery Management Plan for Coastal Migratory Pelagic Resources (Mackerel FMP). The Mid-Atlantic Fishery Management Council cooperates with the South Atlantic Council in developing management measures in the Atlantic. The king mackerel fishery currently operates under a moratorium on the issuance of new commercial vessel permits. The moratorium on new king mackerel permits was established by Amendment 8 to the Mackerel FMP in March 1998 (63 FR 10561; March 4, 1998) and was extended with the implementation of Amendment 12 to the Mackerel FMP (65 FR 52955; August 31, 2000). It is scheduled to expire on October 15, 2005.

The Council intends to develop a DSEIS that describes and analyzes management alternatives to limit entry in the king mackerel fishery. Those alternatives include, but are not limited to the following: (1) A "no action" alternative that would allow the moratorium to expire; (2) an extension of the current moratorium for a designated time frame; or (3) The establishment of some form of license limitation system, including individual fishing quotas. If a license limitation system is chosen, the Council may also consider alternatives for different classes of licenses, initial qualification, initial allocations by license classes, transferability, and appeals regarding eligibility. Also included in the scoping document are alternatives for possible changes to the fishing year for Atlantic group king and Spanish mackerel.

In accordance with NOAA Administrative Order 216–6, Section 5.02(c), the Council has developed this preliminary range of alternatives as a means to initiate discussion for scoping purposes only. This may not represent the full range of alternatives that eventually will be evaluated by the Council. Copies of the scoping document will be available at the meetings and are available prior to the meetings from the Council office (see **ADDRESSES**).

Time and Location for Scoping Meetings

Mackerel scoping will be held at the following dates and locations. All meetings are scheduled to begin at 6:00 PM.

1. Tuesday, April 20, 2004, North Carolina Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954; telephone: 252–473–3494;

2. Wednesday, April 21, 2004, Blockade Runner Beach Resort, 530 Causeway Drive, Wrightsville Beach, NC 28480; telephone: 910–256–0125;

3. Thursday, April 22, 2004, Holiday Inn West on the Waterway, 101 Outlet Boulevard, Myrtle Beach, SC 29579; telephone: 843–236–1000;

4. Monday, April 26, 2004, Hyatt Regency Savannah, Two West Bay Street, Savannah, GA 31401; telephone: 912–238–1234;

5. Tuesday, April 27, 2004, Holiday Inn SunSpree Resort, 1617 North First Street, Jacksonville Beach, FL 32250; telephone: 904- 249–9071;

6. Wednesday, April 28, 2004, Radisson Beach Resort, North Hutchinson Island, 2600 North A1A, Fort Pierce, FL 34949; telephone: 772–465–5544; and

7. Thursday, April 29, 2004, Holiday Inn Key Largo, 99701 Overseas Highway, Key Largo, FL 33037; telephone: 305–451–2121.

In addition, the Mid-Atlantic Council will hold a scoping meeting during its May 4–6, 2004, meeting at the Crown Plaza Meadowlands, 2 Harmon Plaza, Secaucus, NJ 07094; telephone: 202 210–7231. The Mid-Atlantic Council will include the exact time of the scoping meeting in its **Federal Register** notice for the Council meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 15, 2004.

Dated: April 6, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–8116 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033104E]

Marine Mammals; File No. 1009–1640

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Jerome Siegel, Neurobiology Research 151A3, 16111 Plummer St., VA GLAHS-Sepulveda, North Hills, CA 91343, has been issued a permit to import tissue samples from bottlenose dolphins (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), common dolphins (*Delphinus delphis*), beluga whales (*Delphinapterus leucas*), and Northern fur seals (*Callorhinus ursinus*) from Russia, and to analyze tissue samples from captive killer whales (*Orcinus orca*) and bottlenose dolphins in the U.S. for purposes of scientific research.

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

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

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

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Sarah Wilkin, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 29, 2002, notice was published in the **Federal Register** (67 FR 65956) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the regulations governing the taking,

importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes importation and receipt of specimens in the U.S. from the above-named marine mammal species for purposes of sleep research on marine mammals. The permit is issued for five years duration.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: March 31, 2004.

Stephen L. Leathery,

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

[FR Doc. 04–8117 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032604A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for two scientific research permits (1482, 1484) and three permit modifications (1156, 1341, 1345).

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit applications and three applications to modify existing permits relating to Pacific salmon and steelhead. All of the proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on May 10, 2004.

ADDRESSES: Written comments on the applications or modification requests should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435 or by e-mail to *resapps2.nwr@NOAA.gov.*

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph: 503–231–2005, Fax: 503–230–5435, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available at *http://www.nwr.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SR).

Chinook salmon (*O. tshawytscha*): endangered naturally-produced and artificially propagated upper Columbia River (UCR); threatened naturally-produced and artificially propagated SR spring/summer (spr/sum); threatened SR fall; threatened lower Columbia River (LCR); threatened naturally produced and artificially-propagated Puget Sound (PS); threatened upper Willamette River (UWR).

Chum salmon (*O. keta*): threatened Columbia River (CR); threatened Hood Canal summer (HC).

Steelhead (*O. mykiss*): threatened SR; threatened middle Columbia River (MCR); endangered UCR; threatened LCR; threatened UWR.

Coho Salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits/modifications based on findings that such permits and modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Applications Received

Permit 1156 - Modification 2

The U.S. Environmental Protection Agency (EPA) is seeking to modify Permit 1156 to increase the number of SR steelhead, SR spr/sum chinook salmon, SR fall chinook salmon, and PS chinook salmon they are currently allowed to take. They also want to be allowed to take adult and juvenile SR sockeye salmon and juvenile HC chum salmon. Under the current permit they are allowed to annually capture, handle, and release adult and juvenile, naturally-produced and artificially-propagated UCR spring chinook salmon; adult and juvenile, naturally-produced and artificially-propagated UCR steelhead; adult and juvenile LCR chinook salmon; adult and juvenile SR steelhead; adult and juvenile MCR steelhead; adult and juvenile LCR steelhead; juvenile, naturally-produced and artificially-propagated PS chinook salmon; adult and juvenile UWR steelhead; adult and juvenile UWR chinook salmon; adult and juvenile SR spr/sum chinook salmon; adult and juvenile SR fall chinook salmon; and adult and juvenile SONCC coho salmon. The research takes place in randomly selected river systems in Oregon, Idaho, and Washington. The research was originally conducted under Permit 1156, which was in place for 5 years (63 FR 45799) with two modifications (65 FR 20954, 66 FR 56658, 67 FR 34909, 67 FR 39960, 67 FR 66129); it expired on December.31, 2002. A new 5–year permit was granted for the research in 2003, and the EPA is seeking to modify that permit to change the take allotment and add two cooperators. Nonetheless, the modification reflects a continuation of ongoing research. The research is designed to assess species status and trends in selected river systems. The EPA intends to continue conducting annual surveys for fish, macroinvertebrates, algae, and microbial assemblages as well as physical and chemical habitat conditions. The research will benefit listed fish by providing baseline information about water quality in the study areas and will also support enforcement of the Clean Water act in those river systems where listed fish are present. The EPA proposes to capture the fish (using backpack or raft electrofishing), sample them for biological information, and release them. The EPA does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities. Dynamac Corporation, Washington Department of Energy, and Idaho Department of Environmental Quality will be cooperators in the research. The EPA requests that cooperators' biologists be authorized as agents of the EPA in conducting the research.

Permit 1341 - Modification 1

The Shoshone-Bannock (Sho-Ban) Tribes are seeking to modify Permit 1341 to increase the number of SR spr/sum chinook salmon they are currently allowed to capture. Under the current permit, they annually capture, handle, and release SR sockeye salmon and SR spring/summer chinook salmon in Pettit and Alturas Lakes in Idaho State. The purpose of the research is to generate data on chinook and sockeye overwinter survival, downstream migration survival, and downstream migration timing. This data, in turn, is used to evaluate various release strategies and calculate smolt-to-adult return rates. The research benefits the fish by helping managers run the Pettit and Alturas Lakes sockeye salmon reintroduction program in the most efficient way possible; the program is considered key to the survival and recovery of SR sockeye salmon. Under the permit, juvenile SR sockeye salmon and spr/sum chinook salmon are collected in rotary screw traps and weirs. The fish are then sampled for biological information and released (or they receive a passive integrated transponder tag and are released). In addition, to determine trap efficiencies, a portion of the juvenile SR sockeye salmon captured are marked with a small cut on the caudal fin, released upstream of the traps, captured at the traps a second time, inspected for the caudal fin mark, and released. The Sho-Ban tribes do not intend to kill any of the fish being captured, but a small number may die as an unintended result of the research activities.

Permit 1345 - Modification 1

The Washington Department of Fish and Wildlife (WDFW) is seeking to modify Permit 1345 to increase the number of adult and juvenile PS chinook salmon they are currently allowed to capture every year. Under the current permit, they are allowed to annually take UCR steelhead and chinook salmon, PS chinook salmon, SR steelhead, SR spr/sum chinook, and MCR steelhead during the course of Washington State's annual warmwater fish stock assessment surveys. The purpose of these surveys is to gather data on the state's fish species and thereby allow the WDFW to manage them in the best way possible. The research will benefit listed fish by giving managers more information on their abundance, distribution, and health. The surveys are usually conducted using boat electrofishing equipment in the backwater sloughs, oxbow lakes, and ponds associated with major river systems throughout Washington State. During the research, any captured juvenile listed salmonids are sampled for biological information and immediately released. If adult listed salmonids are seen, the electrofishing equipment is turned off and they are allowed to escape. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1482

The WDFW is requesting a 5–year research permit to annually capture, handle, and release juvenile and adult UCR steelhead and spring chinook salmon (natural and artificially propagated). The research will take place in the Methow, Wenatchee, Entiat, and mainstem Columbia Rivers in Washington State. The research would be conducted during the course of two studies: Salmonid Stock Assessment and Habitat Utilization, and Habitat Evaluation, Research, and Monitoring. The purpose of the research is to collect biological data on the salmonid populations in question, determine where salmonids are present in the areas listed above, genetically identify individual salmonid stocks, and examine habitat condition where the salmon and steelhead are found. The research will benefit the fish by helping managers (a) understand the potential effects of proposed land use practices, (b) determine appropriate regulatory and habitat protection measures in the areas where land use actions are planned, (c) project the impacts of potential hydraulic projects, and (d) evaluate the effectiveness of local forest practices in terms of their ability to protect listed salmonids. The WDFW proposes to capture the fish using electrofishing equipment, seines, and barbless hook-and-line angling gear. Once captured, the fish will be variously tissue sampled, measured, marked, allowed to recover, and released. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1484

The Washington Department of Natural Resources (WDNR) is requesting a 5–year research permit to annually handle juvenile PS chinook salmon, LCR chinook salmon, LCR steelhead, and CR chum salmon in WDNR-managed forest lands in the State of Washington. The purpose of the research is to conduct surveys to correctly identify stream types. By correctly identifying stream types, the WDNR could potentially benefit listed species by increasing the size of riparian zones and thus protecting the type of habitat needed for healthy salmonid populations. The WDNR proposes to capture the fish (using backpack electrofishing), identify, and release them. The WDNR does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: March 30,2004.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–8114 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provision of the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

April 6, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (The Committee).

ACTION: Designation.

SUMMARY: The Committee has determined that certain viscose rayon filament yarns, of the specifications detailed below, classified in subheading 5403.41.0000 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA. The Committee hereby designates that apparel articles, made from fabrics formed in the U.S. or an eligible beneficiary ATPDEA country containing such yarns, that are sewn or otherwise assembled in an eligible ATPDEA beneficiary country, shall be eligible to enter free of quotas and duties under HTSUS subheading 9821.11.10,

provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee notes that this designation under the ATPDEA renders apparel articles containing such yarn, sewn or otherwise assembled in an eligible ATPDEA beneficiary country, as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

Specifications:

1. Viscose Filament Yam
   DTEX 166/40 Bright Centrifugal
   Tenacity, cN/tex, min. - 142.0
   Elongation at rupture, % - 18.0 - 24.0
   Elongation at rupture variation factory, % max. - 8.1
   Twist direction - S

2. Viscose Filament Yam
   DTEX 330/60 Bright Centrifugal
   Tenacity, cN/tex, min. - 142.0
   Elongation at rupture, % - 18.0 - 24.0
   Elongation at rupture variation factor, % max. - 8.1
   Twist direction - S

EFFECTIVE DATE: April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

Background

The commercial availability provision of the ATPDEA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, the Committee was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA.

On November 24, 2003, the Committee received a request alleging that certain viscose rayon filament yarns, of the specifications detailed above, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the ATPDEA. It requested that apparel articles containing such yarns be eligible for preferential treatment under the ATPDEA. On December 1, 2003, the Committee requested public comment on the petition (68 FR 67153). On December 17, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On December 17, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (collectively, the Congressional Committees). On January 5, 2004, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the yarn set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On January 28, 2004, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the ATPDEA.

The Committee hereby designates apparel articles, made from fabrics formed in the U.S. or an eligible beneficiary ATPDEA country containing such yarns, that are sewn or otherwise assembled in an eligible ATPDEA beneficiary country, shall be eligible to enter free of quotas and duties under HTSUS subheading 9821.11.10, provided all other yarns are U.S. formed and all other fabrics are U.S. formed from yarns wholly formed in the United States. The Committee notes that this designation under the ATPDEA renders apparel articles sewn or otherwise assembled in an eligible ATPDEA beneficiary country containing such yarn as eligible for quota-free and duty-free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

An "eligible ATPDEA beneficiary country" means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S. note 1 to subchapter XXI of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–8209 Filed 4–8–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense (Health Affairs) DoD.

ACTION: Notice.

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

DATES: Written comments and recommendations on the continuing information collection should be sent to Lt Col Michael Hartzell, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection, please write to the above address or contact LTC Michael Hartzell, by calling 703 681–3636 or e-mail at *michael.hartzell@tma.osd.mil.*

Title, Associated Form and OMB Number: Viability of TRICARE Standard

Survey; OMB Number 0720–[To Be Determined].

Needs and Uses: Data will be collected from civilian providers to determine how many are/are not accepting TRICARE Standard patients and to ascertain the reasons. Information will not be used to assess the scope and nature of any problems related to beneficiary access to care.

Affected Public: Individuals.

Annual Burden Hours: 2340.

Number of Respondents: 9,360.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Annual.

SUPPLEMENTARY INFORMATION: The Health Program Analysis and Evaluation Directorate (HPAE) under authority of the Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity will undertake an evaluation of the Department of Defense's TRICARE Standard healthcare option. HPAE will collect and analyze data that are necessary to meet the requirements outlined in Section 723 of the National Defense Authorization Act for Fiscal Year 2004. Activities include the collection and analysis of data obtained from civilian physicians (M.D.s & D.O.s) within U.S. TRICARE market areas. Specifically, telephone surveys of civilian providers will be conducted in the TRICARE market areas to determine how many healthcare providers are accepting new patients under TRICARE Standard in each market area. The telephone surveys will be conducted in at least 20 TRICARE market areas in the United States each fiscal year until all market areas in the United States have been surveyed. In prioritizing the order in which these market areas will be surveyed, representatives of TRICARE beneficiaries will be consulted in identifying locations with historical evidence of access-to-care problems under TRICARE Standard. These areas will receive priority in surveying. Information will be collected telephonically to determine the number of healthcare providers that currently accept TRICARE Standard beneficiaries as patients under TRICARE Standard in each market area. Providers will also be asked if they would accept TRICARE Standard beneficiaries as new patients under TRICARE Standard. Analyses and reports will include all legislative requirements.

Dated: April 5, 2004.

L.M. Bynum,

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

[FR Doc. 04–8029 Filed 4–8–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received May 10, 2004.

Title and OMB Number: Defense Reutilization & Marketing Service Customer.

Type of Request: Reinstatement.

Number of Respondents: 400.

Responses per Respondent: 1.

Annual Responses: 400.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 100.

Needs and Uses: The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store. Respondents are customers who obtain, or visit a store to obtain, surplus or excess property. The customer comment care is a means for customers to rate and comment on DRMS Facilities, Receipt/Store/Issue services, Reutilization/Transfer/Donation services, Demil services, Environmental services, Usable property sales, and scrap sales. The completed card is an agent for service improvement and determining whether there is a systemic problem.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Managenment Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: April 5, 2004.

L.M. Bynum,

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

[FR Doc. 04–8030 Filed 4–8–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

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

DATES: Consideration will be given to all comments received by June 8, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Military Pay Operations Directorate, Defense Finance and Accounting Service, DFAS–PMAC/CL, ATTN: Gail Halfacre, 1240 East 9th Street, Room 2381, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Gail Halfacre, (216) 204–3624.

Title, Associated Form, and OMB Number: Dependency Statements; Parent (DD Form 137–3), Child Born Out of Wedlock (DD Form 137–4), Incapacitated Child Over Age 21 (DD Form 137–5), Full Time Student 21–22

Years of Age (DD Form 137–6, and Ward of a Court (DD Form 137–7); OMB Number 0730–0014.

Needs and Uses: This information collection is used to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or Uniformed Services Identification and Privilege Card. Information regarding a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court is provided by the military member or by another individual who may be a member of the public. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed child's monthly expenses. DoDFMR 7000.14, Vol. 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreases the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or households.

Annual Burden Hours: 24,300 hours.

Number of Respondents: 19,440.

Responses Per Respondent: 1.

Average Burden Per Response: 1.25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When military members apply for benefits, they must complete the form which corresponds to the particular dependent situation (a parent, a child born out-of-wedlock, an incapacitated child over age 21, a student age 21–22, or a ward of a court). While members usually complete these forms, they can also be completed by others considered members of the public. Dependency claim examiners use the information from these forms to determine the degree of benefits. Without this collection of information, proof of an entitlement to a benefit would not exist. The requirement to complete these forms helps alleviate the opportunity for fraud, waste, and abuse of dependent benefits.

Dated: April 5, 2004.

L.M. Bynum,

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

[FR Doc. 04–8031 Filed 4–8–02; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–04 with attached transmittal, policy justification, and Sensitivity of Technology.

April 5, 2004.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 MAR 2004
In reply refer to:
I-03/016790

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-04 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $1.776 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Transmittal No. 04-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .597 billion
Other	$1.179 billion
TOTAL	$1.776 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two Ultra High Frequency long range early warning radars (surveillance radars, part of the Surveillance Radar Program (SRP)), communications equipment, facilities to house and maintain the radars, missile warning centers, power, spare/repair parts, support equipment, program management, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related program support elements.**

(iv) **Military Department: Air Force (DAH)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 30 MAR 2004**

*** as defined in Section 47(6) of the Arms Export Control Act.**

Transmittal No. 04-04

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – Ultra High Frequency Long Range Early Warning Radars

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of two Ultra High Frequency long range early warning radars (surveillance radars, part of the Surveillance Radar Program (SRP)), communications equipment, facilities to house and maintain the radars, missile warning centers, power, spare/repair parts, support equipment, program management, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related program support elements. The estimated cost is $1.776 billion.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

This proposed SRP sale will contribute to the foreign policy and national security of the United States by helping to improve the security and defensive capability of the recipient, which has been and continues to be an important force for economic progress in the Far East.

The recipient requires these radars to proceed with improvements to its planned command and control infrastructure. Theses radars will assist recipient to identify and detect ballistic missiles, cruise missiles, and air breathing target threats.

The SRP will possess the inherent performance growth capability to address potential threats well into the future. The planned acquisition will include all necessary connectivity to incorporate early warning capability into recipient's Command, Control, Communications, Computers, Intelligence Surveillance and Reconnaissance architecture. SRP is a key integrating element of recipient's air and missile defense architecture.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

A U.S. prime contractor will be chosen after a competitive source selection conducted following LOA acceptance. Raytheon Company of Tewksbury, Massachusetts and Lockheed Martin Corporation of Syracuse, New York are the two largest companies expected to bid. The winning prime contractor will likely be required to propose offset agreements in conjunction with this proposed sale. Further details on offsets are not available at this time.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The surveillance radars will fill gaps in recipient's threat warning capability. The Surveillance Radar Program (SRP) radars will provide a robust early warning capability and will detect, acquire, and track theater ballistic missile, air breathing targets, and cruise missile threats. Further, the SRP systems will be able to operate in severe clutter and jamming environments, amid high levels of background radio frequency interference.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–8032 Filed 4–8–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Supplemental Draft Environmental Impact Statement (SDEIS) for the Proposed Addition of Maneuver Training Land at Fort Irwin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Army has prepared an SDEIS to address potential environmental effects associated with proposed Army training in the study areas in Fort Irwin. Expansion of the maneuver area of the National Training Center (NTC) provides an extended battle space (land and air space) environment for training Army brigade-sized ground and air units according to the Army's training and combat operations.

DATES: The comment period will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Requests for copies of the SDEIS may be made to: NTC Land Expansion Program, Attention: AFZJ–SP, Strategic Planning Division, P.O. 105004, Fort Irwin, California 93210, by calling (760) 380–6339, or by facsimile at (760) 380–2294.

FOR FURTHER INFORMATION CONTACT: Contact Mrs. Priscilla Kernek or Mr. Allen Lute, AFZJ–SP Strategic Planning Division, P.O. 105004, Fort Irwin, CA 92311. Interested parties may also call (760) 380–6173.

SUPPLEMENTARY INFORMATION: The proposed project involves acquisition of approximately 110,000 new acres on the east and southwest sides of the existing NTC and the return to training use of approximately 22,000 acres in the south that are currently set aside for the desert tortoise critical habitat. While the proposed land expansion is less than the 274,167 acres identified in the 2003 Land Use Requirements Survey (LURS), it satisfies the most critical needs for additional maneuver land, while taking into account the Army's environmental stewardship responsibilities.

Submit electronic comments and data by sending electronic mail (e-mail) to *allen.lute@irwin.army.mil.* Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Fort Irwin also accepts data on disks in Microsoft Word 2000 file format.

Individuals who wish to review the SDEIS may examine a copy at a public library in any of the following locations: Barstow, Victorville, San Bernardino, Torrance, Los Angeles, Sacramento, and San Diego, CA.

The dates and locations of the public hearings are: April 27, Barstow City Council Chambers, 220 E. Mountain View, Barstow; April 29, Victorville City Council Chambers, 14343 Civic Drive, Victorville; May 5, San Diego City Admin Building, 22 C Street, 12th Floor, San Diego; May 6, Torrance City Hall, 3031 Torrance Boulevard, Torrance; May 12, San Bernardino City Council Chambers, 300 N. D Street, San Bernardino; and May 18, 2004, Barstow City Council Chambers, 220 E. Mountain View, Barstow. The date, time, and location of the public hearings will also be announced in the local newspapers in Barstow, Victorville, San Bernardino, Torrance, and San Diego, CA.

Dated: April 2, 2004.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health), OASA(I&E).

[FR Doc. 04–8052 Filed 4–8–04; 8:45 am]

BILLING CODE 3710–08–M

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. 4,990,291: Method of Making Lipid Tubules by a Cooling Process, Navy Case No. 71,049.//U.S. Patent No. 5,089,742: Electron Beam Source Formed with Biologically Derived Tubule Materials, Navy Case No. 72,385.//U.S. Patent No. 5,378,962: Method and Apparatus for a High Resolution, Flat Panel Cathodoluminescent Display Device, Navy Case No. 71,559.//U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652.//U.S. Patent No. 5,705,191: Sustained Delivery of Active Compounds from Tubules, with Rational Control, Navy Case No. 77,037.//U.S. Patent No. 5,744,337: Internal Gelation Method for Forming Multilayer Microspheres and Product Thereof, Navy Case No. 76,286.//U.S. Patent No. 6,013,206: Process for the Formation of High Aspect Ratio Lipid Microtubules, Navy Case No. 79,038.// U.S. Patent No. 6,401,816: Efficient Method for Subsurface Treatments, Including Squeeze Treatments, Navy Case No. 79,803.//Navy Case No. 77,839: Improved Method for High Efficiency Production of Lipid Microtubules with Rational Control of the Number of Bilayers in the Wall.//Navy Case No. 82,611: Multi-Geometry/Multi-Layered Controlled Delivery System for Hydrophobic Agents and Method of Information.//Navy Case No. 84,828: Waterbone Coating Containing Microcylindrical Conductors and Non-Conductive Space Filling Latex Polymers.

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: April 2, 2004.

S.A. Hughes,

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

[FR Doc. 04–8059 Filed 4–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Broadley James Corp.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Broadley James Corporation a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent No. 5,234,594 entitled "Nanochannel Filter", in the field of pH and other potentiometric sensors using reference electrodes.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 26, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

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

Dated: April 2, 2004.

S.A. Hughes,

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

[FR Doc. 04–8058 Filed 4–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Lumitox Gulf L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Lumitox Gulf L.C. a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,130,251 issued July 14, 1992, entitled "Stress-resistant Bioluminescent Dinoflagellates", and U.S. Patent No. 5,192,667 issued March 9, 1993, entitled "Method for Evaluating Anti-fouling Paints" in the fields of environmental monitoring for testing for toxicity, medicine for testing chemicals used to treat medical patients and homeland security for testing for the presence of toxic substances in response to the threat of terrorism and U.S. Patent 5,143,545 issued September 1, 1992, entitled "Antifouling Marine Coatings" in the field of protection of iron and steel structures in marine environments.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 26, 2004.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

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

Dated: April 2, 2004.

S.A. Hughes,

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

[FR Doc. 04–8057 Filed 4–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Pyrotech International, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Pyrotech International, Inc. a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described below:

Patent application 10/662,169 (Navy Case 84,321), filed September 11, 2003, entitled "Fast Response Fluid Control Valve/Nozzle."

DATES: Anyone wishing to object to the grant of this license has fifteen days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div, Code OCF, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130.

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

Dated: April 2, 2004.

S.A. Hughes,

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

[FR Doc. 04–8060 Filed 4–8–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Indian Education; Professional Development; Notice Extending the Closing Date for Transmittal of Applications for New Discretionary Program Awards

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299B

SUMMARY: On March 2, 2004, a notice was published in the **Federal Register** (69 FR 9813) that established a closing date of April 5 for transmittal of applications for new program awards for the fiscal year 2004 Professional Development program. The purpose of this notice is to extend the closing date for transmittal of applications for this program, due to unavoidable delays in the technical services contracting process for the panel review of the applications. The closing date for the transmittal of applications for this program is extended to May 3, 2004.

DATES: The new deadline date for the transmittal of applications is May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria Vasques, Office of Indian Education, 400 Maryland Avenue, SW., room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774 or by e-mail: *oiegrants@ed.gov.*

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Authority: 20 U.S.C. 7442.

Dated: April 5, 2004.

Victoria Vasques,

Deputy Under Secretary for Indian Education.

[FR Doc. 04–8068 Filed 4–8–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Indian Education; Demonstration Grants for Indian Children; Notice Extending the Closing Date for Transmittal of Applications for New Discretionary Program Awards

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

SUMMARY: On March 2, 2004, a notice was published in the **Federal Register** (69 FR 9817) that established a closing date of April 2 for transmittal of applications for new program awards for the fiscal year 2004 Demonstration Grants for Indian Children program. The purpose of this notice is to extend the closing date for transmittal of applications for this program, due to unavoidable delays in the technical services contracting process for the panel review of the applications. The closing date for the transmittal of applications is extended to May 3, 2004.

DATES: The new deadline date for the transmittal of applications is May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria Vasques, Office of Indian Education, 400 Maryland Avenue, SW., room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774 or by e-mail: *oiegrants@ed.gov.*

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Authority: 20 U.S.C. 7441.

Dated: April 5, 2004.

Victoria Vasques,

Deputy Under Secretary for Indian Education.

[FR Doc. 04–8069 Filed 4–8–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Native American Vocational and Technical Education Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed extension of project period and waiver.

SUMMARY: We propose to waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Native American Vocational and Technical Education Program (NAVTEP) in fiscal year (FY) 2000. We propose this waiver in order to be able to extend the project periods for 31 current grants awarded under the FY 2000 NAVTEP competition.

A waiver as proposed would mean that: (1) Current grants may be continued at least through FY 2005 (and possibly for subsequent years,

depending on the availability of appropriations for NAVTEP in FY 2005 and those years under the current statutory authority), instead of ending in FY 2004, and (2) we would not announce a new competition or make new awards in FY 2004.

We are requesting public comments on the proposed extension of project period and waiver.

DATES: We must receive your comments on or before May 10, 2004.

ADDRESSES: Address all comments about this proposed extension and waiver to U.S. Department of Education, Office of Vocational and Adult Education, Attn: Sharon A. Jones, 400 Maryland Avenue, SW., Washington, DC 20202–7242. If you prefer to send your comments through the Internet, use the following address: *sharon.jones@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones. Telephone (202) 245–7803.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice of proposed extension and waiver in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed extension and waiver. We are particularly interested in receiving comments on the potential impact the extension and waiver may have on the NAVTEP and on potential eligible applicants who could apply for awards under the NAVTEP.

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

During and after the comment period, you may inspect all public comments about this proposed extension and waiver in room 11108, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, 20004 between the hours of 8 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Background

On January 3, 2001 (66 FR 560), we issued a notice inviting applications for new awards under the NAVTEP. The notice: (a) Established a project period of up to 36 months and reiterated that funding for multi-year awards is dependent on a grantee meeting the requirements of 34 CFR 75.253 (Continuation of a multi-year project after the first budget period), (b) explained changes to the program, (c) described the evaluation and reporting requirements, and (d) established the Government Performance and Results Act (GPRA) indicators for the NAVTEP.

The Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins Act), which includes authorization for the NAVTEP, expired at the end of FY 2003 and was extended for one year under section 422 of the General Education Provisions Act (20 U.S.C. 1226a). With the uncertainties presented by the absence of authorizing legislation for the NAVTEP beyond 2004, it is not advisable to hold a competition in FY 2004 for projects that would then operate for just one year. We are generally reluctant to announce a competition under which eligible entities would be expected to proceed through the application preparation and submission process while lacking critical information about the future of the program, and do not think that it would be in the public interest to do so in this case.

Further, if we were to hold a competition in FY 2004 for grants to operate in FY 2005 using the FY 2003 appropriation, grantees would not have sufficient time to establish and operate effective projects. We think that multi-year projects are necessary for grantees to have ample time to operate high-quality certificate and degree-granting vocational and technical education programs under the NAVTEP and would result in a more efficient use of Federal funds.

We believe, therefore, that it is preferable and in the best interest of the NAVTEP for us to review requests for continuation awards from the 31 current FY 2000 grantees and extend currently funded projects, rather than hold a new competition in FY 2004. We believe that holding a new NAVTEP competition this year would create an unnecessary burden for current grantees since the 31 current grantees would have to undertake the effort and cost of submitting new applications for funding in FY 2004. Authorizing current grantees to request continuation awards would be a more appropriate and effective means for current NAVTEP grantees with projects already under way to continue their projects under this program and would also result in a more cost-effective use of Federal funds.

Education Department General Administrative Regulations (EDGAR) Requirement

In order to provide for continuation awards, we must waive the requirement in 34 CFR 75.261(c)(2), that establishes the conditions for extending a project period, including prohibiting the extension of a program's project period if it involves the obligation of additional Federal funds.

A waiver as proposed would mean that: (1) Current NAVTEP grantees would be authorized to apply for continuation awards in FY 2004 and could be continued at least through FY 2005 (and possibly for subsequent years, depending on the availability of appropriations for NAVTEP in FY 2005 and those years under the current statutory authority), instead of ending their current projects in FY 2004, (2) we would not announce a new competition or make new awards in FY 2004 or any years in which Congress appropriates funds under the current authority (3) the January 3, 2001, notice would govern projects we propose to extend under this notice, and (4) the approved applications submitted by the 31 current grantees in the 2001 competition would govern all continuation awards.

Continuation of the Current Grantees

With this proposed extension and waiver of § 75.261(c)(2) of EDGAR, we propose to extend the project periods of the 31 NAVTEP grantees that received grants under the FY 2000 competition for one year and for any additional years for which Congress appropriates funds under the current statutory authority.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, Grant Performance Reports submitted by grantees, and on the regulations in 34 CFR 75.253. Consistent with 34 CFR 75.253, we

would award continuation grants if we determine, based on information provided by each grantee, that each grantee is making substantial progress performing its NAVTEP grant activities. Under this proposed extension and waiver, (1) the project period for grantees could be extended to September 30, 2005, and (2) additional continuation awards could be made for any additional year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret the waiver as exempting current grantees from the account closing provisions of Public Law 101–510, or as extending the availability of FY 2000 funds awarded to the grantees. As a result of Public Law 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed extension and waiver and the activities required to support additional years of funding would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by this proposed extension and waiver are the FY 2000 grantees currently receiving Federal funds and the following entities that are eligible for an award under the NAVTEP:

(1) A federally recognized Indian tribe.

(2) A tribal organization.

(3) An Alaska Native entity.

(4) A Bureau-funded school (as defined in the January 3, 2001 (66 FR 560), notice inviting applications), except for a Bureau-funded school proposing to use its award to support secondary school vocational and technical education programs.

However, the proposed extension and waiver would not have a significant economic impact on these entities because the proposed extension and waiver and the activities required to support the additional years of funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed extension and waiver would impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard to continuation awards.

Instructions for Requesting a Continuation Award

Generally, in order to receive a continuation grant, a grantee must submit an annual program narrative that describes the activities it intends to carry out during the year of the continuation award. The activities must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's application approved under the FY 2000 competition. A grantee must also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.253(c)(2)). A grantee should request a continuation award at least 30 days before its current grant expires. A grantee may request a continuation award for any year for which Congress appropriates funds under the current statutory authority.

Amount of New Awards Under Continuation Grant

The actual amount of any continuation award depends on factors such as: (1) The grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether the unobligated funds made available are needed to complete activities that are planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3).)

Paperwork Reduction Act of 1995

This proposed extension and waiver does not contain any information collection requirements.

Intergovernmental Review

The NAVTEP is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether this proposed extension and waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

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Program Authority: 20 U.S.C. 2326(a) through (g).

(Catalog of Federal Domestic Assistance Number 84.101 Native American Vocational and Technical Education Program.)

Dated: April 6, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–8067 Filed 4–8–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–119]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

April 2, 2004.

Take notice that on March 30, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval negotiated rate agreements between CEGT and Tenaska Gas Storage, LLC, Oneok Energy Marketing and Trading Company, L.P., and Coral Energy Resources, L.P. CEGT has entered into agreements to provide park and loan service to these shippers under Rate Schedule PHS to be effective April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter

the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–789 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–625–001

Chandeleur Pipe Line Company; Notice of Motion to Place Tariff Sheets into Effect

April 2, 2004.

Take notice that on March 26, 2004 Chandeleur Pipe Line Company (Chandeleur), pursuant to 154.206 of the Commission's regulations, and the Commission's order issued October 31, 2003, and the terms of the settlement agreement filed with the Commission in the captioned docket on March 15, 2004, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Revised Fourteenth Rev. Sheet No. 5, to become effective April 1, 2004.

Chandeleur states that the purpose of the filing is to place into effect on April 1, 2004, the end of the suspension period in this proceeding, the rates which reflect the agreement of the parties in a settlement filed with the Commission on March 15, 2004. Chandeleur states that, should the Commission fail to approve the lower settlement rates, Chandeleur reserves the right to place the rates on Substitute Fourteenth Revised Sheet No. 5 into effect as such were accepted and suspended by Commission Orders dated October 31, 2004, and December 29, 2003.

Chandeleur notes that copies of the filing have been served upon all participants on the official service list and upon all jurisdictional customers and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–791 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–234–000]

East Tennessee Natural Gas Company; Notice of Cashout Report and Refund Plan

April 2, 2004.

Take notice that on March 29, 2004, East Tennessee Natural Gas Company (East Tennessee) tendered for filing its annual cashout report and refund plan for the November 2002 through October 2003 period in accordance with Rate Schedules LMS–MA and LMS–PA.

East Tennessee states that in accordance with its Rate Schedules LMS–MA and LMS–PA, upon the Commission's approval of the refund plan included in the filing, East Tennessee proposes to refund to its customers $341,554 resulting from cashout operations.

East Tennessee states that copies of the filing were mailed to all affected customers of East Tennessee and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Intervention and Protest Date: April 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–794 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–12–003]

Florida Gas Transmission Company; Notice of Motion To Place Suspended Rates and Tariff Sheets Into Effect

April 2, 2004.

Take notice that on March 31, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2004:

Substitute Sixty-Second Revised Sheet No. 8A
Substitute Fifty-Fourth Revised Sheet No. 8A.01
Substitute Fifty-Fourth Revised Sheet No. 8A.02
Substitute Second Revised Sheet No. 8A.03
Substitute Fifty-Seventh Revised Sheet No. 8B
Substitute Fiftieth Revised Sheet No. 8B.01
Substitute Seventh Revised Sheet No. 8B.02

FGT states that pursuant to section 4(e) of the Natural Gas Act and sections 154.7, 154.201, *et seq.*, and 154.301, *et seq.*, of the Commission's Regulations; Article XV of the Settlement in Docket

No. RP96–366–000, *et al.*, approved at 80 FERC ¶61,349 (1997); and Article IV(E) of the Settlement in Docket Nos. CP99–94 and RP96–366, approved at 88 FERC ¶61,142 (1999), FGT made a filing on October 1, 2003 (October 1 Filing), to effectuate increases in rates and changes in the terms and conditions applicable to FGT's jurisdictional services.

FGT states that it requested that such increases and changes be made effective November 1, 2003. FGT explains that, in the Suspension Order, the Commission: (1) Accepted and suspended certain tariff sheets to be effective April 1, 2004, subject to refund and the outcome of hearing procedures; (2) established a technical conference to address certain tariff proposals; and (3) accepted certain tariff sheets to be effective November 1, 2003, subject to condition.

FGT further states that pursuant to the Suspension Order and section 154.206(a) of the Commission's Regulations, FGT is making the instant filing to move into effect the rates and tariff sheets listed in Appendix A, as modified to reflect the elimination of costs of facilities not in service by February 29, 2004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: April 9, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–792 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–235–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 2, 2004.

Take notice that on March 31, 2004, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 2004:

Second Revised Sheet No. 17
Second Revised Sheet No. 59
Second Revised Sheet No. 125
Second Revised Sheet No. 126
Sixth Revised Sheet No. 140
Third Revised Sheet No. 400
Third Revised Sheet No. 401
Third Revised Sheet No. 420

Kern River states that the purpose of this filing is to revise Kern River's tariff to add a provision that would allow Kern River and its shippers to establish discounted rates that are calculated using formulas based on published index prices for specific receipt and/or delivery points or other published pricing reference points. Such index-based, discounted rates would be available for firm service (including capacity release), as well as for interruptible service.

Kern River states that it has served a copy of this filing upon its customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–795 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–163–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

April 2, 2004.

Take notice that on March 29, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Original Sheet No. 275, to become effective March 10, 2004.

Midwestern states that this filing is made to comply with Paragraph 10 of the Commission's order issued on March 8, 2004, in Docket No. RP04–163–000.

Midwestern states that copies of this filing have been sent to all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–793 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–236–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 2, 2004.

Take notice that on March 31, 2004, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sixty Second Revised Sheet No. 9, to become effective April 1, 2004.

National states that Article II, sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (IG) rate semi-annually and monthly. National further states that, section 2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under section 1 of Article II. National indicates that the recalculation produced an IG rate of $0.61 per dth. In addition, National notes that, under Article III, section 1, any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–796 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–545–000 and ER04–545–001]

Redwood Energy Marketing, LLC; Notice of Issuance of Order

April 2, 2004.

Redwood Energy Marketing, LLC (Redwood Energy) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of capacity and energy at market-based rates. Redwood Energy also requested waiver of various Commission regulations. In particular, Redwood Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Redwood Energy.

On April 1, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Redwood Energy should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 3, 2004.

Absent a request to be heard in opposition by the deadline above, Redwood Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Redwood Energy compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Redwood Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the elibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E4–799 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–237–000]

Trailblazer Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

April 2, 2004.

Take notice that on March 31, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 8 to be effective May 1, 2004.

Trailblazer states that the purpose of this filing is to make a periodic adjustment which revises the level of the Expansion Fuel Adjustment Percentage, as required by section 41 of the General Terms and Conditions of Trailblazer's Tariff.

Trailblazer states that copies of the filing are being mailed to its customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–797 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–83–001, et al.]

Aquila, Inc., et al.; Electric Rate and Corporate Filings

April 2, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Aquila, Inc., Aquila Long Term, Inc.

[Docket No. EC04–83–001]

Take notice that on March 31, 2004, Aquila, Inc. and Aquila Long Term, Inc. (Applicants), filed revisions to their application filed March 26, 2004, pursuant to section 203 of the Federal Power Act and section 33 of the Commission's regulations requesting approval of the transfer of two power sales agreements to Tor Power, LLC.

Comment Date: April 21, 2004.

2. Duke Energy Trading and Marketing, L.L.C.

[Docket No. EC04–85–000]

Take notice that on March 31, 2004, Duke Energy Trading and Marketing, L.L.C. (DETM) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of the transfer by DETM of certain wholesale power contracts to Williams Power Company, Inc.

Comment Date: April 21, 2004

3. TransCanada Corporation, TransCanada PipeLines Limited, TransCanada PipeLine USA Ltd., Manchief Holding Company, TCPL Power (Colorado) Inc., Manchief Inc., TransCanada (Curtis Palmer) Ltd., TransCanada (Hydroelectric) USA Ltd., TCPL Power (New York) Inc., Curtis Palmer Inc.

[Docket No. EC04–86–000]

Take notice that on March 31, 2004, TransCanada Corporation, TransCanada PipeLines Limited, TransCanada PipeLine USA Ltd., Manchief Holding Company, TCPL Power (Colorado) Inc., Manchief Inc., TransCanada (Curtis Palmer) Ltd., TransCanada (Hydroelectric) USA Ltd., TCPL Power (New York) Inc., and Curtis Palmer Inc. (jointly, Applicants) filed an application under section 203 of the Federal Power Act (FPA) requesting authorization for (1) a proposed change in the upstream ownership of Manchief Power LLC (Manchief Power) and Curtis Palmer Hydroelectric Company L.P. (Curtis Palmer), both of which own generating plants and facilities that are subject to the Commission's jurisdiction under the FPA and (2) the conversion of certain corporations that are upstream owners of Manchief Power and Curtis Palmer to limited liability companies. Applicants request expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: April 21, 2004.

4. Innovative Energy Consultants Inc., SE Holdings LLC, Strategic Energy LLC

[Docket No. EC04–87–000]

Take notice that on March 31, 2004, Innovative Energy Consultants Inc. (IEC), SE Holdings, LLC (SE Holdings), and Strategic Energy LLC (Strategic Energy) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby SE Holdings will sell to IEC a portion of its indirect interests in Strategic Energy, a power marketer that has received market-based rate authority from the Commission. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: April 21, 2004.

5. American Electric Power Service Corporation, Oklaunion Electric Generating Cooperative, Inc., and Golden Spread Electric Cooperative, Inc.

[Docket No. EC04–88–000]

Take notice that on April 1, 2004, American Electric Power Service Corporation (AEPSC), acting on behalf of its electric utility subsidiary, AEP Texas Central Company, formerly known as Central Power and Light Company (TCC), Golden Spread Electric Cooperative, Inc. (Golden Spread) and Oklaunion Electric Generating Cooperative, Inc., (OEGC) submitted an application for approval of the transfer by TCC to OEGC of certain jurisdictional facilities associated with TCC's 7.81% undivided ownership interest in the 690 MW Oklaunion Unit No.1, pursuant to section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (2003), and part 33 of the regulations of the Commission, as revised pursuant to Order No. 642, FERC Stats. & Regs. ¶31,111 (2000). Such transfer is proposed to be made to comply with the Texas Public Utility Regulatory Act. AEPSC request expedited consideration of the application and privileged treatment of certain exhibits to the application.

AEPSC states that a copy of the filing has been served on the Public Utility Commission of Texas and the Oklahoma Corporation Commission.

Comment Date: April 22, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER03–1091–003]

Take notice that on March 5, 2004, Pacific Gas and Electric Company (PG&E) submitted a refund report in response to and in compliance with the Commission's November 6, 2003, letter order regarding various generator interconnection agreements in Docket Nos. ER03–1091–000 and –001.

PG&E states that copies of this filing have been served upon Weillhead Power Panoche, LLC, Wellhead Power Gates, LLC, CalPeak Power Vaca Dixon, LLC, High Winds, LLC, Energy Transfer—Hanover Ventures, LP, Duke Energy Morro Bay, Global Renewable Energy Partners. Inc., the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: April 12, 2004.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–691–000]

Take notice that on March 31, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted its revised Open Access

Transmission and Energy Markets Tariff (Tariff) consistent with earlier Commission orders, 102 FERC ¶61,196 (2003); *order on reh'g*, 103 FERC ¶61,120 (2003); 105 FERC ¶ 61,145 (2003), *reh'g denied*, 105 FERC ¶61,272 (2003). The Tariff includes those terms and conditions that the Midwest ISO states are necessary for the implementation of the Midwest ISO's Centralized Security Constrained Economic dispatch supported by Day-Ahead and Real-Time Energy Markets and congestion management provisions based on Locational Marginal Pricing and Financial Transmission Rights within the Midwest ISO Region.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all State commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: May 7, 2004.

8. Midwest Energy, Inc.

[Docket No. ES04–17–000]

Take notice that on March 26, 2004, the Midwest Energy, Inc. (Midwest Energy) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize Midwest Energy to borrow up to $38 million in long-term debt under a Loan Agreement between Midwest Energy and the National Rural Utilities Cooperative Finance Corporation during the two-year period commencing July 1, 2004; and (2) authorize Midwest Energy to borrow up to $15 million in short-term debt during the two year period commencing July 1, 2004.

Midwest Energy also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 22, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–787 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–38–001, et al.]

Duke Energy Marketing America, LLC, et al.; Electric Rate and Corporate Filings

April 1, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Energy Marketing America, LLC and Engage Energy, LLC

[Docket No. EC04–38–001]

Take notice that on March 29, 2004, Duke Energy Marketing America, LLC (DEMA) and Engage Energy, LLC (Engage) filed with the Commission a request for additional flexibility pursuant to section 203 of the Federal Power Act in implementing DEMA's acquisition of Engage.

Comment Date: April 19, 2004.

2. Great Bay Hydro Corporation

[Docket No. EG04–46–000]

On March 30, 2004, Great Bay Hydro Corporation (Great Bay), a corporation organized under the laws of the State of New Hampshire, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935 (PUHCA).

Great Bay states that copies of the application were served upon the Securities and Exchange Commission, the New Hampshire Public Utilities Commission, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: April 20, 2004.

3. Northeast Utilities Service Company, the Connecticut Light and Power Company, Public Service Company of New Hampshire, and Western Massachusetts Electric Company

[Docket No. EL04–92–000]

Take notice that on March 26, 2004, Northeast Utilities Service Company, on behalf of The Connecticut Light and Power Company, Public Service of New Hampshire, and Western Massachusetts Electric Company (collectively, Applicants), tendered for filing a request for the Commission to issue an order approving the Applicants' proposed reclassification of transmission and distribution facilities.

Comment Date: April 23, 2004.

4. R.W. Beck Plant Management, Ltd.

[Docket No. EL04–93–000]

Take notice that on March 29, 2004, R.W. Beck Plant Management Ltd. (Beck) filed with the Commission an application requesting that the Commission issue an order (1) Disclaiming Federal Power Act (FPA) jurisdiction over Beck, (which acts as manager of a company that owns a currently idle 526 MW electric generating facility in Attala County, Mississippi) or, in the alternative, granting certain waivers of the Commission's regulations, and (2) confirming that Beck requires no additional FPA section 203 approval before operations at the facility recommence.

Comment Date: April 14, 2004.

5. Redbud Energy, LP

[Docket No. ER01–1011–002]

Take notice that on March 29, 2004, Redbud Energy LP (Redbud), submitted for filing its triennial updated market analysis and certain revisions to its

FERC Electric Tariff, Original Volume No. 1 to include incorporation of the Market Behavior Rules set forth in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003).

Comment Date: April 19, 2004.

6. XL Weather & Energy Inc. and XL Trading Partners America LLC

[Docket Nos. ER03–330–002 and ER04–350–001]

Take notice that on March 26, 2004, XL Weather & Energy Inc. (XL Weather) and XL Trading Partners America LLC (XL Trading America) submitted notification of a non-material change in the characteristics that the Commission relied upon in granting XL Weather's and XL Trading America's market-based rate authorizations.

Comment Date: April 16, 2004.

7. New England Power Pool

[Docket No. ER04–335–002]

Take notice that on March 29, 2004, the New England Power Pool (NEPOOL) Participants Committee filed changes to section 10 of NEPOOL Market Rule 1 in compliance with the Commission's order issued February 27, 2004, in Docket No. ER04–335–000, *New England Power Pool*, 106 FERC ¶ 61,190 (2004).

The NEPOOL states that copies of these materials were sent to the NEPOOL Participants and the New England State governors and regulatory commissions.

Comment Date: April 19, 2004.

8. Vermont Electric Cooperative, Inc.

[Docket No. ER04–341–001]

Take notice that on March 29, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing certain proposed revisions to its Open Access Transmission Tariff and proposed First Revised Rate Schedules FERC Nos. 3-9, as well as certain cost information. VEC states that the filing is intended to comply with the requirements of the Commission's order issued in Docket No. ER04–341–000 on February 12, 2004. Consistent with this order, VEC requests an effective date for its proposed revisions as of the date of the closing under a Purchase and Sale Agreement by which VEC has agreed to purchase from Citizens Communications Company (Citizens) certain electric transmission and distribution facilities in Vermont.

VEC states that each of the customers under the OATT and rate schedules, Citizens, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: April 19, 2004.

9. New York Independent System Operator, Inc.

[Docket Nos. ER03–552–008 and ER03–984–006]

Take notice that on March 29, 2004, the New York Independent System Operator, Inc. (NYISO) submitted a report regarding potential settlement and customer credit enhancements in compliance with the Commission's order issued September 22, 2003, in Docket No. ER03-352-000, *et al.*

Comment Date: April 19, 2004.

10. Tucson Electric Power Company

[Docket No. ER04–648–001]

Take notice that on March 29, 2004, Tucson Electric Power Company (Tucson) submitted a Certificate of Concurrence to the March 15, 2004, filing in Docket No. ER04–648–000 by Public Service Company of New Mexico of the 2004 Interim Invoicing Agreement for the San Juan Generating Station, dated as of January 31, 2004.

Tucson states that a copy of this filing has been mailed to all interested parties.

Comment Date: April 19, 2004.

11. New England Power Pool

[Docket No. ER04–677–000]

Take notice that on March 29, 2004, the New England Power Pool (NEPOOL) Participants Committee filed materials to implement arrangements to compensate Exelon New England Holdings, LLC for costs incurred in connection with the operation of its Mystic 8 and 9 Units on January 14–16, 2004, at the direction of ISO New England Inc. NEPOOL requests an effective date of one business day following a Commission order accepting the filing, but in no event later than May 28, 2004.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England State governors and regulatory commissions.

Comment Date: April 19, 2004.

12. PPL Electric Utilities Corporation

[Docket No. ER04–679–000]

Take notice that on March 29, 2004, PPL Electric Utilities Corporation (PPL Electric) filed an Interchange Scheduling Agreement between PPL Electric and Mt. Carmel Cogen, Inc.

PPL Electric states that a copy of this filing has been provided to Mt Carmel Cogen, Inc.

Comment Date: April 19, 2004.

13. West Penn Power Company

[Docket No. ER04–681–000]

Take notice that on March 29, 2004, Allegheny Energy Service Corporation on behalf of West Penn Power Company (West Penn) tendered for filing pursuant to the Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of West Penn Power Company, Rate Schedule FERC No. 102, consisting of a Transition Service Agreement with Letterkenny Industrial Development Authority. West Penn requests an effective date of May 2, 2004, for the cancellation.

Comment Date: April 19, 2004.

14. Central Maine Power Company

[Docket No. ER04–682–000]

Take notice that on March 29, 2004, Central Maine Power Company (CMP) tendered for filing an Executed Service Agreement for Non-Firm Local Point-to-Point Transmission Service between CMP and Androscoggin Reservoir Company designated as CMP–FERC Electric Tariff, Fifth Revised Volume No. 3, First Revised Service Agreement Number 194.

Comment Date: April 19, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–788 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2835–005 New York]

New York State Electric and Gas Corporation; Notice of Availability of Environmental Assessment

April 2, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for relicensing the Rainbow Falls Hydroelectric Project located on the Ausable River in Clinton and Essex counties, New York, and has prepared an Environmental Assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA 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.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Rainbow Falls Project No. 2835–005" to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. For further information, contact Jack Hannula at (202) 502–8917 or by E-mail at *John.Hannula@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–798 Filed 4–8–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

April 2, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings 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 (FERRIS) 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.

Docket no.	Date filed	Presenter or requester
Prohibited		
1. Project No. 2342–000	3–25–04	Kathy B. Newman.
2. Project No. 2342–000	4–01–04	Aimee Durden.
4. CP04–58–000	3–29–04	Michael Boyd.
Exempt		
1. ER04–316–000	3–24–04	Hon. Doug Ose.
2. CP03–75–000	3–31–04	Ken Gathright.
3. CP03–75–000	3–31–04	Frederick T. Werner.

Magalie R. Salas,
Secretary.
[FR Doc. E4–790 Filed 4–8–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6650–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–L65443–OR Rating EO2, Biscuit Fire Recovery Project, various management activities alternatives, implementation, Rogue River and Siskiyou National Forests, Josephine and Curry Counties, OR.

Summary: EPA expressed environmental objections with adverse impacts to water quality under the preferred alternative. Impacts from increased sediment delivery to already impaired surface waters could cause long term exceedances in State Water Quality standards and effects on designated beneficial uses (salmonid rearing). EPA's other concerns included impacts to waters in the Northwest Forest Plan-designated key watersheds, Wild and Scenic Rivers, and potential wilderness values in Inventoried Roadless Areas.

ERP No. D–FHW–F40420–MN Rating EC2, I–94/TH–10 Interregional connection from St. Cloud to Becker, transportation improvements, funding and U.S. Army COE section 404 permit, in the cities of Becker and St. Cloud, Sherburn, Stearns and Wright Counties, MN.

Summary: EPA has environmental concerns with the proposed project related to the secondary land use and cumulative impacts associated with the project. EPA also recommends that a mitigation plan with specific mitigation measures be developed and included in the FEIS for the preferred alternative identified.

ERP No. D–IBR–K65262–CA Rating EC2, Lake Berryessa Visitor Services Plan, future use and operation, Solano Project Lake Berryessa, Napa County, CA.

Summary: EPA expressed environmental concerns that significant increases in visitor use under the proposed VSP could result in negative impacts to air and water quality. EPA requested information on estimated future use and environmental impacts be included in the FEIS.

Final EISs

ERP No. F–AFS–C65003–PR, Caribbean National Forest, Rio Sabana picnic area construction, Rio Sabana Trail Reconstruction and PR–191 Highway Reconstruction from km.21.3 to km 20.0, implementation and special-use permit issuance, PR.

Summary: Based upon the additional information provided in the final EIS, EPA does not have any objections to the implementation of the preferred alternative.

ERP No. F–AFS–J65383–MT, Logan Creek Ecosystem Restoration Project, hazardous fuel reduction across the landscape and vegetation management restoration or maintenance, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT.

Summary: EPA expressed environmental concerns with short-term water quality effects of road construction and vegetation treatments. However, modifications to the preferred alternative should improve water quality and fisheries habitat, and reduce risk of severe wildfire over the long term.

ERP No. F–AFS–J65388–UT, North Rich Cattle Allotment, proposal to authorize grazing, implementation, Logan District, Wasatch-Cache National Forest, Cache and Rich Counties, UT.

Summary: EPA continued to express environmental concerns about impacts to water quality and aquatic resources, soil resources, and wildlife habitat.

ERP No. F–AFS–J65391–WY, Blackhall-McAnulty Analysis Area, proposal to reduce the spread of Dwarf Mistletoe and Mountain Pine Beetle in Lodgepole Pine Stands, Brush Creek/Hayden Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Carbon County, WY.

Summary: EPA continued to express environmental concerns with disturbances to terrestrial habitat and watersheds and impacts within the project area. The final EIS did however propose to minimize impacts on the landscape and decommission roads while meeting project goals.

ERP No. F–AFS–K61158–CA, Silver Pearl Land Exchange Project, proposal to exchange 2,153 acres of National Forest System (NFS) land for up to 3,963 acres of Sierra Pacific Industries (SPI) land within the boundary of Eldorado National Forest, Eldorado and Placer Counties, CA.

Summary: The final EIS adequately addresses issues raised in our comment letter on the DEIS.

ERP No. F–AFS–K65260–AZ, Rodeo-Chediski Fire Salvage Project, timber harvest of merchantable dead trees as sawtimber and products other than lumber (POL), implementation, Apache-Sitgreaves and Tonto National Forests, Apache, Coconino and Navajo Counties, AZ.

Summary: EPA continues to express environmental concerns regarding cumulative impacts and potential impacts to watershed conditions.

ERP No. F–AFS–L65426–OR, Flagtail Fire Recovery Project, addressing the differences between existing and desired conditions, Blue Mountain Ranger District, Malheur National Forest, Grant County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FRC–H03000–00, Cheyenne Plains Pipeline Project, natural gas transmission pipeline construction and operation, NPDES permit and U.S. Army COE section 404 permit issuance, several counties, CO and several counties, KS.

Summary: EPA has no objection to the proposed action since previous issues were resolved.

ERP No. FA–COE–E36167–FL, Central and Southern Florida Project, Tamiami Trail Feature (US Highway 41), modified water deliveries to Everglades National Park, Dade County, FL.

Summary: EPA has no environmental objections to the measures proposed to protect the Tamiami roadway.

Dated: April 6, 2004.

Ken Mittelholtz,
Environmental Protection Specialist, Office of Federal Activities.
[FR Doc. 04–8098 Filed 4–8–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6650–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*
Weekly receipt of Environmental Impact Statements

Filed March 29, 2004 Through April 2, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040149, DRAFT EIS, AFS, AK, Resurrection Creek Stream and Riparian Restoration Project, Proposes to Accelerate the Recovery of Riparian Areas, Fish and Wildlife Habitat, Chugach National Forest, Seward Ranger District, Kenai Peninsula Borough, AK, Comment Period Ends: May 24, 2004, Contact: Dave Blanchet (907) 743–9538.

EIS No. 040150, FINAL EIS, SFW, CA, South Bay Salt Ponds Initial Stewardship Plan, To Maintain and Enhance the Biological and Physical Conditions, South San Francisco Bay, CA, Wait Period Ends: May 10, 2004, Contact: Marge Kolar (510) 792–0222.

EIS No. 040151, DRAFT EIS, AFS, OR, Crooked River National Grassland Vegetation Management/Grazing, Vegetation Treatments and Grazing Disposition, Ochoco National Forest, Jefferson County, OR, Comment Period Ends: May 24, 2004, Contact: Kristin Bail (541) 416–6648. This document is available on the Internet at: *http://www.fs.fed.us/r6/centraloregon/projects/units/crooked.*

EIS No. 040152, DRAFT EIS, COE, NM, The Closure of the Al Black Recreation Area at the Cochiti Lake Dam Outlet Works, Implementation, Sandoval County, NM, Comment Period Ends: May 24, 2004, Contact: Ernest Jahnke (505) 342–3416.

EIS No. 040153, DRAFT EIS, BLM, MT, Dillon Resource Management Plan, Provide Direction for Managing Public Lands within the Dillon Field Office, Implementation, Beaverhead and Madison Counties, MT, Comment Period Ends: July 12, 2004, Contact: Renee Johnson (406) 683–8016. This document is available on the Internet at: *http://www.mt.blm.gov/dfo/rmp.*

EIS No. 040154, FINAL EIS, NPS, PA, Lackawanna Heritage Valley a State and National Heritage Area, Management Action Plan, Implementation, Lackawanna, Luzerne, Wayne and Susquehanna Counties, PA, Wait Period Ends: May 10, 2004, Contact: Peter Samuel (315) 597–1848.

EIS No. 040155, FINAL EIS, EPA, CT, NY, Central and Western Long Island Sound Dredged Material Disposal Sites, Designation, CT and NY, Wait Period Ends: May 10, 2004, Contact: Jean Brochi (617) 918–1070.

EIS No. 040156, DRAFT EIS, AFS, UT, Wasatch Powderbird Guides Permit Renewal, Authorization to Continue Providing Guided Helicopter Skiing Activities on National Forest System (NFS) Land on the Wasatch-Cache and Uinta National Forests, Special-Use Permit (SUP), Provo and Salt Lake City, UT, Comment Period Ends: May 24, 2004, Contact: Steve Scad (801) 733–2689. This document is available on the Internet at: *http//www.fs.fed.us/r4/wcnf/projects/decisions/index.shtm/.*

EIS No. 040157, FINAL EIS, BLM, OR, Upper Siuslaw Late-Successional Reserve Restoration Plan, To Protect and Enhance Late-Successional and Old-Growth Forest Ecosystems, Eugene District Resource Management Plan, Northwest Forest Plan, Coast Range Mountains, Lane and Douglas Counties, OR, Wait Period Ends: May 10, 2004, Contact: Rich Colvin (541) 683–6669.

EIS No. 040158, DRAFT EIS, NOA, WA, ID, OR, CA, Pacific Coast Groundfish Fishery Management Plan, Amendment 16–3 Adopts Rebuild Plans for Bocaccio, Cowcod, Widow Rockfish and Yelloweye Rockfish, Maximum Sustainable Yield (MSY), Implementation, WA, OR, ID and CA, Comment Period Ends: May 24, 2004, Contact: Robert Lohn (206) 526–6150. This document is available on the Internet at: *http://www.pcouncil.org.*

EIS No. 040159, DRAFT EIS, FHW, WA, WA–99 Alaskan Way Viaduct and Seawall Replacement Project, To Provide Transportation Facility and Seawall with Improved Earthquake Resistence, U.S. Army COE Section 10 and 404 Permits, Seattle WA , Comment Period Ends: June 1, 2004, Contact: Mary Gray (360) 753–9487.

EIS No. 040160, *FINAL EIS, NOA,* Framework Adjustment 4 to the Atlantic Mackeral, Squid, and Bullfish Fishery Management Plan, To Extend the Moratorium to the Illex Fishery, Mid-Atlantic Fishery Management Council, Wait Period Ends: May 10, 2004, Contact: George H. Darcy (301) 713–1622.

EIS No. 040161, DRAFT EIS, COE, CA, Hamilton City Flood Damage Reduction and Ecosystem Restoration, Propose to Increase Flood Protection and Restore the Ecosystem, Sacramento River, Glenn County, CA, Comment Period Ends: May 24, 2004, Contact: Erin Taylor (916) 557–5140.

EIS No. 040162, FINAL EIS, COE, NC, Bogue Inlet Channel Erosion Response Project, Relocation of the Main Ebb Channel to Eliminate the Erosive Impact to the Town of Emerald Isle, Carteret and Onslow Counties, NC, Wait Period Ends: May 24, 2004, Contact: Mickey Sugg (910) 251–4811.

Dated: April 6, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–8099 Filed 4–8–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0072; FRL–7342–6]

Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA expects to have approximately $5 million available in fiscal year 2004 grant/cooperative agreement funds under the Pollution Prevention (P2) Grant Program. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act (PPA) of 1990, subject to the availability of funds at the time of award. The Pollution Prevention Act of 1990 and 40 CFR part 35, subpart B, authorize EPA to award grant funds to State, Tribes, and Intertribal Consortia programs that address the reduction or elimination of pollution across environmental media (air, land, and water) and to strengthen the efficiency and effectiveness of pollution prevention technical assistance programs in providing source reduction information to businesses. This year, EPA more prominently emphasizes measurement as one of the National program criteria used in evaluating grant applications. In addition, EPA strongly encourages applicants to consider replicating previous P2 Grant projects, in order to more broadly demonstrate regional and preferably national environmental impact. This notice describes the procedures and criteria for the award of these grants.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Michele Amhaz, Pollution Prevention Division (7409M), Office Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–

0001; telephone number: (202) 564–8857; e-mail address: *amhaz.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Overview Information

The following listing provides certain key information concerning the availability of funds opportunity.

- Federal Agency name: Environmental Protection Agency (EPA).
- Funding opportunity title: Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review; Notice of Availability.
- Announcement type: Initial announcement.
- Catalog of Federal Domestic Assistance (CFDA) number: 66.708.
- Dates: Pre-proposal and application deadlines vary by EPA regional office. EPA advises applicants, who have the flexibility of submitting pre-proposals to their region, to contact their Regional P2 Coordinator listed in Unit IX. for information on the application due date.

Region 1—Pre-proposals are due May 26, 2004

Region 2—Pre-Proposals are due May 26, 2004

Region 3—Applications are due May 26, 2004

Region 4—Pre-proposals are due May 26, 2004

Region 5—Applications are due May 17, 2004

Region 6—Pre-proposals are due May 26, 2004

Region 7—Applications are due May 26, 2004

Region 8—Applications are due May 26, 2004

Region 9—Applications are due May 26, 2004

Region 10—Pre-proposals are due May 26, 2004

II. General Information

A. Does this Action Apply to Me?

This action is directed to States (including State universities), Tribes, and Intertribal Consortia. This notice may, however, be of interest to local governments, private universities, private nonprofit entities, private businesses, and individuals who are not eligible for this grant program. If you have any questions regarding the applicability of this action to a particular entity, contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0072. 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/*. This document will also be available at the EPA P2 web site at *http:/www.epa.gov/p2*. A frequently updated electronic version of both 40 CFR part 31 and part 35 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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 II.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

III. Background on the Pollution Prevention Program

More than $80 million has been awarded to over 100 State and Tribal organizations under EPA's multimedia P2 Grant Program, since its inception in 1989. During the past 14 years, P2 grant funds have established and enabled State and Tribal programs to implement a wide range of pollution prevention activities. P2 grants provide economic benefits to small businesses by funding pollution prevention technical assistance programs focused on helping the businesses develop more efficient production technologies and operate more cost effectively.

The goal of the P2 Grant Program is to assist businesses and industries in identifying better environmental strategies and solutions for reducing waste at the source. The majority of the P2 grants fund State-based projects in the areas of technical assistance and training, education and outreach, regulatory integration, data collection and research, and demonstration projects.

In November 1990, the Pollution Prevention Act of 1990 (Public Law 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible.

1. Section 6603 of the Pollution Prevention Act of 1990 defines source reduction as any practice that:

i. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

ii. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

2. Section 6605 of the Pollution Prevention Act of 1990 and 40 CFR part 35, subpart B, authorizes EPA to offer matching grants to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Pollution Prevention Act of 1990 directs EPA to consider whether the proposed program will:

i. Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

ii. Target assistance to businesses for which lack of information is an impediment to source reduction.

iii. Provide training in source reduction techniques.

IV. Award Information

EPA expects to have approximately $5 million in grant/cooperative agreement funds available for FY 2004–2005 pollution prevention activities. The Agency has delegated grant making authority to the EPA regional offices. EPA regional offices are responsible for the solicitation of interest and the screening of proposals. This year, in order to achieve regional and, preferably, national impact, the regions are encouraging grant applicants to replicate prior P2 grant projects which have demonstrated a measurable environmental impact. Each region will have flexibility of selecting at least one project, which demonstrates a measurable impact. To find examples of P2 grant projects which could be replicated, please visit: *http://www.epa.gov/p2/grants/ppis/ppis.htm#summaries.* As the applicant constructs his/her project, EPA strongly encourages the applicant to provide a mechanism for measuring program activities. For more information on performing grant measurement, please read Unit V.C.2.iv. The Agency reserves the right to reject all initial proposals and make no awards.

In addition to the statutory criteria discussed in Unit III., all applicants must address all four of the national program criteria listed in Unit V.C.2. In addition to the national program criteria some regions may require applicants to address regionally specific criteria. To find out more information about regionally specific criteria applicants are advised to refer to the 2004 Pollution Prevention Grant guidance in addition to contacting their Regional P2 Coordinator.

EPA invites applicants to submit proposals that make the case for how their work will address P2 priorities on the national, Tribal, regional, and State level. Interested applicants should contact their EPA Regional P2 Coordinator and visit the regional web site listed in Unit IX. for additional information on the review and selection process. Additionally, all applicants are encouraged to review the 2004 Pollution Prevention Grant guidance located at *http://www.epa.gov/p2/grants/ppis/ppis.htm.*

V. Eligibility

A. Eligible Applicants

Eligible applicants for purposes of funding under this program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory of or possession of the United States, any agency or instrumentality of a State including State universities, and Indian Tribes that meet the requirement for treatment in a manner similar to a State at 40 CFR 35.663 and Intertribal Consortia that meet the requirements at 40 CFR 35.504. Local governments, private universities, private nonprofit, private businesses, and individuals are not eligible for funding. Eligible applicants are encouraged to establish partnerships with business and other environmental assistance providers to seamlessly deliver pollution prevention assistance. Successful applicants will be those that best meet the evaluation criteria in Unit VII.B.3. In many cases, this is likely to be accomplished through partnerships.

B. Matching Requirements

States, Tribes, and Intertribal Consortia recipients of P2 grants under section 6605 of the Pollution Prevention Act of 1990 must provide at least 50% of the total allowable project cost. For example, the Federal Government will provide half of the total allowable cost of the project, and the recipient will provide the other half. Recipients may meet the match requirements by allowable costs incurred by the grantee (often referred to as "in-kind goods or services") or the value of third party in-kind.contributions consistent with 40 CFR 31.24. If a Tribe or Intertribal Consortium is selected for award of a P2 grant and the Tribe includes the funds in a Performance Partnership Grant awarded under 40 CFR part 35, subpart B, the required Tribal match for the pollution prevention portion of the P2 grant will be reduced to 5% of the allowable pollution prevention project cost for the first 2 years of the P2 grant.

C. Other Eligible Criteria

1. *General.* EPA specifically seeks to build pollution prevention capabilities or to test innovative pollution prevention approaches and methodologies. Funds awarded under the P2 Grant Program must be used for State technical assistance programs for businesses to support pollution prevention programs that address the transfer and reduction of potentially harmful pollutants across environmental media (air, land, and water). Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts. This year, in order to achieve regional and preferably, national impact, the regions are encouraging grant applicants to replicate prior P2 grant projects which have demonstrated a measurable environmental impact. Each region will have flexibility of selecting at least one project which demonstrates a measurable impact. To find examples of P2 grant projects which could be replicated, please visit: *http://www.epa.gov/p2/grants/ppis/ppis.htm#summaries.*

2. *National program criteria for 2004.* This unit describes the four national program criteria EPA will use to evaluate proposals under the P2 Grant Program. In addition to the statutory criteria and the national program criteria, there may be regionally specific criteria that the proposed activities are also required to address. For more information on the EPA regional requirements, applicants should contact their EPA Regional P2 Coordinator, listed in Unit IX. to find out if regionally specific criteria are required in their proposal package. As well as ensuring that the proposed activities meet EPA's definition of pollution prevention, the applicant's proposal must include information and discussion addressing the following four criteria:

i. *Promote multimedia pollution prevention.* Applicants should identify how projects will encourage source reduction to actively prevent pollution across environmental media (air, land, and water). Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts. Pollution prevention programs can develop multimedia pollution prevention activities which provide technical assistance to businesses, institutionalize multimedia pollution prevention as an environmental management priority, or initiate demonstration projects that provide technical assistance to test and support innovative pollution prevention approaches and methodologies.

ii. *Advance environmental goals.* EPA believes that State and Tribal pollution prevention programs have a unique opportunity to promote pollution prevention, especially through the environmental performance agreements. By developing applications that support stated environmental goals, pollution prevention programs can help ensure that States and Tribes achieve objectives through a cost-effective preventive approach. EPA would like to ensure that pollution prevention is integrated and that the funds provide a service that supports each State's or Tribe's strategic plan. EPA will not fund any projects developed apart from those included in the stated strategic plans.

iii. *Promote partnerships.* For the past 7 years, EPA has required P2 grant applicants to identify major environmental assistance providers in their area and to work with these organizations to educate businesses on

pollution prevention. EPA believes that pollution prevention programs that do not develop a strong relationship with other environmental assistance providers will face difficulties accessing State and Federal resources in the future. EPA continues to seek more cooperation among State and Tribal pollution prevention programs and the other environmental and business assistance providers. These can include university-based technical assistance and cooperative extension programs, and other State-based assistance programs. Partnerships are also encouraged with regional and national programs, such as the Pollution Prevention Resource Exchange (P2Rx) Centers, National Institute of Standards and Technology (NIST) Programs, EPA's Office of Enforcement and Compliance Assurance (OECA) Compliance Assistance Centers, EPA's Small Business Assistance Programs (SBAPs), etc.

By developing such partnerships, EPA would like to ensure that pollution prevention programs leverage this outside expertise. This partnership will also reduce the need for other environmental assistance providers to develop their own expertise, which would otherwise result in duplication of effort.

iv. *Assess program activities and share results.* Effective grants management requires an understanding of what is to be accomplished with the funds and timely follow-up to measure and assess the actual results and impacts of the activities. P2 grantees should work with their EPA Regional P2 Coordinator to evaluate and report on progress and accomplishments made under the grant.

Such reporting should include several elements:

- Grantees should provide data regarding the scope and results of the specific activities conducted pursuant to the work plan commitments to support the wide variety of pollution prevention activities, encompassing such efforts as training, case studies, and P2 assessments, included under the grant.
- Grantees should attempt where possible to measure and assess the effect activities encompassing training, case studies, and P2 assessments, in terms of changes in knowledge, capabilities, attitudes, and behaviors of the targeted audiences. These changes are important in assessing the effectiveness of the funded activities and in planning future actions.
- Grantees should attempt where possible to measure and assess the wide-ranging positive environmental and economic impacts. Some of the EPA regional offices have negotiated with their States specific measurement structures which may provide appropriate frameworks for estimating environmental impact. Particularly important are the P2 outcome measures included in EPA's Strategic Plan: Pounds of pollution prevented, amount of energy and water conserved, and dollars saved. Grantees should also look to existing P2 measurement reports and systems, such as those managed by the National Pollution Prevention Roundtable (NPPR), the Northeast Waste Management Officials Association (NEWMOA), and the Pacific Northwest Pollution Prevention Resource Center (PPRC) for examples and to avoid duplicative reporting.

The resulting information should prove invaluable, not only in ensuring proper management of grant funds, but in demonstrating the value of the funded work. In particular, data on "real world" impacts of P2 efforts, especially displayed in such compelling terms as pounds of pollution prevented or dollars saved, can be a powerful indication of the success of a specific grant activity and of the importance of P2 programs generally. Grantees are encouraged to share this information with key stakeholders and audiences, including program sponsors, affected media and regulatory offices, other environmental programs, elected officials, allied organizations, business and civic groups, and the general public.

3. *Program management.* Awards for FY 2004 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional P2 Coordinator, listed in Unit IX. or view the 2004 Pollution Prevention Grant guidance located at *http://www.epa.gov/p2/grants/ppis/ppis.htm* to obtain specific regional requirements and deadlines for submitting proposals. EPA anticipates making funding decisions by June/July 2004.

VI. Application and Submission Information

A. Address to Request Application Package

Applicants may request an application package from their EPA Regional P2 Coordinator listed in Unit IX. However, it is strongly encouraged that applicants download applicable forms from the Internet at *http://www.epa.gov/ogd/AppKit/application.htm.* For pre-application assistance in completing your application, or general inquiries about EPA's assistance programs, please contact EPA's Grants Administration Division at (202) 564–5305.

B. Content and Form of Application

Application requirements for pre-proposal and proposal packages vary by regional office. Applicants are advised to contact their EPA Regional P2 Coordinator and visit the appropriate regional web site listed in Unit IX. for information on the application review and selection process. In addition, applicants are encouraged to review the P2 Grant National guidance posted to EPA's Pollution Prevention web site at *http://www.epa.gov/p2/grants/ppis/ppis.htm.*

C. Submission Dates

Pre-proposal and application deadlines vary by EPA regional office. EPA advises applicants, who have the flexibility of submitting pre-proposals to their region, to contact their Regional P2 Coordinator listed in Unit IX. for information on the application due date.

Region 1—Pre-proposals are due May 26, 2004

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Region 8—Applications are due May 26, 2004

Region 9—Applications are due May 26, 2004

Region 10—Pre-proposals are due May 26, 2004

D. Intergovernmental Review

Applicants must comply with the Intergovernmental Review Process and/or the consultation provisions of section 204, of the Demonstration Cities and Metropolitan Development Act, if applicable, which are contained in 40 CFR part 29. All State applicants should consult with their EPA regional office or official designated as the single point of contact in his or her State for more information on the process the State requires when applying for assistance. If you do not know who your single point of contact is, please call the EPA Headquarters Grant Policy Information and Training Branch at (202) 564–5325 or refer to the State single point of contact web site at *http://www.whitehouse.gov/omb/grants/spoc.html.* Federally-recognized tribal governments are not required to comply with this procedure.

E. Applicable Regulations

State applicants and recipients of P2 grants are subject to the requirements of 40 CFR parts 31 and 35, subpart A. Tribal and Intertribal Consortia applicants and recipients of P2 grants are subject to the requirements of 40 CFR parts 31 and 35, subpart B.

F. Funding Restrictions

EPA grant funds may only be used for the purposes set forth in the grant agreement, and must be consistent with the statutory authority for the award. Grant funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal Gvernment or any other government entity. All costs identified in the budget must conform to applicable Federal cost principles contained in OMB Circular A-87, A-122, and A-21, as appropriate. Ineligible costs will be reduced from the final grant award.

G. Other Submission Requirements

Applicants should clearly mark all pre-proposal and/or application materials containing confidential business information (CBI). EPA reserves the right to make final confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. If no such claim accompanies the proposal when it is received by the EPA, it may be made available to the public by EPA without any further notice to the applicant. The proposed work plan must meet the requirements for an approved work plan stipulated in 40 CFR 35.107 or 35.507.

H. Dispute Resolution Process

Procedures at 40 CFR 30.63 and 40 CFR 31.70 apply.

VII. Application Review Information

A. Criteria

Application requirements for pre-proposal and proposal packages vary by regional office. Applicants are advised to contact their EPA Regional P2 Coordinator and visit the appropriate regional web site listed in Unit IX. for information on the application review and selection process. In addition, applicants are encouraged to review the P2 Grant National guidance posted to EPA's Pollution Prevention web site at *http://www.epa.gov/p2/grants/ppis/ppis.htm.*

B. Review and Selection Process

Applicants are advised to contact their EPA Regional P2 Coordinator and visit the appropriate regional web site listed in Unit IX. for information on the application review and selection process. In addition, applicants are encouraged to review the P2 Grant National guidance posted to EPA's Pollution Prevention web site at *http://www.epa.gov/p2/grants/ppis/ppis.htm.* Please note, some regions allow applicants to submit pre-proposals. If the applicant finds that his or her region allows pre-proposals to be submitted then EPA recommends that the applicant should contact their Regional P2 Coordinator to find out the due date for applications and what supporting materials will be needed in order to complete the application package.

C. Anticipated Announcement and Award Dates

Applicants will receive acknowledgment of EPA's receipt of their pre-proposal and/or application. Once pre-proposals and/or applications have been reviewed and evaluated, applicants will be notified regarding the outcome of the competition.

VIII. Award Administration Information

A. Award Notices

Awards for FY 2004 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional P2 Coordinator, listed in Unit IX. EPA anticipates making funding decisions by June 2004.

B. Administration and National Policy Requirements

Awards for FY 2004 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional P2 Coordinator, listed under Unit IX., to obtain specific requirements for submitting proposals.

C. Reporting

The work plans and reporting must be consistent with the requirements of 40 CFR 35.107, 35.115, 35.507, and 35.515. The grantee, along with the Regional Project Officer, will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan (see 40 CFR 35.115 and 35.515). A description of the evaluation process and a reporting schedule must be included in the work plan (see 40 CFR 35.107(b)(2)(iv) and 35.507(b)(2)(iv)).

The evaluation process must provide for:

1. A discussion of accomplishments as measured against work plan commitments.

2. A discussion of the cumulative effectiveness of the work performed under all work plan components.

3. A discussion of existing and potential problem areas.

4. Suggestions for improvement, including, where feasible, schedules for making improvements.

EPA's Pollution Prevention Division has created an optional progress report format to facilitate national reporting on status of P2 grant activities. A copy of the report format is included in the grant guidance located on the P2 Grant Program web site (*http://www.epa.gov/p2/grants/ppis/ppis.htm*). This progress report format is not required but has been used in several States for the past year.

IX. Regional Pollution Prevention Coordinators

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Robert Guillemin, 1 Congress St., Suite 1100 (SPP), Boston, MA 02203; telephone number: (617) 918–1814; e-mail address: *guillemin.robert@epa.gov.* Regional web site: *http://www.epa.gov/region1/grants/gfinfo.html.*

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands) Tristan Gillespie, (SPMMB), 290 Broadway, 25th Floor, New York, NY 10007; telephone number: (212) 637–3753; e-mail address: *gillespie.tristan@epa.gov.* Regional web site: *http://www.epa.gov/region02/cgp/ppis/index.html.*

Region III: (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia) Mary Zielinski, (3EA40), Philadelphia, PA 19103–2029; telephone number: (215) 814–5415; e-mail address: *zielinski.mary@epa.gov.* Regional web site: *http://www.epa.gov/reg3p2p2/grants.htm.*

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Dan Ahern, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–9028; e-mail address: *ahern.dan@epa.gov.* Regional web site: *http://wrrc.p2pays.org/P2GrantInfo.asp.*

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) Phil Kaplan, (DW–8J), 77 West Jackson Blvd., Chicago, IL 60604–3590; telephone number: (312) 353–4669; e-mail address: *kaplan.phil@epa.gov.* Regional web site: *http://www.epa.gov/region5/p2/grants.htm.*

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) Eli Martinez, (6EN–XP), 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202; telephone number: (214) 665–2119; e-mail address:*martinez.eli@epa.gov.* Regional

web site: *http://www.epa.gov/earth1r6/6en/enxp4d.htm.*

Region VII: (Iowa, Kansas, Missouri, Nebraska) Gary Bertram, (ARTD/SWPP), 901 N. 5th St., Kansas City, KS 66101; telephone number: (913) 551–7533; e-mail address: *bertram.gary@epa.gov.* Regional web site: *http://www.epa.gov/region07/economics/r7_grant_opportunities.htm.*

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Linda Walters, (8P–P3T), 999 18th St., Suite 300, Denver, CO 80202–2405; telephone number: (303) 312–6385; e-mail address: *walters.linda@epa.gov.* Regional web site: *http://www.epa.gov/region8/conservation_recycling/grants.html.*

Region IX: (American Samoa, Arizona, California, Guam, Hawaii, Nevada) Leif Magnuson, (WST–7), 75 Hawthorne Ave., San Francisco, CA 94105; telephone number: (415) 972–3286; e-mail address: *magnuson.leif@epa.gov.* Regional web site: *http://www.epa.gov/region09/funding/p2.html.*

Region X: (Alaska, Idaho, Oregon, Washington) Carolyn Gangmark, (01–085), 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–4072; e-mail address: *gangmark.carolyn@epa.gov.* Regional web site: *http://yosemite.epa.gov/R10/OI.NSF/webpage/2004+Region+10+Pollution+Prevention+Grant.*

X. Congressional Review Act

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

List of Subjects

Environmental protection, Grants, Pollution prevention.

Dated: March 29, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–8104 Filed 4–8–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0399; FRL–7349–1]

Support the Tribal Pesticide Program Council (TPPC); Notice of Funds Availability

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs is soliciting proposals under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for assistance to support a continuing project that promotes and enhances Tribal pesticide program development, raises human health and environmental issues related to pesticides that are important to Tribes and their people, and addresses policy needs at the national level. The total funding for the cooperative agreement is $1,000,000 for a 5–year period. Approximately $200,000 is expected to be available in fiscal year (FY) 2004. At the conclusion of the first 1 year period of performance, incremental funding of up to $200,000 may be made available for each year allowing the project to continue for a total of five periods of performance (approximately 5 years) depending on need and the Agency budget in outlying years.

DATES: Applications must be received by EPA on or before May 24, 2004.

ADDRESSES: Applications may be submitted by mail, fax, or electronically. Please follow the detailed instructions provided in Unit III.H.1. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195 fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview Information

The following listing provides certain key information concerning the proposal opportunity.

- *Federal agency name*: Environmental Protection Agency (EPA).
- *Funding opportunity title*: Tribal Pesticide Program Council (TPPC); Request for Proposals.
- *Announcement type*: The initial announcement of a funding opportunity.
- *Catalog of Federal Domestic Assistance (CFDA) Number(s)*: 66.500.
- *Dates*: Applications must be received by EPA on or before May 24, 2004.

II. General Information

A. Does this Action Apply to Me?

States; territories and possessions of the United States; federally recognized Tribal governments; qualified intertribal consortia; municipal, interstate or intermunicipal agencies; universities; hospitals; laboratories; nonprofit agencies; State and local government departments; public agencies and authorities; other public or nonprofit private agencies, institutions, organizations, and individuals. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

For this solicitation, an intertribal consortium is defined as a partnership between two or more federally recognized Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under FIFRA. Only one proposal may be submitted by each Tribal government, intertribal consortium, university or other entity. 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 OPP–2003–0399. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **"Federal Register"** document electronically through the EPA Internet

under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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.

III. Introduction

EPA's Office of Pesticide Programs (OPP) has significantly expanded its resources devoted to Tribal pesticide programs and projects. In the past, Tribal representatives expressed the need for a forum to present their pesticide issues and concerns and to discuss approaches for resolving them at the national level. Moreover, the Agency recognized the importance of the Tribes' participation in developing a policy that would strengthen their current pesticide programs and provide guidance for Tribes that do not have such programs.

In response to these concerns, an EPA cooperative agreement with Native Ecology Initiative (NEI) formed the Tribal Pesticide Program Council (TPPC) in September 1999. The NEI agreement expires in September 2004. The cooperative agreement provides for the coordination and administration of the TPPC. The TPPC was modeled after the State FIFRA Issues Research and Evaluation Group (SFIREG), which is funded through an EPA cooperative agreement with the Association of American Pesticide Control Officials (AAPCO). The TPPC informs Tribes of pesticide issues, promotes pesticide education and awareness, and assists in the establishment, development, and implementation of comprehensive Tribal pesticide programs. It serves as a Tribal counterpart to the SFIREG and includes representatives from federally recognized Tribes and Indian nations and intertribal organizations. Since its inception in early FY 2000, the TPPC has developed a reputation as a very effective Tribal environmental organization. The TPPC is governed by an 11 member elected Executive Committee, and an elected Chairperson and Vice-Chairperson.

IV. Program Description

A. Purpose and Scope

Cooperative agreements awarded under this program are intended to provide financial assistance to support a continuing project that promote and enhance Tribal pesticide program development, raise human health and environmental issues related to pesticides that are important to Tribes and their people, and address policy needs at the national level.

This program is included in the Catalog of Federal Domestic Assistance under number CFDA 66.500.

B. Goal and Objectives

The objective of this project is to research and develop an appropriate approach for the formation of the TPPC which will work to strengthen Tribal pesticide programs and serve as a Tribal counterpart to the SFIREG. The group will promote and enhance Tribal pesticide program development, raise pesticide issues important to Tribes and their peoples, and to participate in policy at the national level. The TPPC does the following:

- Assists Tribes and Indian nations in developing their own pesticide programs.
- Provides Indian Country-focused pesticide education, training, and research; (For the purposes of this solicitation, the term "Indian country" means (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.)
- Offers a forum for raising a broad range of tribal pesticide-related issues and concerns.
- Facilitates communications between the Tribes, Indian Nations, Tribal and intertribal organizations, Tribal communities, EPA headquarters, regions, and other federal and State agencies on pesticides and pesticide-related issues.
- Seeks to ensure that Tribes with less experience in the pesticide management area can develop relationships with and learn from those Tribes who have more experience, and to develop Tribal mentoring or coaching relationships.
- Works in partnership with EPA to ensure that the federal law governing pesticides, FIFRA, is complied with and enforced in Indian Country in a manner that is consistent with Tribes' and Indian Nations' sovereignty and treaty rights.
- Helps to ensure that knowledgeable and experienced Tribal and Indian Nations representatives are aware of and able to participate where their knowledge and expertise are needed in pesticide-related, decision-making initiatives, committees, and meetings that may impact Indian Country.
- Coordinates and works cooperatively with the Tribal Operations Committee (TOC), Regional Tribal Operating Committees (RTOCs), the National Tribal Environmental Council (NTEC), the Intertribal Agricultural Council (IAC), the National Congress of American Indians (NCAI), and any other Tribal or Indian Nation organization or intertribal organization that is or may be involved with pesticide issues and concerns.
- Liaises with SFIREG to ensure good communications between States and Tribes on pesticide issues.

C. Eligibility

1. *Applicants.* To be eligible for consideration, applicants must meet all of the following criteria. Failure to meet the following criteria will result in the automatic disqualification of the proposal for funding consideration:

- Be a State; territory or possession of the United States; federally recognized Tribal government; qualified intertribal consortium; municipal, interstate or intermunicipal agency; university; hospital; laboratory; nonprofit agency; State and local government department; public agency or authority; other public or nonprofit private agency, institution, organization, or individual.
- Applicants must demonstrate the ability, experience and expertise to be able to assist the TPPC in achieving its defined purposes, as listed above.
- The applicant must demonstrate the ability to establish good communications, build partnerships and cooperative efforts, maintain good records and data, and provide relevant information to TPPC members, stakeholders, and EPA.
- Applicants must demonstrate that they have the ability, experience and expertise in comparable work areas to work cooperatively and successfully with the Office of Pesticide Programs (OPP) Liaison and under the guidance of

the TPPC Chairperson and the TPPC Executive Committee, to:

a. Assist the TPPC with planning meetings, developing meeting agendas, and communicating meeting dates and agendas.

b. Make all travel arrangements for bi-annual full Tribal Pesticide Program Council meetings, TPPC Executive Committee, and Working Group meetings; arrange for meeting space and facilities, and assist in making hotel arrangements.

c. Notify Tribes, EPA headquarters, the American Indian Environmental Office, the Tribal Operations Group, the National Tribal Environmental Council, SFIREG, and other interested parties of TPPC meetings.

d. Prepare minutes for all TPPC meetings, and after approval by the Executive Committee of the TPPC, send them, with appropriate attachments, to Tribes, EPA headquarters and regions, and other interested parties.

e. Maintain up-to-date TPPC data bases, mailing lists and files.

f. Serve as a clearinghouse for Tribal pesticide codes, laws, regulations, and policies, as well as pesticide education and training materials.

g. Respond to phone inquires relating to TPPC meetings and other TPPC matters.

h. On occasion, distribute materials generated by the Agency to all Tribes upon request.

i. Help Tribes keep abreast of funding opportunities for pesticide programs, and deadlines attached to those opportunities.

j. Prepare the annual application for supplemental annual funding of the TPPC cooperative agreement several months ahead of current funds' agreement expiration date.

k. Work annually with the Executive Committee to assist in preparation of a proposed budget for the TPPC; coordinate with the TPPC elected Chairperson and Executive Committee in finalizing any proposed budget and working out the details for approval and funding; and provide financial reporting to the TPPC as required by the TPPC and the Executive Committee.

l. Review for accuracy all requests for disbursement of funds and supporting documentation; issue checks, with the signed approval of the TPPC Chairperson; see to it to ensure that reimbursement for expenses when properly presented and documented is provided within 30 days.

m. Prepare reports for EPA as required by the cooperative agreement.

n. Assist the Executive Committee of the TPPC in defining training needs and obtaining technical assistance where the Executive Committee requests such assistance.

o. Act as Project Manager for the TPPC, serving as the Administrative Contact for the TPPC with EPA, including the OPP Liaison and Project/Grants Manager.

p. Administer the appointments process for filling vacancies on any work groups.

2. *Proposals.*

- The proposal must address all of the High Priority Areas for Consideration.
- The proposal must meet all format and content requirements contained in this notice.
- The proposal must comply with the directions for submittal contained in this notice.

D. Authority

EPA expects to enter into this cooperative agreement under the authority provided in FIFRA section 20 which authorizes the Agency to issue grants or cooperative agreements for research, development, monitoring, public education, training, demonstrations, and studies.

Regulations governing these cooperative agreements are found at 40 CFR part 30 for institutions of higher education, colleges and universities, and non-profit organizations; and 40 CFR part 31 for States and local governments. In addition, the provisions in 40 CFR part 32, governing government-wide debarment and suspension; and the provisions in 40 CFR part 40, regarding restrictions on lobbying apply.

All costs incurred under this program must be allowable under the applicable OMB Cost Circulars: A–87 (States and local governments), A–122 (nonprofit organizations), or A–21 (universities). Copies of these circulars can be found at*http://www.whitehouse.gov/omb/circulars/*. In accordance with EPA policy and the OMB circulars, as appropriate, any recipient of funding must agree not to use assistance funds for lobbying, fund-raising, or political activities (e.g., lobbying members of Congress or lobbying for other Federal grants, cooperative agreements or contracts). See 40 CFR part 40.

E. Activities to be Funded

See Unit IV.C.1.a. through IV.C.1.p. of this notice for activities funded.

F. Award and Distribution of Funds

1. *Available funding.* The funding for the selected award project is in the form of a cooperative agreement awarded under FIFRA section 20 authority.

The total funding available for award in FY 2004 is expected to be approximately $200,000. At the conclusion of the first 1 year period of performance, incremental funding of up to $200,000 may be made available for each year allowing the project to continue for a total of five periods of performance (approximately 5 years) and with a total of up to $1,000,000 for the 5–year period, depending on need and the Agency budget in outlying years.

Should additional funding become available for award, the Agency may award additional grants based on this solicitation and in accordance with the final selection process, without further notice of competition.

2. *Evaluation process and criteria.* Applicants will be screened to ensure they meet all eligibility criteria and will be disqualified if they do not meet all eligibility criteria. All proposals will be reviewed, evaluated, and ranked by a selected panel of EPA reviewers based on the following evaluation criteria and weights (Total: 100 points).

i. *General background information request.* Please provide the following background information about your organization, Tribe, or other type of entity:

- How many people are employed by your organization?
- Specify the experience your organization has in working with Tribes.
- Specify if your organization is currently working on Tribal related matters.
- Specify if your organization is currently working on human health and environmental issues related to pesticides.
- Specify if your organization has experience working with program development, project support and administration.

ii. *Technical qualifications, overall management plan, past performance.* Does the person(s) designated to lead the project have the technical expertise he or she will need to successfully complete it? Does the project leader have experience in grant and project management? Proposals should provide complete information on the education, skills, training and relevant experience of the project leader. As appropriate, please cite technical qualifications and specific examples of prior or relevant experience. To whom does the project leader report? What systems of accountability and management oversight are in place to ensure this project stays on track? Has your organization received past funding from EPA's Office of Pesticide Programs, other EPA programs, or other source? If so, please identify the funding source and activities/deliverables it supported.

If previously performed work directly relates to this project, briefly describe the connection. If a directly relevant project is currently ongoing, what progress has been made? If your organization, in its proposal to support the TPPC, builds upon earlier efforts, how will you use the knowledge, data, and experience of grant outputs from previous projects to shape this work you will do? (Weight: 30 points)

iii. *Justification of need for the project, soundness of technical approach.* Why is this project important to your organization? Review the environmental issue(s) your organization expects to address with this proposal; how serious are these issues? What is the expected outcome of your organization carrying out and supporting the TPPC? What benefits will your proposed support to the TPPC provide to Tribes, human health, and the environment? Has your organization identified a need to coordinate or consult with other parties to ensure the success of this project? If so, who are they? How will they be affected by the outcome of the project? What will be the key outputs of this project? How will your organization quantify and measure progress? Have interim milestones for this project been established?

If so, what are they? How will you evaluate the success of this project in terms of measurable environmental results? Please describe the steps your organization will take to ensure successful completion of the project and provide a time line and description of interim and final results and deliverables. Does your budget request accurately reflect the work you propose? Please provide a clear correlation between expenses and project objectives. Will EPA funding for this proposal be supplemented with funding from other source(s)? If so, please identify them. (Weight: 35 points).

iv. *Benefits, sustainability, and transferable result.* What ecological or human health benefits does this proposal provide? What quality of life issues does the proposal address? Does your organization's proposed support of the TPPC have limited or broad applications to address risks related to pesticides? Will the results from this proposed support of the TPPC continue to provide benefits to the Tribes after the period of performance has expired and this funding is no longer available? How are these benefits expected to be sustained over time? Does the applicant understand/acknowledge the need for coordination between other organizations, such as Tribal agencies and outside communities, and/or federal, State or local agencies? Are any of the deliverables, experiences, products, or outcomes resulting from the proposed support of the TPPC transferable to other groups, organizations, or communities? (Weight: 35 points)

3. *Selection official.* The funding decision will be made from the group of top rated proposals by the Chief of the Government and International Services Branch, Field and External Affairs Division, Office of Pesticide Programs.

4. *Dispute resolution process.* The procedures for dispute resolution at 40 CFR 30.63 and CFR 31.70 apply.

G. Application Requirements

1. *Content requirements.* Proposals must be typewritten, double spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch horizontal and vertical margins. Pages must be numbered in order starting with the cover page and continuing through the appendices. One original and one electronic copy (e-mail or disk) is required. It is requested that applicants have a section in their proposal which shows how they meet the eligibility criteria and another section which shows how applicants meet the evaluation criteria.

All proposals must include:

- Completed Standard Form SF 424*, Application for Federal Assistance. Please include organization fax number and e-mail address. The application forms are available on line at*http://www.epa.gov/ogd/grants/how_to_apply.htm.*
- Completed Section B--Budget Categories, on page 1 of Standard Form SF 424A*, (See Unit IV.G.3.--Allowable Cost). Blank forms may be located at:*http://www.epa.gov/region03/grants/appforms.htm.*
- Detailed itemization of the amounts budgeted by individual Object Class Categories (See Unit IV.G.3.--Allowable Cost).
- Statement regarding whether this proposal is a continuation of a previously funded project. If so, please provide the assistance number and status of the current grant/cooperative agreement.
- *Executive Summary.* The Executive Summary shall be a stand alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding measuring or movement toward achieving project goals. This summary should identify the measurable environmental results you expect including potential human health and ecological benefits.
- *Table of contents.* A one page table listing the different parts of your proposal and the page number on which each part begins.
- *Proposal narrative.* Includes Parts I–V (Parts I through V listed below are not to exceed 10 pages).
- *Part I--Project title.* Self explanatory.
- *Part II--Objectives.* A numbered list (1, 2, etc.) of concisely written project objectives, in most cases, each objective can be stated in a single sentence.
- *Part III--Justification.* For each objective listed in Part II, discuss the potential outcome in terms of human health, environmental and/or pesticide risk reduction.
- *Part IV--Approach and methods.* Describe in detail how the program will be carried out. Describe how the system or approach will support the program goals.
- *Part V--Impact assessment.* Please state how you will evaluate the success of the program in terms of measurable results. How and with what measures will humans be better protected as a result of the program?

2. *Appendices.* These appendices must be included in the cooperative agreement proposal. Additional appendices are not permitted.

- *Timetable.* A timetable that includes what will be accomplished under each of the objectives during the project and when completion of each objective is anticipated.
- *Major participants.* This appendix should list all affiliates or other organizations, educators, trainers and others having a major role in the proposal. Provide name, organizational affiliation or occupation and a description of the role each will play in the project. A brief resume (not to exceed two pages) should be submitted for each major project manager, educator, support staff or other major participant.

3. *Allowable costs.* EPA grant funds may only be used for the purposes set forth in the cooperative agreement, and must be consistent with the statutory authority for the award. Cooperative agreement funds may not be used for matching funds for other Federal grants, lobbying, or intervention in Federal regulatory or adjudicatory proceedings. In addition, Federal funds may not be used to sue the Federal government or any other government entity. All costs identified in the budget must conform to applicable Federal Cost Principles contained in OMB Circular A–87; A–122; and A–21, as appropriate.

4. *Federal requirements for recipients.* An applicant whose proposal is selected for Federal funding must complete additional forms prior to award (see 40 CFR 30.12 and 31.10). In addition,

successful applicants will be required to certify that they have not been debarred or suspended from participation in Federal assistance awards in accordance with 40 CFR part 32.

H. Application Procedures

1. *Submission instructions.* All proposals should be mailed to: Georgia McDuffie, Environmental Protection Agency, Government and International Services Branch, Field and External Affairs Division, Office of Pesticide Programs, Mail Code 7506C, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001. The electronic copy should be e-mailed to*Mcduffie.Georgia@epa.gov.* To be considered, both the paper and electronic copy must be received by the due date.

As indicated above, each application must include the original paper copy of the submission, along with one electronic copy. The electronic copy of your application package, whether submitted separately by e-mail or on a disk, should be consolidated into a single file, and be in Word Perfect WP8/9 for Windows, or Adobe pdf 4/5 format. If mailing a disk, please use a 3.5 disk that is labeled as a proposal for the Tribal Pesticide Program Council, and include your pertinent information. Please check your electronic submissions to ensure that it does not contain any computer viruses.

2. *Notification.* The Government and International Services Branch, Office of Pesticide Programs, will mail acknowledgments to applicants upon receipt of the proposal. Once proposals have been reviewed, evaluated, and ranked, applicants will be notified regarding the outcome of the competition. A listing of the successful proposal will be posted on the Office of Pesticide Programs' web site: *www.epa.gov/pesticides/.* This website may also contain additional information about this notice including information concerning deadline extensions or other modifications.

I. Recipient Report Requirements

The successful recipient will be required to submit quarterly and annual reports, and to submit annual financial reports. The specific information contained within the report will include at a minimum, a comparison of actual accomplishments to the objectives established for the period.

J. Intergovernmental Review

Applicants must comply with the Intergovernmental Review Process and/or the consultation provisions of section 204, of the Demonstration Cities and Metropolitan Development Act, if applicable, which are contained in 40 CFR part 29. All State applicants should consult with their EPA Regional office or official designated as the single point of contact in his or her State for more information on the process the State requires when applying for assistance; if the State has selected the program for review. If you do not know who your Single Point of Contact is, please call the EPA Headquarters Grant Policy Information and Training Branch at (202) 564–5325 or refer to the State Single Point of Contact web site at*http://www.whitehouse.gov/omb/grants/spoc.html.* Federally-recognized Tribal governments are not required to comply with this procedure.

V. Submission to Congress and the Comptroller General

Grant solicitations such as this are considered rules for the purpose for the Congressional Review Act (CRA). The CRA, 4 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Grants, Pesticides, Training.

Dated: March 31, 2004.

Susan B. Hazen,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–8105 Filed 4–8–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 14, 2004. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF THE MEETING: Federal Home Loan Bank of Topeka Capital Plan Amendment.

MATTERS TO BE CONSIDERED AT THE CLOSED PORTION OF THE MEETING: Further Consideration of Various Disclosure Initiatives and Supervisory Issues Regarding Enhanced Securities Disclosure.

CONTACT PERSON FOR MORE INFORMATION: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: April 7, 2004.

By the Federal Housing Finance Board.

John Harry Jorgenson,

General Counsel.

[FR Doc. 04–8248 Filed 4–7–04; 2:49 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank

holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Community National Bancorporation, Waterloo, Iowa; to acquire 100 percent of the voting shares of Community Bank, Austin, Minnesota (in organization).

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Haines Financial Corp, Woodland, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Medford, Medford, Oklahoma.

Board of Governors of the Federal Reserve System, April 5, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–8039 Filed 4–8–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (e.d.t.), April 19, 2004.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

9 a.m. (e.s.t.) convene meeting.
1. Approval of the minutes of the March 15, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 2004 Budget/FY 2005 Budget Estimates.
4. Investment Policy Review.
5. Status of DOL Audit.

Parts Closed to the Public

6. Personnel matters.
7. Procurement issues.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: April 7, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–8259 Filed 4–7–04; 3:44 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—02/23/2004			
20040346	Ryder System, Inc	Ruan Financial Corporation	Ruan Leasing Company.
TRANSACTIONS GRANTED EARLY TERMINATION—02/24/2004			
20040482	Citadel Broadcasting Corporation	Albert J. Kaneb	KIX Broadcasting, Inc, KOOL Broadcasting, Inc.
20040492	Royal Bank of Scotland Group plc	People's Mutual Holdings	People's Bank.
TRANSACTIONS GRANTED EARLY TERMINATION—02/25/2004			
20040472	Weston Presidio Capital IV, L.P	HWH Capital Partners, L.P	NBC Acquisition Corp.
20040497	Perseus Market Opportunity Fund, L.P.	Workflow Management, Inc	Workflow Management, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/26/2004			
20040114	Poydras Street Investors L.L.C	Miller Brands of Phoenix, LLC	Pearce Beverage Company, LLC.
20040431	Anthem, Inc	WellPoint Health Networks Inc	WellPoint Health Networks Inc.
20040432	Leonard D. Schaeffer	Anthem, Inc	Anthem, Inc.
20040455	Poydras Street Investors L.L.C	Zeb Pearce Companies	Pearce Beverage Company, LLC.
20040489	William A. Goldring	Miller Brands of Phoenix, LLC	Pearce Beverage Company, LLC.
20040490	William A. Goldring	Zeb Pearce Companies	Pearce Beverage Company, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—02/27/2004			
20040372	Masonite International Corporation	The Stanley Works	The Stanley Works.
20040498	ChoicePoint Inc	iMapData.com, Inc	iMapData.com, Inc.
20040510	Boyd Gaming Corporation	Harrah's Entertainment, Inc	Red River Entertainment of Shreveport Partnership.
20040515	GTCR Fund VIII, L.P	Bonita Bay Holdings, Inc	Prestige Brands International, Inc.
20040518	Kennametal Inc	Conforma Clad Inc	Conforma Clad Inc.

Trans #	Acquiring	Acquired	Entities
20040521	DaimlerChrysler AG	Mitsubishi Fuso Truck and Bus Corporation.	Mitsubishi Fuso Truck and Bus Corporation.
20040522	California Amplifier, Inc	Vytek Corporation	Vytek Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—03/02/2004			
20040463	Capital Environmental Resource Inc	Florida Recycling Services, Inc., an Illinois corporation.	Florida Recycling Services, Inc., an Illinois corporation.
20040483	Connetics Corporation	Fritz Gerber	Hoffman-La Roche Inc.
20040516	Nexfor Inc	MeadWestvaco Corporation	Northwood Panelboard Company.
20040520	Yucaipa Corporate Initiatives Fund I, L.P.	Piccadilly Cafeterias, Inc	Piccadilly Cafeterias, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/04/2004			
20040466	Lap Shun (John) Hui	Gateway, Inc	Gateway, Inc.
20040467	Gateway, Inc	Lap Shun (John) Hui	EM Holdings, Inc.
20040502	Dycom Industries, Inc	The Berwind Company LLC	Prince Telecom Holdings, Inc.
20040504	Fenway Partners Capital Fund II, L.P	Castle Harlan Partners III, L.P	American Achievement Corporation.
20040507	Mitsui & Co., Ltd	Roger S. Penske	United Auto Group, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/05/2004			
20040473	JP Morgan Chase & Co	Bank One Corporation	Bank One Corporation.
20040524	J.W. Childs Equity Partners III, L.P	RCS MediaGroup S.p.A	Edera Inc., J A Apparel Corp., Nashawena Mills Corp., Riverside Manufacturing Corp.
20040544	MBNA Corporation	Sky Financial Group, Inc	Sky Financial Solutions, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/08/2004			
20040491	American International Group, Inc	El Paso Corporation	Bonneville Pacific Corporation, Cambria Clean Coal, LLC, Dartmouth Power Holding Company, LLC, Vandolah Holding Company, LLC.
20040513	Swiss Reinsurance Company	Loews Corporation	CNA International Life Corp., Continental Assurance Company.
20040514	I-trax, Inc	Meridian Occupational Healthcare Associates, Inc.	Meridian Occupational Healthcare Associates, Inc.
20040530	Dow Jones & Company, Inc	Wicks Communications & Media Partners, L.P.	VentureOne Corporation, Wicks Business Information, LLC.
20040532	General Catalyst Group III, L.P	Verizon Communications Inc	BBNT Solutions LLC.
20040535	Port Blakely Tree Farms (Limited Partnership).	President and Fellows of Harvard College.	Rainier Mineral Company LLC, Rainier Timber Company, LLC.
20040538	GENESCO Inc.	Hat World Corporation	Hat World Corporation.
20040541	CIENA Corporation	Catena Networks, Inc	Catena Networks, Inc.
20040547	Curative Health Services, Inc	Thoma Cressey Fund VII, L.P	Critical Care Systems, Inc.
20040549	Tekelec	Taqua, Inc	Taqua, Inc.
20040555	GTCR Fund VII, L.P	Fifth Third Bancorp	Fifth Third Bank.
20040568	KRG Capital Fund II, L.P	FleetBoston Financial Corporation	Interior Specialists, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/09/2004			
20040480	Fidelity National Financial, Inc	Willis Stein & Partners, II, L.P	Aurum Technology Inc.
20040481	Willis Stein & Partners, II, L.P	Fidelity National Financial, Inc	Fidelity National Financial, Inc.
20040546	Neurocrine Biosciences, Inc	Wyeth	Wyeth Holdings Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—03/10/2004			
20040551	CIENA Corporation	Sprout Capital IX, L.P	Internet Photonics, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/11/2004			
20040495	Rent-A-Center, Inc	Rainbow Rentals, Inc	Rainbow Rentals, Inc.
20040536	Merck & Co., Inc	Aton Pharma, Inc	Aton Pharma, Inc.
20040552	Calpine Corporation	Brazosvalley SP LP LLC	Brazos Valley Energy LP, Brazos Valley Special Purpose GP Ltd. Partnership, Brazos Valley Special Purpose LP Ltd. Partnership, Brazos Valley Technology LP.
20040554	BlueScope Steel Limited	Butler Manufacturing Company	Butler Manufacturing Company.
20040559	Aurora Equity Partners II L.P	AK Steel Holding Corporation	Douglas Dynamics, L.L.C.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—03/12/2004			
20040540	Ariba, Inc	FreeMarkets, Inc	FreeMarkets, Inc.
20040567	The Amex Membership Corporation	National Association of Securities Dealers, Inc.	American Stock Exchange, LLC.
20040570	Freedom Communications, Inc	Freedom Communications, Inc	Freedom Newspapers, Lima News.
20040583	Global Private Equity IV, LP	Long Term Holdings, Inc	Long Term Holdings, Inc.
20040595	Adelphia Business Solutions, Inc. dba TelCove.	Adelphia Communications Corporation (debtor in possession).	ACC Telecommunications, LLC, ACC Telecommunications of Virginia, LLC, Adelphia Cable Partners, L.P., Adelphia Cablevision, LLC, Adelphia Cablevision of New York, Inc., Adelphia Cablevision of West Palm Beach IV, LLC, Adelphia California Cablevision, LLC, Adelphia Central Pennsylvania, LLC, Better TV, Inc. of Bennington, Chelsea Communications, LLC, FrontierVision Access Partners, LLC, Lake Champlain Cable Television Corporation, Mountain Cable Company, LP, Multi-Channel TV Cable Company; Grand Island Cable, Inc., Scranton Cablevision, Inc., Southeast Florida Cable, Inc., Telesat Acquisition, LLC, UCA, LLC, Young's Cable TV Corporation.
20040596	Group 1 Automotive, Inc	Mr. Charles G. Peterson	FLT, Inc., Folsom Lake Used Car Outlet, Inc., Rancho Imports, RMH, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—03/16/2004			
20040500	Gerald W. Schwartz	General Electric Company	LAC Holding Corp.
20040501	Juniper Networks, Inc	NetScreen Technologies, Inc	NetScreen Technologies, Inc.
20040537	Hewlett-Packard Company	Novadigm, Inc	Novadigm, Inc.
20040542	Fisher Scientific International Inc	Dr. Stephen A. Scaringe	Dharmacon, Inc.
20040594	Thomas Weisel Capital Partners, L.P	Trover Solutions, Inc	Trover Solutions, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/17/2004			
20040586	Boyd Gaming Corporation	Coast Casinos, Inc	Coast Casinos, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/18/2004			
20040572	Cytyc Corporation	Novacept	Novacept.
20040573	DigitalNet Holdings, Inc	Yong K. Kim	User Technology Associates, Inc.
20040577	CapitalSource, Inc	Security Leasing Partners, L.P	Security Leasing Partners, L.P.
20040584	Michael J. Gaughan	Boyd Gaming Corporation	Boyd Gaming Corporation.
20040585	Franklin Toti	Boyd Gaming Corporation	Boyd Gaming Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—03/19/2004			
20040519	Cable Design Technologies Corporation.	Belden, Inc	Belden Inc.
20040576	Charles W. Ergen	Gemstar-TV Guide International, Inc	SpaceCom Systems, Inc., Superstar/Netlink Group LLC, Telluride Cablevision, Inc., United Video TV, Inc., UV Corp., UVTV–A, Inc., UVTV–X, Inc.
20040587	PP Acquisition Corporation	Golder, Thoma Cressey Fund III, L.P	Polypore, Inc.
20040593	Lightbridge, Inc	InfoSpace, Inc	Authorize.Net Corporation.
20040598	Temasek Holdings (Private) Limited	ChipPAC, Inc	ChipPAC, Inc.
20040599	Warburg Pincus Private Equity VIII, L.P.	ConocoPhillips	ConocoPhillips Company.
20040600	Robin J. Hardie	Freedom Communications, Inc	Freedom Communications, Inc.
20040601	KKR Millennium Fund LP	UniSource Energy Corporation	UniSource Energy Corporation.
20040606	Fidelity National Financial, Inc	Fidelity National Financial, Inc	Hansen Quality, LLC.
20040607	Thomas H. Lee Equity Fund IV, L.P	The Nu-Gro Corporation	The Nu-Gro Corporation.
20040617	MemberWorks Incorporated	Lavalife Inc	Lavalife Inc.
20040619	Ask Jeeves, Inc	Interactive Search Holdings, Inc	Interactive Search Holdings, Inc.
20040622	Threshie Limited Partnership	Freedom Communications, Inc	Freedom Communications, Inc.
20040623	Sun Microsystems, Inc	Andreas Bechtolsheim	Kealia, Inc.

Trans #	Acquiring	Acquired	Entities
20040624	NdTV Holdings, LLC	Vivendi Universal, S.A	NWI Cable, Inc., NWI Direct, Inc., NWI Network, Inc., NWI Television, Inc., NWI Vision, Inc., Universal Television Network.
TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2004			
20040566	Yell Group PLC	Roberta Feist	Feist Publications, Inc.
20040581	KKR Millennium Fund L.P	Sealy Corporation	Sealy Corporation.
20040588	American Capital Strategies, Ltd	Sentinel Capital Partners II, L.P	Cottman Transmission Systems, LLC.
20040603	Atlantic Equity Partners III, L.P	Genstar Capital, ULC	Prestolite Electric Holding, Inc.
20040615	Koch Industries, Inc	Georgia-Pacific Corporation	Brunswick Pulp & Paper Company, Scott Timber Company, Georgia-Pacific Asia (Hong Kong), Georgia-Pacific GmbH, Leaf River Forest Products, Inc., LRC Timber, Inc., Old Agusta Railroad Company.
20040618	CGI Group Inc	American Management Systems, Incorporated.	American Management Systems, Incorporated.
20040626	C/R BPL Investment Partnership II, L.P.	Glenmoor, Ltd	Glenmoor, Ltd.
TRANSACTIONS GRANTED EARLY TERMINATION—03/23/2004			
20040627	International Business Machines Corp.	Trigo Technologies, Inc	Trigo Technologies, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/24/2004			
20040582	Gryphon Partners II, L.P	Jack C. Priegel	Autotronic Controls Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—03/26/2004			
20040448	Dental Service of Massachusetts, Inc	MOA Investments, LLC	Doral Dental USA, LLC.
20040561	Mayne Group Limited	AAIPharma Inc	aaiPharma LLC and AAI Properties, Inc.
20040602	Heroux-Devtek Inc	Guinn Dale Crousen	Progressive Incorporated, Promilling, L.P.
20040625	Duke Energy Corporation	ConocoPhillips	ConocoPhillips Company.
20040644	Intersil Corporation	Xicor, Inc	Xicor, Inc.

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact Representative

or

Renee Hallman, Legal Technician

Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–8089 Filed 4–8–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–116]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments Application Form and Supporting Regulations in 42 CFR 493.1–.2001; *Form No.:* CMS–116 (OMB# 0938–0581); *Use:* Clinical Laboratory Certification—The application must be completed by entities performing laboratory testing on human specimens for diagnostic or treatment purposes. This information is vital to the

certification process; *Frequency:* Bi-annually; *Affected Public:* Business or other for-profit, not-for-profit institutions, Federal government, and State, local, or tribal government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 1, 2004.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–8094 Filed 4–8–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advanced Beneficiary Notice and Supporting Regulations in 42 CFR 411.404, 411.406, and 411.408; *Form No.:* CMS–R–131 (OMB# 0938–0566); *Use:* Physicians, practitioners, suppliers, and providers furnishing Part A or Part B items or services may bill a patient for items of services denied by Medicare as not reasonable and necessary, under Medicare prcgram standards (section 1862(a)(1) of title XVIII of the Social Security Act (the Act), or under one of several other statutory bases (section 1862(a)(9), section 1814(a)(2)(C), section 1835(a)(2)(A), section 1861(dd)(3)(A), section 1834(j)(1), section 1834(a)(15), and section 1834(a)(17)(B) of the Act), if they informed the patient , prior to furnishing the items or services and the patient, after being so informed, agreed to pay for the items or services; *Frequency:* As-needed; *Affected Public:* Business or other for-profit, not-for-profit institutions, and individuals or households; *Number of Respondents:* 1,084,932; *Total Annual Responses:* 21,171,480; *Total Annual Hours:* 1,764,290.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503. Fax: (202) 395–6929.

Dated: April 1, 2004.

Melissa Musotto,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–8095 Filed 4–8–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (CMS Match No. 2004–03)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces a computer matching agreement between CMS and the Department of the Treasury, Internal Revenue Service (IRS). We have provided background information about the proposed matching program in the "Supplementary Information" section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See "Effective Dates" section below for comment period.

EFFECTIVE DATES: CMS filed a report of the Computer Matching Program with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 6, 2004. We will not disclose any information under a matching agreement until the later of 40 days after filing a report to OMB and Congress or 30 days after publication in the **Federal Register.** We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, CMS, Mail stop N2–04–27, 7500 Security

Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Walter Stone, Senior Paralegal Specialist, Division of Data Liaison and Distribution, Enterprise Databases Group, Office of Information Services, CMS, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–5357, or e-mail *wstone@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act (CMPPA) of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L.100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Boards' (DIB) approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all of the computer-matching programs that this agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: April 6, 2004.

Mark B. McClellan,

Administrator.

HHS Computer Match No. 2004–03

NAME:

"Medicare Prescription Drug Discount Card and Transitional Assistance Program"

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

PARTICIPATING AGENCIES:

Centers for Medicare & Medicaid Services (CMS), and

The Department of the Treasury, Internal Revenue Service (IRS)

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MPDIMA) (Pub. L. 108–173, Section 101, 117 Stat. 2066 (2003)) creates a discount prescription drug card program for certain individuals who receive Medicare benefits. This program has a phase-in period ending December 31, 2005, during which time certain individuals are eligible for transitional assistance. Section 101, Part D, Subpart 4 of the MPDIMA adds § 1860D–31(f) to the Social Security Act, requiring the Secretary of the Department of Health and Human Services (HHS) to determine if an individual is eligible for the discount card or for transitional assistance.

Section 105(e)(1) of the MPDIMA adds new section 6103(1)(19) to the Internal Revenue Code (26 U.S.C. 6103(1)(19)), which authorizes the IRS to disclose specified return information of applicants for transitional assistance to officers, employees, and contractors of HHS. This authority does not extend to applicants for other benefits under the MPDIMA.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this Computer Matching Agreement (CMA) is to establish the conditions, safeguards, and procedures under which CMS will conduct a computer-matching program with the IRS to determine eligibility for the Transitional Assistance Program. The Transitional Assistance Program provides up to $600 to purchase prescription drugs to individuals whose annual income does not exceed 135% of the applicable Federal poverty level and who have no disqualifying outpatient drug coverage. This match will assist CMS to rapidly identify eligible applicants for this program.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

Under this matching agreement, CMS will provide to the IRS an initial file containing the name, Social Security Number (SSN), and Health Insurance Claims Number (HICN) for all Medicare beneficiaries. This information will be taken from CMS's Medicare Beneficiary Database (CMS System No. 09–70–0536). IRS will match this information with the individual's taxpayer income information from the CADE—Individual Master File (IRS System No. 24.030), and create a separate file consisting of the name, SSN, and return information specified in 26 U.S.C. 6103(1)(19) of each individual on the initial list. IRS will maintain this separate list for purposes of responding to CMS inquiries as to whether the income of a transitional assistance applicant exceeds the threshold amount. When Medicare beneficiaries apply for transitional assistance, and CMS cannot otherwise verify the income information provided on an application, CMS will disclose to IRS that applicant's name, SSN, HICN, and threshold amount. IRS will match this information with the separate list created as described above, and return to CMS a report file containing the applicant's SSN, HICN, and specified return information. CMS will use the IRS response to further process benefits applications under the transitional assistance program.

INCLUSIVE DATES OF THE MATCH:

The Matching Program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The match is expected to begin on May 1, 2004. The matching program will continue for 18 months from the effective date and may be extended for up to an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–8181 Filed 4–7–04; 10:48 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities (ADD); Funding Opportunity Title: Family Support Initiative 2004

Announcement Type: Initial.

Funding Opportunity Number: HHS–2004–ACF–ADD–DF–0001.

CFDA Number: 93.631—Developmental Disabilities—Projects of National Significance.

Due Date for Applications: The due date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 8, 2004.

I. Funding Opportunity Description

Objectives: To provide funds to States to create or expand statewide systems change for Family Support. To allow for the award of competitive grants to conduct training, technical assistance, and other national activities designed to address the problems that impede the self-sufficiency of families of children with developmental disabilities. This program announcement will provide funds for the development phase of the Family Support Initiative.

Statutory Authority Covered Under This Announcement

This announcement is covered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001–15115. Projects of National Significance is Part E of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15081–15083. Provisions under this section provide for the award of grants, contracts, or cooperative agreements for Projects of National Significance that support:

- The development of national and State policies that reinforce and promote the self-determination, independence, productivity, integration, and inclusion in all facets of community life of individuals with developmental disabilities;
- Family support activities, data collection and analysis, technical assistance to entities that provide family support and data collection activities; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities.

General Description

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). ADD shares goals with other ACF programs that promote the economic and social well-being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions that transcend traditional agency boundaries;
- Services planned and integrated to improve access to programs and supports for individuals and families;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees, and migrants to address their needs, strengths and abilities;
- A recognition of the power and effectiveness of public-private partnerships, including collaboration among community groups, such as faith-based organizations, families, and public agencies; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

These goals will enable individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance (PNS) program is one means through which ADD promotes the achievement of these goals.

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs to promote self-sufficiency and protect the rights of persons with developmental disabilities. ADD implements the Developmental Disabilities Assistance and Bill of Rights Act (the DD Act), which was authorized by Congress in 2000.

This Act supports and provides assistance to States, public, private non-profit agencies, and organizations, including faith-based organizations, to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

As defined in the DD Act, the term "developmental disabilities" means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that is manifested before the individual attains age 22 and is likely to continue indefinitely. Developmental disabilities result in substantial limitations in three or more of the following functional areas; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and capacity for economic self-sufficiency.

A number of significant findings are identified in the DD Act, including:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration, and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely; and
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families.

The DD Act also promotes the best practices and policies presented below:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration, and inclusion into the community, and often require the provision of services, supports, and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual; and
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive, and play decision making roles in policies and programs that affect the lives of such individuals and their families.

Toward these ends, ADD seeks to support and accomplish the following:

- Enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential;
- Support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination and to engage in leadership activities in their communities; and

• Ensure the protection of individuals with developmental disabilities' legal and human rights.

The four programs funded under the Act are:

• State Developmental Disabilities Councils;

• State Protection and Advocacy Systems for Individuals with Developmental Disabilities' Rights;

• Grants to the National Network of University Centers for Excellence in Developmental Disabilities, Education, Research, and Service; and

• Grants for Projects of National Significance.

A. *Description of the Family Support Program.* The Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001–15115 was authorized on October 30, 2000. The purpose of the family support program is for states to create or expand statewide systems change. It allows for the award of competitive grants to conduct training, technical assistance, and other national activities designed to address the problems that impede the self-sufficiency of families of children with developmental disabilities.

B. *Requirements.* Project funds must be used to support the planning and development of family support activities contributing to the self-determination, independence, productivity, and integration and inclusion in all facets of community life of such individuals. Projects will:

(1) Ensure the full participation, choice and control of families of children with developmental disabilities, in decisions related to the provisions of such family support for their family;

(2) Ensure the active involvement of families of children with developmental disabilities in the planning, development, implementation, and evaluation of the project; increase the availability of, funding for, access to, and provision of family support for families of children with developmental disabilities;

(3) Promote training activities that are family-centered and family-directed and that enhance the ability of family members of children with developmental disabilities to increase participation, choice, and control in the provision of family support for families of children with developmental disabilities;

(4) Increase and promote interagency coordination among State agencies, and between State agencies and private entities that are involved in these projects; and

(5) Increase the awareness of laws, regulations, policies, practices, procedures, and organizational structures that facilitate or impede the availability or provision of family support for families of children with developmental disabilities.

II. Award Information

Funding Instrument Type: Grant.

Category of Funding Activity: ISS Income Security and Social Services.

Anticipated Total Program Funding: $550,000.

Anticipated Number of Awards: 6.

Ceiling on Amount of Individual Awards: $100,000 for a State Entity per project period; $50,000 for a Territorial Entity per project period.

An application received that exceeds the upper value of the dollar range specified will be considered "non responsive" and be returned to the applicant without further review.

Floor on Amount of Individual Awards: None.

Project Periods for Awards: Up to 17 month project period with up to one 17 month budget period.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
Special district governments
Independent school districts
State controlled institutions of higher education
Native American tribal governments (Federally recognized)
Public housing authorities/Indian housing authorities.

Nonprofits with 501(c)(3) IRS status, other than institutions of higher education.

Private institutions of higher education.

Small businesses.

Faith-based and Community-based Organizations

Additional Information on Eligibility: Eligible States and territorial entities under this announcement are: Alabama, Arkansas, Louisiana, Iowa, Tennessee, American Samoa. States not listed above are not eligible to apply.

Eligible applicants include any public or private non-profit organization, including State and local governments, federally recognized Indian tribes, faith-based organizations, and private non-profit organizations including universities and other institutions of higher education designated by the governor or chief executive officer of the State as the lead agency for this project. Applicants awarded planning grants last year (FY 2003) under this announcement are not eligible.

Applicants awarded planning grants in Fiscal Years, 1999 through 2002 that have never received a development grant are eligible to apply under this announcement for development funds. A letter from the office of the governor or the chief executive officer designating the applicant as the lead agency for the State or Territory must accompany the application. This lead agency is responsible for coordinating the planning, development, implementation (or expansion and enhancement), and evaluation of a statewide system of family support services for families of children with developmental disabilities. If the Governor's letter does not accompany the application, it will not be reviewed and ranked for funding consideration.

Applicants who have not previously been awarded family support development grants are eligible for family support development grants under this announcement.

All applications developed jointly by more than one agency or organization must identify only one organization as the lead organization and the official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors.

Before applications under this Program Announcement are reviewed, each one will be screened to determine whether the applicant is eligible for funding. Applications from organizations that do not meet eligibility requirements will not be considered or reviewed in the competition, and the applicant will be so informed.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant-Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

Yes. Grantees must provide at least 25 percent of the total approved cost of the project. Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contribution although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds (based on an award of $100,000 per budget period) must provide a match of at least $33,333. Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required match. Failure to provide the amount will result in disallowance of Federal funds.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

3. Other

All Applicants must have a Duns & Bradstreet Number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Duns and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com*

Applications that fail to follow the required format described in section IV.2 Application Requirements will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that fail to include the required amount of cost-sharing will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that exceed the ceiling of $100,000 for a State Entity and $50,000 for a Territorial Entity will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

Valerie Reese, Program Specialist, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Mail Stop Room 405D HHH Bldg., Washington, DC 20447, E-mail: *vreese@acf.hhs.gov.* Phone: (202) 690–5805, Fax: (202) 690–6904.

2. Content and Form of Application Submission

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants:gov. that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Please see Section V for instructions on preparing the project summary/abstract and the full project description.

A. Project Summary/Abstract

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Provide a summary description that accurately and concisely reflects the proposal. The summary should describe the objectives of the project, the approaches to be used and the expected outcomes. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project "abstract." This is a major source of information about the

proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

B. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned in Part I.

The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach;
(*a*) Organization Profile; and
(*b*) Budget and Budget Justification.

C. Assurances, Certifications and Other Forms

Applicants are required to submit a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under Section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under Part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant-Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *www.acf.hhs.gov/programs/ofs/forms.htm*.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;
—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and
—Application length does not exceed 60 pages, including attachments and all federally required forms.

A complete application consists of the following items in this order:

Application for Federal Assistance (SF 424, REV 4–88);
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate; (when charging indirect costs to Federal funds or when using indirect costs as a matching share);
—Letter from the Governor in the applicant's State or Territory designating the applicant as the lead agency as required by the Program Announcement;
—Project Description;
—Letter(s) of commitment verifying non-Federal cost share
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying;
—Certification of Protection of Human Subjects, if necessary; and
—Certification of the Pro Children Act of 1994, signature on the application represents certification.
—Voluntary Survey for Private, Non-Profit Grant Applicants

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

The narrative should be typed double spaced on a single side of an 8½" x 11" plain white paper, with 1" margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative, including attachments (such as charts, references/footnotes, tables, maps, exhibits, etc.) and letters of support must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including all attachments and required Federal forms, must not exceed 60 pages. The federally required forms will be count towards the total number of pages. The 60-page limit will be strictly enforced. All pages beyond the first 60 pages of text will be removed prior to applications being evaluated by the reviewers. A page is a single side of an 8½ x 11" sheet of paper with 1" margins.

Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed projects from the two copies submitted with the original application to ACF. For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application for ACF.

Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. A list of the State Developmental Disabilities Councils can be found at ADD's Web site: *http:///www.acf.dhhs.gov/programs/add* or by contacting Joan Rucker, ADD, 370

L'Enfant Promenade SW., Mail Stop 405D HHH Bldg, Washington, DC 20447, (202) 690–7898.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. Eastern Standard Time (EST) on June 8, 2004. Mailed or hand carried applications received after 4:30 p.m. EST on the closing date will be classified as late.

• *Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 8th Floor, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447–0002, Attention: Lois Hodge.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

• Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note, "Attention: Lois Hodge."

Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

What to submit	Required content	Required form or format	When to submit
SF424, SF424A, SF424B	Per required form	May be found at 60 *http://www.acf.hhs.gov/program/ofs/forms.htm.*	60 days from release date.
Project Summary/Abstract ...	Summary of application request.	One page limit	60 days from release date.
Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	60 days from release date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/program/ofs/forms.htm.*	60 days from release date.

Additional Forms:

Private non-profit organizations may voluntarily submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicant.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	60 days from release date.

4. Intergovernmental Review

State Single Point of Contact (SPOC), Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a *SPOC* has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447. The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

A list of the Single Points of Contact for each State and Territory is included with the application materials in this announcement.

5. Funding Restrictions

Reimbursement of pre-award costs, costs for foreign travel or costs for construction activity are not allowable charges to the program grant.

6. Other Submission Requirements:

Electronic Link to Full Announcement: http//www.acf.dhhs.gov/programs/add/announce.htm

Electronic Address to Submit Applications: http://www.grants.gov.

Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Attention: Lois Hodge 370 L'Enfant Promenade, SW., Washington, DC 20447. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Hand Delivery: Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants ACF Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "Attention: Lois Hodge. Applicants are cautioned that express/overnight mail services do not always deliver as agreed."

ACF cannot accommodate transmission of applications by fax.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information:

1. Criteria

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139.

General Instructions for the Uniform Project Description

Applicants required to submit a full project description should prepare the project description statement in accordance with the following instructions.

Project summary/abstract: Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and need for assistance: Clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or benefits expected: Identify the results and benefits to be derived. For example, extent to which the application is consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy practice, theory and research. Extent to which the proposed project cost is reasonable in view of the expected results.

Approach: Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates. If any data are to be collected, maintained, and disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profile: Provide information on the applicant organization(s) and cooperating partners such as with organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by

providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification: Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Minimum Requirements for Project Design. ADD requires grant funds to be used to support the development of State policies that reinforce and promote (with the support of families, guardians, advocates, and communities of individuals with developmental disabilities) the self-determination, independence, productivity and integration and inclusion in all facets of community life of such individuals through family support activities. Project activities should accomplish any of the following:

- Establishment of a State Policy Council of families of children with developmental disabilities, or utilization of an existing council which will advise and assist the lead entity in the performance of activities under the project. The State Policy Council shall be composed of a majority of participants who are family members of children with developmental disabilities, or who are youth with developmental disabilities (ages 18–21), or qualify under both categories;
- Training and technical assistance for family members, service providers, community members, professionals, members of the Policy Council, State agency staff, students and others;
- Interagency coordination of Federal and State policies, resources, and services; establishment of interagency workgroups to enhance public funding options and coordination; and other interagency activities that promote coordination;
- Outreach to locate families who are eligible for family support and to identify groups who are underserved or unserved;
- Policy studies that relate to the development and implementation, or expansion and enhancement, of a statewide system of family support for families of children with developmental disabilities;
- Hearings and forums to solicit input from families of children with developmental disabilities, regarding family support programs, policies, and plans for such families;
- Public awareness and education to families of children with developmental disabilities, parent groups and organizations, public and private agencies, students, policymakers, and the general public;
- Needs assessment;
- Data collection and analysis related to the statewide system of family support for families of children with developmental disabilities;
- Implementation plans must include innovative partnerships with community organizations to increase the utilization of generic services by families of children with developmental disabilities;
- Pilot demonstration projects to demonstrate new approaches to the provision of family support for families of children with developmental disabilities, that includes family strengthening services such as parenting education and marriage education;
- Development of an evaluation system that uses measurable outcomes based on family satisfaction indicators. Indicators include the extent to which a service or support meets a need, solves a problem, or adds value for families of children with developmental disabilities, as determined by the individual family.

ADD expects to fund applications that include or incorporate into these activities one or more of the following populations relevant to their State: (1) Unserved and underserved populations that include populations such as individuals from racial and ethnic minority backgrounds, economically disadvantaged individuals, individuals with limited-English proficiency, and individuals from underserved geographic areas (rural or urban); (2) aging families of adult children with developmental disabilities, who are over age 21 with a focus on assisting those families and their adult child to be included as self-determining members of their communities; (3) foster/adoptive families of children with developmental disabilities; (4) families participating in the State's Temporary Assistance for Needy Families Program (TANF), welfare-to-work, and/or SSI program; (5) veterans with families having a child with a developmental disability; (6) parents with developmental disabilities (especially cognitive disabilities) who have children with or without disabilities; and (7) families of children with developmental disabilities who have behavioral/emotional issues.

ADD intends to fund those applications that describe how the project will:

- Ensure consumer/self-advocate orientation and participation;
- Include key project personnel with direct life experience living with a developmental disability;
- Have strong advisory components that consist of a majority of individuals with developmental disabilities and a structure where individuals with developmental disabilities make real decisions that determine the outcome of the grant;
- If the project includes research, reflect the principles of participatory action;
- Consider cultural competency ("cultural competency" as defined in the DD Act as—services, supports, or other assistance that is conducted or provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behavior of individuals who are receiving the services, supports or other assistance, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program involved);
- Allow individuals with developmental disabilities and their families to be involved in all aspects of the design, implementation, and evaluation of the project;
- Attend to unserved and inadequately served individuals, who have developmental disabilities (from mild to severe), and who are from multicultural backgrounds, rural and inner-city areas, and migrant, homeless, and refugee families;
- Comply with the Americans With Disabilities Act, if applicable, and Section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998 (Pub. L. 105–220);
- Use collaboration through partnerships and coalitions;
- Develop the capacity to communicate and disseminate information and technical assistance through e-mail and other effective, affordable, and accessible forms of electronic communication;
- Develop and establish system change activities beyond the project period; and

• Disseminate models, products, best-practices, and strategies for distribution between networks and beyond.

Applications must also include provisions for the travel of a key staff person during the project period to Washington, DC.

Evaluation Criteria

Five (5) criteria will be used to review and evaluate each application under this announcement. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for a criterion in the review process. The specific information to be included under each of these headings is described in the General Instructions for the Uniform Project Description. Additional information that must be included is described below.

Criterion 1: Approach (Maximum 35 points)

Applicants are expected to present a plan that (1) reflects an understanding of the characteristics, needs and services currently available to the targeted population; (2) provides services that directly address the needs of the target population; (3) is evidence-based and grounded in theory and practice; (4) is appropriate and feasible; (5) can be reliably evaluated; and (6) if successfully implemented, can be sustained after Federal funding has ceased.

The application will be evaluated on the extent to which it:

(1) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished for each project. Defines goals and specific measurable objectives for the project (8 points);

(2) Identifies the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Describes how the proposed project will be evaluated to determine the extent to which it has achieved its stated goals and objectives; and whether the methods of evaluation include the use of performance measures that are clearly related to the intended outcome of the project (8 points);

(3) Describes any unusual features of the project, such as design or technological innovation, reductions in cost or time, or extraordinary social and community involvement (5 points);

(4) Provides quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity, in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified, activities should be listed in chronological order to show the schedule of accomplishments and their target dates (4 points);

(5) Describes the products to be developed during the implementation of the proposed project. These can include questionnaires, interview guides, data collection instruments, software, Internet applications, reports, outcomes and evaluation results. Also present a dissemination plan for conveying the information (4 points);

(6) Cites factors which might accelerate or decelerate the work and provide reasons for taking this approach as opposed to others (3 points);

(7) Lists each organization, operator, consultant, or other key individual who will work on the project along with a short description of the nature of their effort or contribution (3 points).

Criterion 2: Objectives and Need for Assistance (Maximum 25 points)

The application should describe the context of the proposed demonstration project, including the geographic location, environment, magnitude and severity of the problem(s) to be solved and the needs to be addressed. Applications requesting development funds, in addition to providing the following information, should include a summary/abstract of the project goals and accomplishments during the planning grant.

The application will be evaluated on the extent to which it:

(1) Demonstrates the need for the assistance and states the principal and subordinate objectives for the project (10 points).

(2) Pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution (5 points).

(3) Provides supporting documentation or other testimonies from concerned interests other than the applicant (5 points).

(4) Provides any relevant data based on planning studies (4 points); and

(5) Provides maps and other graphic aids (1 point).

Criterion 3: Results or Benefits Expected (Maximum 20 points)

The application should identify results and benefits to be derived and the anticipated contribution to policy, practice, theory and research should be indicated.

The application will be evaluated on the extent to which it:

(1) Clearly describes project benefits and results as they relate to the objectives of the project (10 points); and

(2) Provides information as to the extent to which the project will build on current theory, research, evaluation and best practices to contribute to increased knowledge of understanding the problems, issues or effective strategies and practices in family support (10 points).

Criterion 4: Organizational Profile (13 points)

Applications should demonstrate a capacity to implement the proposed project. Capacity includes (1) experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing sustaining work among key stakeholders; (5) experience and commitment of any proposed consultants and subcontractors; and (6) appropriateness of the organizational structure, including its management information system, to carry out the project.

The application will be evaluated on the extent to which it:

(1) Identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization that demonstrates the an ability to effectively and efficiently administer this project; present brief resumes (4 points);

(2) Provides a brief background description of how the applicant organization is organized, the types and quantity of services it provides, and the research and management capabilities it possesses (4 points);

(3) Describes the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable (3 points); and

(4) Provides an organization chart showing the relationship of the project to the current organization (2 points).

Criterion 5: Budget and Budget Justification (7 points)

Applications must present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The dollar amount requested must be fully justified and documented.

A letter of commitment of non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

The application will be evaluated on the extent to which it:

(1) Discusses and justifies the costs of the proposed project which are reasonable and programmatically justified in view of the activities to be conducted and the anticipated results and benefits (3 points);

(2) Describes the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement (2 points); and

(3) Includes a fully explained non-Federal share budget and its source(s) (2 points).

Additional Points

This year, five additional points will be added to the total in the score for an application for any project that includes partnership and collaboration with one or more of the 140 Empowerment Zones/Enterprise Communities. To receive the additional five points, the application must provide a clear outline for the collaboration and a discussion of how the involvement of the EZ/EC is related to the objectives and the activities of the project. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project. For further information on Empowerment Zones and Enterprise Communities, please visit the ACF Office of Community Service's Web site at *http://www.acf.hhs.gov/programs/ocs/ez-ec.*

2. Review and Selection Process

A. Selection Process

Applications under this Program Announcement from eligible applicants received by the deadline date will be competitively reviewed and scored. Experts in the field, generally persons from outside the Federal Government, will use the evaluation criteria listed later in the evaluation section of the Program Announcement to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant.

In making PNS decisions for 2004 grant awards, ADD will consider whether applications focus on or feature the following aspects/activities in their project design to the extent appropriate:

- A substantially innovative strategy with the potential to improve theory or practice in the field of human services;
- A model practice or set of procedures that holds the potential for replication by organizations administering or delivering human services;
- A substantial involvement of volunteers, the private sector (either financial or programmatic), faith-based and community organizations, and/or national or community foundations;
- A favorable balance between Federal and non-Federal funds available for the proposed project, which is likely to result in the potential for high benefit for low Federal investment; and
- A programmatic focus on those most in need of services and assistance, such as unserved and underserved populations, including underserved cultural, ethnic, and racial minority populations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, and rural and urban areas. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

B. Review Process

Using the evaluation criteria described above, a panel of at least three reviewers (primarily experts from outside the Federal Government) will evaluate and score the applications. To facilitate this review, applicants should ensure that they address the minimum requirements identified in the Priority Area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments, and assign numerical scores. The point value following each criterion indicates the maximum numerical weight that each applicant may receive per section in the review process.

VI. Award Administration Information

1. Award Notices

Subject to the availability of funding, ADD intends to award new grants resulting from this Program Announcement during the fourth quarter of Fiscal Year 2004. Up to $550,000 in Federal funds will be available to support these projects this fiscal year.

Successful and unsuccessful applicants will be notified of the results of this grant competition within 90 days of the application deadline.

Following approval of the application selected for funding, ACF will mail a written notice of award to the applicant organization. The official award document is the Financial Assistance Award that specifies the amount of the Federal funds approved for use in the project, the project and budget period for which support is provided and the terms and conditions of the award. The notice of award signed by the grants management officer is the authorizing document.

For the purpose of the awards under this Program Announcement, the successful applicants should expect a project start date of September 1, 2004.

2. Administrative and National Policy Requirements

45 CFR Part 74, Administration of Grants for Institutions of Higher Education, non-profit organizations and Indian Tribal Governments.

45 CFR Part 92, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

Public Law 108–96.

3. Reporting Requirements

A. *Programmatic Reports:* semi-annually, and a final report due 90 days after end of Project Period.

B. *Financial Reports:* semi-annually, and a final report due 90 days after end of Project Period.

Original reports and one copy should be mailed to: Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC, 20447.

VII. Agency Contacts

Program Office Contact: Joan Rucker, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 690–7898, *jrucker@acf.hhs.gov,* or fax (202) 690–6904.

Grants Management Office Contact: Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 401–2344, or e-mail *lhodge@acf.hhs.gov.*

Application Materials Contact: Valerie Reese, Program Specialist, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 690–5805, *vreese@acflhhs.gov,* or fax (202) 690–6904.

VIII. Other Information

All forms are available online at: *http://www.acf.hhs.gov/programs/ofs/form/htm.*

Dated: April 5, 2004.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 04–8081 Filed 4–8–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Privacy Office; Data Integrity, Privacy, and Interoperability Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee management; notice of establishment and request for applications for membership.

SUMMARY: The Department of Homeland Security provides notice of establishment of the Data Integrity, Privacy, and Interoperability Advisory Committee. This notice also requests qualified individuals interested in serving on this committee to apply for membership.

DATES: Applications forms for membership should reach the Privacy Office on or before April 30, 2004.

ADDRESSES: You may request a copy of the Committee's charter or an application form by writing to Ms. Tina Hubbell, U.S. Department of Homeland Security Privacy Office, Washington, DC 20528, by calling (202) 772–9848, or by faxing (202) 772–5036. The Committee's charter will also be available at *www.dhs.gov/privacy*. Send your application in written form to the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, telephone (202) 772–9848.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Homeland Security has determined that the establishment of the Data Integrity, Privacy, and Interoperability Advisory Committee is necessary and in the public interest in connection with the performance of duties of the Chief Privacy Officer. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Data Integrity, Privacy, and Interoperability Advisory Committee.

Purpose and Objective: The Committee will advise the Secretary of the Department of Homeland Security (DHS) and the Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that affect individual privacy, as well as data integrity and data interoperability and other privacy related issues.

Duration: Continuing.

Balanced Membership Plans: This Committee will be composed of not less than 12 members, appointed by the Secretary, who shall be specially qualified to serve on the Committee by virtue of their education, training, or experience and who are recognized experts in the fields of data protection, privacy, interoperability, and/or emerging technologies. Membership shall be balanced among individuals from the following fields:

- Individuals who are currently working in the areas of higher education or research in public (except Federal) or not-for-profit institutions;
- Individuals currently working in non-governmental industry or commercial interests, including at least one representative of a small to medium enterprise;
- Other individuals, as determined appropriate by the Secretary.

Individuals may be required to have an appropriate security clearance before appointment to membership on the Committee.

Membership terms will be for up to 4 years, with the terms of the initial appointees staggered in 2-, 3-, and 4-year terms to permit continuity and orderly turnover of membership. Thereafter, members shall generally be appointed to 4-year terms of office.

Members will not be compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel and per diem in accordance with Federal Government regulations.

Dated: April 6, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 04–8106 Filed 4–8–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

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

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: June 3, 2004.

Place: Building J, Room 101, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m.—FICEMS Ambulance Safety Subcommittee; 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Counter-Terrorism Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee and Subcommittees Meeting Minutes; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, June 1, 2004, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503; or telephone at (703) 674–0190, or facsimile at (703) 674–0195, or e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is "430746#."

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on September 2, 2004. The minutes will also be posted on the U. S. Fire Administration Web site at *http://www.usfa.fema.gov/fire-service/ems/ficems.shtm* within 30 days after their approval at the September 2, 2004 FICEMS Committee Meeting.

Dated: April 2, 2004.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 04–8111 Filed 4–8–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), FEMA, Emergency Preparedness and Response, Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

DATES: May 6–7, 2004.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: May 6, 2004, 11 a.m.–5 p.m. May 7, 2004, 8:30 a.m.–5 p.m.

Proposed Agenda: May 6–7, Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before April 30, 2004.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

Dated: March 31, 2004.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 04–8112 Filed 4–8–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: April 9, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 1, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–7812 Filed 4–8–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Fish and Wildlife Permit Application; Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit a request for approval of a collection of information to OMB under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments on or before June 8, 2004.

ADDRESSES: Send your comments on the information collection requirement via mail to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 222–ARLSQ, Arlington, Virginia 22203; or via fax at (703) 358–2269; or via e-mail at *Anissa_Craghead@fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the proposed information collection requirement, related forms, or explanatory material, contact Anissa Craghead, Information Collection Clearance Officer, by telephone at (703) 358–2445 or by e-mail at *Anissa_Craghead@fws.gov*. You may also contact Mary Klee, Endangered Species Program, by telephone at (703) 358–2061 or by e-mail at *Mary_Klee@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (Service or we) plans to submit a request to OMB to renew its existing approval of the collection of information for Native Threatened and Endangered Species Permit Applications, which expires on July 31, 2004. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0094.

Under the Endangered Species Act (ESA), it is unlawful to import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign

commerce; take (includes harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect any wildlife within the United States); take on the high seas; possess, ship, deliver, carry, transport, sell, or receive unlawfully taken wildlife; remove and reduce to possession any plant from areas under Federal jurisdiction; maliciously damage or destroy an endangered plant on areas under Federal jurisdiction; and remove, cut, dig up, or damage or destroy any endangered plant in knowing violation of any State law or regulation or in the course of a violation of a State criminal trespass law. These prohibitions apply equally to live or dead animals or plants, their progeny (seeds in the case of plants), and parts or products derived from them.

The ESA provides a number of exceptions to these prohibitions, including the prohibition against "take" of listed species. Regulations have been promulgated at 50 CFR 17.22 (endangered wildlife species), 17.32 (threatened wildlife species), 17.62 (endangered plant species), and 17.72 (threatened plant species) to guide implementation of these exceptions through permitting programs.

The information collection requirement in this submission implements the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (16 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald Eagle Protection Act (16 U.S.C. 668), and the Marine Mammal Protection Act (16 U.S.C. 1374) contained in Service regulations in chapter I, subchapter B of title 50 of the Code of Federal Regulations (CFR).

This entire information collection is titled, "Federal Fish and Wildlife Permit Application; Native Endangered and Threatened Species." These permit applications are used to collect information on prohibited activities that may impact native endangered and threatened species. The information supplied on the application form and the attachments will be used to review the application and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations on the issuance, suspension, revocation, or denial of permits. The obligation to provide the information is "required to obtain a benefit" (*i.e.*, to obtain an exception to the prohibited activities). An agency may not conduct or sponsor a collection of information unless the collection of information (*i.e.*, the permit application form) displays a currently valid OMB control number. We have revised the following information collection requirement, and they are included in this submission:

1. *Title of Form:* Enhancement of Survival Permits associated with Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Approval Number: 1018–0094.
Service Form Number: 3–200–54.
Frequency of Collection: Annually.
Description of Respondents: Individuals, households, businesses, State agencies, private organizations.
Total Annual Burden Hours: The reporting burden is estimated to average 3 hours per respondent for the application and 8 hours per respondent for the annual report of permitted activities. The Total Annual Burden hours are 66 hours for the application and 424 hours for the annual report on the permitted activities.
Total Annual Responses: The total number of annual responses is estimated to be 22 for the application and 53 for the annual report of the permitted activities.
Background Explanation: Service form number 3–200–54 addresses application and reporting requirements for Enhancement of Survival permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) of the ESA. The permittee is required to notify the Service of any transfer of lands subject to the Safe Harbor Agreement so that any landowners may be offered the opportunity to continue the actions which the original landowner agreed to, and thus he or she may be offered the same regulatory assurances. A major incentive for landowner participation in the Safe Harbor program is the long-term certainty the program provides, including the certainty that the take authorization will stay with the land when it changes hands. The Service also requires the permittee/landowner to notify the Service as far in advance as possible when he or she expects to "take" any species covered under the permit and provide the Service with an opportunity to translocate affected individual specimens, if possible and appropriate.

2. *Title of Form:* Permits for Scientific Purposes, Enhancement of Propagation or Survival (*i.e.*, Recovery) and Interstate Commerce.

Approval Number: 1018–0094.
Service Form Number: 3–200–55.
Frequency of Collection: Annually.
Description of Respondents: Individuals, scientific and research institutions.
Total Annual Burden Hours: The reporting burden is estimated to average 4 hours per respondent for the application and 8 hours per respondent for the annual report on the permitted activities. The Total Annual Burden hours are 3,280 hours for the application and 11,680 hours for the annual report on the permitted activities.
Total Annual Responses: The total number of annual responses is estimated to be 820 for the application and 1,460 for the annual report of the permitted activities.
Background Explanation: Form number 3–200–55 addresses application and reporting information requirements for Recovery and Interstate Commerce permits under section 10(a)(1)(A) of the ESA. Recovery permits allow "take" of listed species as part of scientific research and management actions, enhancement of propagation or survival, zoological exhibition, educational purposes, or special purposes consistent with the ESA designed to benefit the species involved. Interstate Commerce permits allow transport and sale of listed species across State lines as part of breeding programs enhancing the survival of the species. Detailed descriptions of the proposed taking, its necessities for success of the proposed action, and benefits to the species resulting from the proposed action are required under the implementing regulations cited above. Take authorized under this permit program would otherwise be prohibited by the ESA.

3. *Title of Form:* Incidental Take Permits Associated With a Habitat Conservation Plan.

Approval Number: 1018–0094.
Service Form Number: 3–200–56.
Frequency of Collection: Annually.
Description of Respondents: Individuals, households, businesses, local and State agencies.
Total Annual Burden Hours: The reporting burden is estimated to average 3 hours per respondent for the application and 20 hours per respondent for the annual report on the permitted activities. The Total Annual Burden hours are 288 hours for the application and 4,020 hours for the annual report on the permitted activities.
Total Annual Responses: The total number of annual responses is estimated to be 96 for the application and 201 for the annual report of the permitted activities.
Background Explanation: Form number 3–200–56 addresses application and reporting requirements for Incidental Take Permits under section 10(a)(1)(B) of the ESA. These permits allow "take" of listed species that is incidental to otherwise lawful non-

Federal actions. Take authorized under this permit program would otherwise be prohibited by the ESA.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our endangered and threatened species management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 30, 2004.

Anissa Craghead,

Information Collection Clearance Officer.

[FR Doc. 04–8063 Filed 4–8–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Environmental Impact Statement/ Environmental Impact Report on the South Bay Salt Ponds Initial Stewardship Plan, San Francisco Bay, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public of the availability of the Final Environmental Impact Statement/ Environmental Impact Report for the South Bay Salt Ponds Initial Stewardship Plan. The Record of Decision will be signed no sooner than 30 days from this notice.

The U.S. Fish and Wildlife Service and the California Department of Fish and Game plan to manage 15,100 acres of former commercial salt ponds in south San Francisco Bay using an interim strategy while a long-term restoration plan is developed and implemented. This interim strategy, the Initial Stewardship Plan (ISP), would use existing and new water control structures, pursuant to permits, to release any remaining saline pond waters to the Bay and to prevent further salt concentration by circulating waters through the ponds. The ponds are located at the Don Edwards San Francisco Bay National Wildlife Refuge and at the Eden Landing State Ecological Reserve.

DATES: A Record of Decision will occur no sooner than 30 days from the date of publication of this notice. In accordance with NEPA, we have filed the EIS with the Environmental Protection Agency (EPA). Each Friday, EPA publishes a **Federal Register** notice that lists EISs received during the previous week. The EPA notice officially starts the 30-day review period for these documents. It is the goal of the Fish and Wildlife Service to have the FWS notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for the Final EIS.

ADDRESSES: The Final Environmental Impact Statement/ Environmental Impact Report can be viewed at *http://www.southbayrestoration.org/documents.* Copies of the Final Environmental Impact Statement/ Environmental Impact Report are also available for review at the following government offices and libraries:

Government Offices—Don Edwards San Francisco Bay NWR, #1 Marshlands Road, Fremont, CA 94536, (510) 792–0222; Don Edwards San Francisco Bay NWR, Environmental Education Center, 1751 Grand Boulevard, Alviso, CA 95002, (408) 262–5513; California Department of Fish and Game, 7329 Silverado Trail, Napa, CA 94558, (707) 944–5500.

Libraries—Alviso Library, 5050 N. 1st St., Alviso, CA 95002–1060, (408) 263–3626; Hayward Public Library, 835 C St., Hayward, CA 94541–5120, (510) 293–8685; Menlo Park Public Library, 800 Alma Street, Menlo Park, CA 94025–3460, (415) 858–3460; Mountain View Public Library, 585 Franklin St., Mountain View, CA 94041–1998; (650) 903–6335; Union City Library, 34007 Alvarado-Niles Road, Union City, CA 94587–4498; (510) 745–1464.

FOR FURTHER INFORMATION CONTACT: Margaret Kolar, Refuge Complex Manager, San Francisco Bay NWR Complex, P.O. Box 524, Newark, California 94560, (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) prepared a Final Environmental Impact Statement evaluating the impacts of managing the South Bay Salt Ponds in San Francisco Bay under an Initial Stewardship Plan.

On March 6, 2003, the State of California and the United States of America acquired 15,100 acres of commercial salt ponds in South San Francisco Bay from Cargill, Inc. The purpose of the acquisition was to protect, restore and enhance the property for fish and wildlife, as well as to provide opportunities for wildlife-oriented recreation and education. The Final Environmental Impact Statement/ Environmental Impact Report (Final EIS/EIR) on the South Bay Salt Ponds Initial Stewardship Plan addresses the interim management of these ponds prior to their long-term restoration.

Under commercial salt production, Cargill managed the South Bay salt ponds as shallow water ponds with various salinity levels. The salinity levels varied both geographically, based on the location of the pond within the system, and temporally, based on seasonal and climatic conditions. Although these ponds were managed for salt production, they provided habitat for many water bird species including waterfowl and shorebirds.

The restoration of the salt ponds is taking place in three independent stages. First, Cargill is reducing the salinity levels in the ponds by moving the saltiest brines to its plant site in Newark, California. After the salinities are reduced to levels that are allowed to be discharged to the Bay, Cargill will no longer manage the ponds for salt production. Management of the Baumberg ponds will be turned over to the California Department of Fish and Game and management of the Alviso ponds and West Bay ponds will be turned over to the U.S. Fish and Wildlife Service.

In the second stage of restoration, the ponds will be managed by the agencies in a manner that provides habitat values while the long-term restoration plan is being developed and implemented. In this Initial Stewardship stage, Bay waters will be circulated through the ponds following installation of water control structures and the existing levees will be maintained for minimum flood protection. The Final EIS/EIR covers only this second stage of restoration, *i.e.*, Initial Stewardship.

The third stage of restoration is the actual long-term restoration of the salt ponds to a mix of tidal marshes, managed ponds and other habitats. The planning process for this long-term restoration has just begun and will include a substantial amount of data collection, studies, modeling efforts, and public involvement. The long-term planning process will include development of a separate EIS/EIR.

Implementation of the long-term restoration plan is expected to be conducted in phases beginning in 5 years, but with some phases extending beyond 20 years. Therefore, some ponds may be managed under the Initial

Stewardship Plan for as little as 5 years, while others may require such management for over 20 years.

On March 20, 2003, the Service published a Notice of Intent to prepare an EIS in the **Federal Register** (68 FR 13721). The purpose was to maintain and enhance, to the extent possible, the biological and physical conditions within the salt ponds for the period after commercial salt production ceased until long-term restoration was implemented. Scoping activities in preparation for the draft EIS/EIR included a public meeting on March 23, 2003 and a meeting with a group of technical experts on April 17, 2003.

On January 23, 3004, the Service published a Notice of Availability of the Draft EIS/EIR in the **Federal Register**. A public meeting to accept comments on the draft document was held on February 4, 2004 in Fremont, California. In the Draft EIS/EIR, we proposed to circulate Bay waters through reconfigured pond systems and release pond contents to the Bay. This would require installation, replacement or removal of 55 water control structures, breaches or levee fills. We also proposed to manage a limited number of ponds in different manners: as seasonal ponds; as higher salinity ponds; as muted or full tidal ponds; or at different water levels in winter or summer. Project impacts were described in the Draft EIR/EIS.

Development of the Final EIS

The Draft EIS/EIR was jointly developed with the California Department of Fish and Game. Because of differences in notice and comment periods, the Final EIR under the California Environmental Quality Act has already been prepared and issued under a separate cover. However, all comments received by either the Service or the Department of Fish and Game during either the EIR or EIS comment periods, are included and considered in the Final EIS/EIR. A total of 21 comment letters were received from 17 different organizations or individuals. The Final EIS/EIR incorporates all changes or additions to the draft into one complete document.

The analysis provided in the Final EIS/EIR is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed actions; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Alternatives Analyzed

The Final EIS/EIR considers four alternatives for Initial Stewardship: a No Action Alternative, a Seasonal Pond Alternative, and two Pond Management alternatives which vary based on the dates for initial release of saline pond waters.

Under the No Action alternative, there would be no flow circulation through the pond systems. Remaining brines would dry through the evaporation process and the ponds would then fill seasonally with rainwater in winter. No new public access would be available. No action would be conducted by the agencies, including no levee maintenance, and some levees would likely fail during this period, which could impact water quality in the Bay, flood protection for adjacent homes and businesses, and existing public access on the levees. The existing open water ponds in South San Francisco Bay would be dry during most of the year which would reduce their value for wildlife.

In Alternative 1, the Seasonal Pond Alternative, there would be no flow circulation through the pond systems. Remaining brines would dry through the evaporation process and the ponds would then fill seasonally with rainwater in winter. No new public access would be available. The only action taken by the agencies would be to maintain the levees at their current standard of maintenance to prevent release of existing brines, to assure continued public access, and to maintain a minimum level of flood control. The existing open water ponds in South San Francisco Bay would be dry during most of the year which would reduce their value for wildlife.

Under the two pond management alternatives, bay waters would be circulated through the ponds, the pond levees would continue to be maintained at the current level, existing public access would continue and the ponds previously kept closed by Cargill would be open to limited public access. The majority of the existing open water ponds would remain in open water habitat throughout the year thereby maintaining important wildlife habitat values. The two action alternatives differ in the timing of the initial release of the existing low to mid salinity brines in the ponds.

In Alternative 2, the Simultaneous March/April Initial Release alternative, the contents of most of the Alviso and Baumberg Ponds would be released simultaneously in March and April. The ponds would be managed as a mix of continuous circulation ponds, seasonal ponds and batch ponds. Higher salinity ponds in Alviso and in the West Bay would be discharged in March and April in later years when salinities in the ponds have been reduced to required levels. The Island Ponds (A–19, 20, and 21) would be breached and open to tidal waters. This alternative would delay implementation of Initial Stewardship for over a year and could impact the ability of the agencies to maintain low salinities needed to meet permit discharge requirements.

In Alternative 3, the Phased Release Alternative, many lower salinity ponds in Alviso and Baumberg would be discharged in July, and medium salinity ponds would be discharged the following March and April. The higher salinity ponds would be discharged in later years and the Island Ponds would be breached as in Alternative 2. The ponds would be managed as in the Simultaneous March/April Release Alternative during the continuous circulation period. Alternative 3, the Phased Release Alternative, is the preferred alternative in the Final EIS/EIR.

This notice is provided pursuant to regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: March 30, 2004.

David G. Paullin,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 04–7692 Filed 4–8–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–050–1610–DP–018E]

Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) for the Dillon Field Office, MT

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA), a Draft Resource Management Plan and Environmental Impact Statement (DRMP/EIS) has been prepared for public lands and resources administered by the Bureau of Land Management's Dillon Field Office. The public is invited to review and comment on the range and adequacy of the draft

alternatives and associated environmental effects. For comments to be most helpful, they should relate to specific concerns or conflicts that are within the legal responsibilities of the BLM and can be resolved in this planning process. The DRMP/EIS provides direction and guidance for the management of approximately 900,000 acres of public land and 1.3 million acres of federal mineral estate located in Beaverhead and Madison Counties in southwestern Montana. The DRMP/EIS will replace the Dillon Management Framework Plan approved in September 1979.

DATES: The comment period will end 90 days after the Environmental Protection Agency's Notice of Availability is published in the **Federal Register** announcing the availability of this DRMP/EIS. Comments on the DRMP/EIS must be received on or before the end of the comment period at the address listed below. Public meetings will be held during the comment period. Public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, newsletter mailings, and on the Dillon RMP Web site at *www.mt.blm.gov/dfo/rmp.*

ADDRESSES: Written comments should be sent to Dillon RMP Team, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725. Comments may also be sent by e-mail to *MT_Dillon_RMP@blm.gov.* Documents pertinent to the DRMP/EIS and written comments, including names and street addresses of respondents, will be available for public review at the Dillon Field Office at the address above during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Responses to the comments will be published as part of the Proposed Resource Management Plan/Final Environmental Impact Statement. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Review copies of the DRMP/EIS are available at the following locations in and near the planning area:

Beaverhead County Courthouse, Commissioner's Office, Dillon
BLM Butte Field Office
BLM Dillon Field Office
BLM Ennis Field Station
BLM Missoula Field Office
Bozeman Public Library
Dillon Public Library
Ennis Public Library
Lima Town Hall
Madison County Courthouse, Commissioner's Office, Virginia City
Red Rocks Refuge, Lakeview
Sheridan Forest Service Office
Twin Bridges Public Library
Whitehall Public Library
Wisdom Forest Service Office
Wise River Forest Service Office

The DRMP/EIS and other associated documents may also be viewed and downloaded in PDF format at the Dillon RMP Web site at *www.mt.blm.gov/dfo/rmp.*

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list contact Renee Johnson, RMP Project Manager, at (406) 683–8016 or Tim Bozorth, Dillon Field Manager, at (406) 683–8023; use the toll-free number and information line at (877) 521–2889; or correspond by e-mail to *MT_Dillon_RMP@blm.gov.*

SUPPLEMENTARY INFORMATION: The Dillon Field Office RMP area is located in the southwestern portion of Montana in Beaverhead and Madison Counties. The planning area addressed in the RMP contains 901,226 acres of public surface estate and 1,354,710 acres of federal mineral estate administered by the BLM Dillon Field Office. The DRMP/EIS focuses on the principles of multiple use and sustained yield as prescribed by section 202 of the FLPMA. Beaverhead and Madison Counties participated in development of the plan as cooperating agencies with special expertise.

The public involvement and collaboration process implemented for this effort included a situation assessment conducted prior to scoping, five open houses during scoping, an information fair, release of reports on Wild and Scenic River and Area of Critical Environmental Concern (ACEC) findings, release of an *RMP Digest* document describing the current situation followed by nine public alternative development workshops, incorporation of recommendations from three Western Montana Resource Advisory Council (RAC) subgroups, and distribution of information via the Dillon RMP website and periodic newsletters. A copy of the DRMP/EIS has been sent to individuals, agencies, and groups who requested a copy, or as required by regulation or policy.

The DRMP/EIS considers and analyzes four (4) alternatives (A–D), including the No Action, or Continuation of Current Management alternative. These alternatives were developed based on extensive public input including scoping (September/October 2001), an information fair (April 2002), alternative development workshops (February 2003), numerous meetings with local, state, tribal, and federal agencies, and recommendations made by citizen-based working groups convened by the Western Montana RAC. The alternatives provide for an array of alternative land use allocations and variable levels of commodity production and resource protection and restoration. After comments are reviewed and any pertinent adjustments made, a Proposed RMP and Final Environmental Impact Statement is expected to be available in early 2005.

The issues addressed in the formulation of alternatives include upland and riparian management, forest and woodland management, noxious weeds, sage grouse and westslope cutthroat trout conservation, commercial uses (including livestock grazing, mineral development, oil and gas leasing, right-of-ways and communication use areas), Areas of Critical Environmental Concern (ACECs), Wild and Scenic Rivers, and travel management. Information on the management of the 13 potential ACECs and analysis of impacts is described within the Draft RMP/EIS.

Dated: January 23, 2004.

Martin C. Ott,

State Director.

[FR Doc. 04–7460 Filed 4–8–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–5900, HAG04–0090]

Notice of Availability of the Final Environmental Impact Statement for the Upper Siuslaw River Late-Successional Reserve Restoration Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, a Final Environmental Impact Statement has been prepared by the Bureau of Land Management (BLM), Eugene District, with the U.S. Fish and Wildlife Service

as a cooperating agency, for the Upper Siuslaw Late-Successional Reserve (LSR) Restoration Plan. The FEIS was prepared to analyze the impacts of a long-term management approach and specific actions needed to achieve the LSR goals and Aquatic Conservation Strategy objectives set out in the Northwest Forest Plan. The Upper Siuslaw LSR Restoration Plan will address management of approximately 25,000 acres of BLM-managed lands within LSR 267 in the upper portion of the Siuslaw River fifth-field watershed. An abbreviated FEIS has been prepared, containing copies of comments received on the Draft Environmental Impact Statement (DEIS), responses to those comments, and an errata section with specific modifications and corrections to the DEIS. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies. A limited number of copies of the document will be available at the Eugene District Office. The FEIS and Draft EIS are also available online from the Eugene District Internet Web site at *http://www.edo.or.blm.gov*.

DATES: Written comments on the FEIS must be postmarked or otherwise delivered by 4:15 p.m., 30 days following the date the Environmental Protection Agency (EPA) publishes the NOA and filing of the FEIS in the **Federal Register**.

Comments, including names and street addresses of respondents, will be available for public review at the Eugene District office during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays, and may be published as part of the environmental analysis or other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. Anonymous comments will not be accepted. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Written comments on the document should be addressed to: Rick Colvin, P.O. Box 10226, Eugene, OR, 97440; or e-mail to: *or090mb@or.blm.gov* Attn: Rick Colvin. Written comments may also be hand-delivered to the Eugene District Office, 2890 Chad Drive, Eugene, OR.

FOR FURTHER INFORMATION CONTACT: Rick Colvin at (541) 683–6600 or 1–888–442–3061.

SUPPLEMENTARY INFORMATION: The FEIS addresses alternatives for forest and aquatic restoration within a Late-Successional Reserve in the Coast Range Mountains west of Eugene, Oregon. The purpose of the action is to protect and enhance late-successional and old-growth forest ecosystems; foster the development of late-successional forest structure and composition in plantations and young forests; and reconnect streams and stream channels to their riparian areas and upslope areas.

The FEIS analyzes in detail the following six alternatives:

Alternative A—no active management (No Action);

Alternative B—restoration limited to forest plantations and road management with no commercial timber harvest;

Alternative C—continuation of the current management approach;

Alternative D—restoration focused on recovery of threatened and endangered species;

Alternative E—restoration that would reduce forest stand densities as quickly as possible;

Alternative F—restoration based on multi-entry and multi-trajectory thinning.

All alternatives analyzed in the FEIS are in conformance with the 1995 Eugene District Resource Management Plan (RMP) and do not require any amendment or revision of the RMP. The Preferred Alternative is *Alternative D.*

The FEIS analyzes the following issues:

—How would thinning affect development of late-successional forest habitat characteristics?

—What are the effects of restoration activities on the northern spotted owl, marbled murrelet, and coho salmon habitat?

—What level of risk to existing late-successional forest would result from restoration activities?

—How would actions meet the objectives of the Aquatic Conservation Strategy?

—How much new road construction would be needed to implement restoration actions?

—How would road decommissioning and road-management actions alter public access to BLM lands?

—How would restoration actions affect the presence and spread of noxious weeds?

—What would be the economic effects of restoration activities?

—What would the restoration program cost?

The DEIS was made available for a 60-day public comment period, from August 15, 2003 to October 15, 2003. BLM received 11 comment letters during the comment period and one comment letter after the comment period. BLM received no comments that suggested development of additional alternatives or pointed out flaws or deficiencies in analysis. As a result, BLM made only minor changes in the DEIS in response to comments, consisting of technical, editorial, or non-substantive factual corrections. Therefore, only an abbreviated FEIS has been prepared, containing copies of comments received on the DEIS, responses to those comments, and an errata section with specific modifications and corrections to the DEIS in response to comments. The DEIS will not be rewritten or reprinted. Only the comments, responses, and an errata sheet will be circulated for review, consistent with 40 CFR 1503.4 and the BLM NEPA Handbook H–1790–1, p. V–21.

Steven Calish,

Field Manager.

[FR Doc. 04–7564 Filed 4–8–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–03–1610–DQ]

Notice of Availability of the Approved Santa Rosa and San Jacinto Mountains National Monument Final Management Plan and Record of Decision

AGENCIES: Bureau of Land Management, Interior, and Forest Service, USDA.

ACTION: Notice of availability of the approved Santa Rosa and San Jacinto Management Plan and Record of Decision.

SUMMARY: In compliance with the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Pub. L. 106–351), the Bureau of Land Management and Forest Service approved the Santa Rosa and San Jacinto Mountains National Monument Management Plan and issued a Record of Decision on February 6, 2004. This Management Plan and Record of Decision is a cooperative effort between the Department of the Interior, BLM,

and the Department of Agriculture, Forest Service. The 272,000-acre National Monument encompasses 86,400 acres of BLM lands and 64,400 acres of Forest Service lands in the Coachella Valley and surrounding mountains. Additional land managing entities within the National Monument include the Agua Caliente Band of Cahuilla Indians, the California Department of Parks and Recreation, the California Department of Fish and Game, Riverside County, local jurisdictions, and private landowners. The management plan provides direction for coordination between the BLM, Forest Service, and various partners and outlines proposed strategies for protecting the values that the National Monument was established to protect.

DATES: The Approved Santa Rosa and San Jacinto Mountains National Monument Management Plan became effective on approval of the ROD.

FOR FURTHER INFORMATION CONTACT: Copies of the Approved Management Plan and Record of Decision are available for public inspection at the BLM Palm Springs-South Coast Field Office, P.O Box 581260, 690 W. Garnet Avenue, North Palm Springs, CA 92258. Interested persons may also review the Approved Management Plan and Record of Decision on the Internet at *http://www.ca.blm.gov/palmsprings*. Copies may be requested by contacting Greg Hill at the above address, or at Phone Number: 760–251–4800.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by Pub. L. 106–351 and will be cooperatively managed by the BLM and the Forest Service. The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries. The BLM and the Forest Service will jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other Federal agencies, State agencies, and local governments.

Dated: February 4, 2004.

Danella George,

Santa Rosa and San Jacinto Mountains, National Monument Manager.

Dated: February 5, 2004.

Gene Zimmerman,

San Bernardino National Forest, Forest Supervisor.

[FR Doc. 04–7826 Filed 4–8–04; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–009]

Government in the Sunshine Act Meeting Notice

AGENCY: International Trade Commission.

TIME AND DATE: April 16, 2004 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1073–1075 (Preliminary) (Certain Circular Welded Carbon Quality Line Pipe from China, Korea, and Mexico)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before April 19, 2004; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before April 26, 2004.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 6, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–8198 Filed 4–7–04; 10:46 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Final Judgment in United States v. Alcan Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed final Judgment in *United States* v. *Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., Pechiney Rolled Products, LLC, No. 1:030 CV 02012–GK,* filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On September 29, 2003, the United States filed a Complaint that alleged that Alcan Inc.'s proposed acquisition of Pechiney, S.A., would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the sale of brazing sheet in North America. The proposed final Judgment, also filed on September 29th, requires the defendants to divest Pechiney's brazing sheet business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United State's responses thereto are included within the United States's Certificate of Compliance with the Antitrust Procedures and Penalties Act, which appears immediately below. After publication of this Certificate of Compliance in the **Federal Register**, the United States may file a motion with the Court, urging it to conclude that the proposed Judgment is in the public interest and to enter the proposed Judgment. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, the Competitive Impact Statement, and the United States's Certificate of Compliance with the Antitrust Procedures and Penalties Act are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States of America, Plaintiff, v. *Alcan Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Defendants.*

[Case No. 1:030 CV 02012–GK]

Judge Gladys Kessler

Deck Type: Antitrust

Notice of Filing of the United States's Certificate of Compliance With the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h)

Please take notice that the United States has filed its Certificate of Compliance with the antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("Tunney Act"). Following publication in the **Federal Register** of the public comments and the government's responses, the United States will move the Court for entry of the pending Final Judgment. Dated: March 15, 2004.

Respectfully submitted,

Anthony E. Harris,

(IL Bar #1133713), U.S. Department of Justice, antitrust Division, 1401 H Street, NW., Suite 3000. Washington, DC 20530, Telephone No.: (202) 307–6583.

Attorney for the United States

United States's Certificate of Compliance with the Antitrust Procedures and Penalties act

The United States of America hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA"), and states:

1. The Complaint, proposed Final Judgment ("Judgment"), and Hold Separate Stipulation and Order ("Hold Separate Order"), by which the parties have agreed to the Court's entry of the Final Judgment following compliance with the APPA, were filed on September 29, 2003. The United States filed its Competitive Impact Statement on November 14, 2003.

2. Pursuant to 15 U.S.C. 16(b), the proposed Judgment, Hold Separate Order, and Competitive Impact Statement were published in the **Federal Register** on December 17, 2003 (68 FR 70287). A copy of the **Federal Register** notice is attached hereto as Exhibit 1.

3. Pursuant to 15 U.S.C. 16(b), the United States furnished copies of the Complaint, Hold Separate Order, proposed Judgment, and Competitive impact Statement to anyone requesting them.

4. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement was published in The Washington Post, a newspaper of general circulation in the District of Columbia, during a seven-day period in December 2003 (December 13th–December 19th). A copy of the Proof of Publication from The Washington Post is attached hereto as Exhibit 2.

5. On March 15, 2004, defendants served on the United States, and attempted to file with this Court, declarations that describe their communications with employees of the United States concerning the proposed Judgment, as required by 15 U.S.C. 16(g). See Exhibit 16.

6. The sixty-day public comment period specified in 15 U.S.C. 16(b) began on December 17, 2003, and ended on February 17, 2003. During that period, the United States received a total of eleven comments on the proposed settlement. The United States evaluated and responded to each comment, and has arranged to publish the comments and its responses in the **Federal Register,** pursuant to 15 U.S.C. 16(b) and (d). Copies of the comments and the United State's response are attached hereto as Exhibits 3 through 15; they are summarized below.

A. Comments From State and Local Government Officials and Labor Leaders [1]

The United States received four comments from state and local government officials, *viz.*, the governor of West Virginia (Exhibits 3 and 15), the mayors of Ripley and Ravenswood, West Virginia (Exhibits 4 and 6), and the president of the Jackson County (WV) Development Authority (Exhibit 5). The officials represent the interests of constituents who are current or retired employees of the Ravenswood facility, which comprises the bulk of Pechiney's "brazing sheet business" subject to divestiture under the terms of proposed Judgment (§§ II (E) and IV(A)). The United States also received comments from labor leaders, who represent the interests of current and retired hourly wage workers (Exhibit 7) and retired salaried employees at the Ravenwood facility (Exhibits 8 and 13).[2]

These comments raise three broad concerns about the proposed Judgment and the scope of the ordered divestiture. First, these commenters assert that the proposed Judgment is unnecessary because, in their view, Alcan's acquisition of Pechiney would not substantially diminish competition. Second, they contend that even if the acquisition was unlawful, requiring the parties to sell the Ravenswood facility is excessive because brazing sheet accounts for only a fraction of the facility's production. And finally, they contended that, by requiring defendants to divest the Ravenswood facility, the proposed Judgment would jeopardize jobs and retirement benefits of the facility's current and retired workers. The commenters reasoned that a purchaser of the Ravenswood facility would not be a vigorous and viable competitor—and thus, would be significantly more likely to fail—if it does not have the technical expertise to develop, produce, and sell brazing sheet and other rolled aluminum products and begins its operations saddled with the "legacy costs" (*i.e.*, retiree pension, life, health care insurance benefits) of its former owners, Alcan and Pechiney.

In its responses, the United States generally explained that the appropriate legal standard for assessing the proposed Judgment is whether its entry would be in the "public interest." To make that determination the Court, *inter alia*, must carefully review the relationship between the relief in the proposed Judgment and the allegations of the government's Complaint. A Tunney Act proceeding is not an open forum for commenters—or a court—to second-guess the United States's exercise of its broad discretion to file a civil complaint to enforce the nation's antitrust laws. "The Tunney Act cannot be interpreted as an authorization for a district court to assume the role of Attorney General," *United States* v. *Microsoft Inc.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). "[T]he court is only authorized to review the decree itself" and has no authority to "effectively redraft the complaint" to inquire into matters that the government might have but did not pursue, *Microsoft Corp.*, 56 F.3d at 1459–60. In the context of a Tunney Act proceeding, a court cannot, as several commenters urged, reject the proposed settlement simply because it provides relief that is "not necessary" or "to which the government might not be strictly entitled," *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981). *See United States* v. *Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) (purpose of Tunney Act is to ascertain whether proposed relief is in public interest, "not to evaluate the strength of the [g]overnment's case"). Thus, the United States is not required to prove the allegations of its antitrust complaint before the Court can evaluate the appropriateness of the parties' agreed-upon relief. Imposing such a requirement on the United States would effectively turn every government antitrust case into a full-blown trial on the merits of the parties' claims, and seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. *Microsoft Inc.*, 56 F.3d at 1459; *Alex Brown & Sons, Inc.*, 169 F.R.D. at 541.

Applying those legal principles to this case, the Court's entry of the proposed Judgment surely would be "within the reaches" of the public interest (*United States* v. *Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)). The proposed

[1] The United States received Tunney Act comments from two members of the public (Exhibits 12 and 14), whose concerns generally echoed those voiced by state and local officials and labor leaders.

[2] Two individuals sent comments not only to the Department of Justice, but also to their Congressional representatives. The United States promptly responded to those comments (Exhibits 15 and 13), and submitted more expansive replies (Exhibits 3 and 7) after it had received and reviewed all other public comments received during the sixty-day comment period. The United States also considered and responded to another public comment that had been sent to Congressional representatives (Exhibit 14), but which was never submitted directly to the Department of Justice.

Judgment would alleviate the serious competitive concerns regarding defendants' proposals to combine two of North America's three major producers of brazing sheet by requiring defendants promptly to divest Pechiney's Ravenswood rolling mill, which produces all of the brazing sheet made and sold by Pechiney in North America. The sale of the Raveneswood facility to a viable purchaser would create a new competitor in brazing sheet, and thus leave competition in the North American brazing sheet market no worse off after Alcan's acquisition of Pechiney than before it.

Responding to the argument that the divestiture relief in the proposed Judgment is too broad, the United States noted that the competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a piecemeal sale or "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing, and selling brazing sheets. The commenters acknowledged that brazing sheets is produced on the same production lines that make many other important rolled aluminum alloy products (*e.g.*, common alloy coil, aerospace sheet) at Ravenswood. The United States is unaware of any evidence that would warrant a conclusion that dismantling the Ravenswood facility to sell off a few parts exclusively committed to the production of brazing sheet would produce a viable new firm capable of replacing the competition lost by Alcan's acquisition of Pechiney. In these circumstances, the proposed Judgment's mandated complete divestiture of the Ravenswood facility as an ongoing business enterprise is an appropriate means of ensuring the new purchaser's long-term competitive in the brazing sheet business. See Federal Trade Commission, A Study of the Commission's Divestiture Process 12 (1999) ("[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business.")

Finally, the United States shares the commenters' keen interest in ensuring that the purchaser of the Ravenswood facility is a viable competitor capable of long-term survival. Indeed, a lynchpin of the proposed decree is its requirement that Pechiney's brazing sheet business (including the Ravenswood facility) be divested to a person who, in the United States' judgment, is able to successfully operate it as an ongoing business enterprise in competition with Alcan and others. (*See* Judgment § IV(J).) But it is far too early to assume that defendants' legacy costs will automatically doom or scare off any potential purchaser of the Ravenswood facility, especially since defendants' are still negotiating with prospective buyers.[3] Even if defendants are unable to find an acceptable purchaser through their own efforts, the proposed Judgment permits the Department of Justice to nominate, and the Court to appoint, a trustee to conduct an independent search for an acceptable purchaser and sell Pechiney's brazing sheet business "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment §§ V(A) and (B)). In short, there is no reason for the Court to conclude, as some commenters have urged, that Alcan must retain Pechiney's brazing sheet business (and the Ravenswood facility) because defendants'—and if necessary, the trustee's—efforts to sell Pechiney's brazing sheet business will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[4]

B. Comments From Customers and Suppliers of the Ravenswood Facility

The United States also received comments from customers and suppliers of the Ravenswood facility (Exhibits 9 through 11). The comments emphasized that the Ravenswood facility must be sold to a purchaser with the financial, technical, and marketing resources to continue operating Pechiney's brazing sheet business (and the Ravenswood facility) as part of a competitively vigorous, viable, ongoing enterprise. Like the state and government officials, these commenters doubted whether a new purchaser could manage that responsibility if it is burdened with the legacy costs of the Ravenswood facility's former owners, Alcan and Pechiney.

In response, the United States noted that the ordered divestiture should provide the new purchaser with the means to continue successfully competing against Alcan and others in the development, production, and sale of brazing sheet and other rolled aluminum products. For instance, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility and any research, development, or engineering facilities, wherever located, used to develop and produce any product—not just brazing sheet—currently rolled at the Ravenswood facility, including R&D for aluminum plate used in military and aerospace applications. (*See* Judgment §§ II(E), IV(J).) As to their contention that there may not be an acceptable purchaser, the United States reiterated its view that it would be premature to rule out the existence of such a purchaser, since neither defendants—nor for that matter, the trustee—have exhausted all efforts to find one.

7. The public comments did not persuade the United States to withdraw its consent to entry of the proposed Judgment. At this state, with the United States having published its proposed settlement and its responses to public comments, and defendants having certified their pre-settlement contacts with government officials, the parties have fulfilled their obligations under the APPA. Pursuant to the Hold Separate Stipulation and Order the Court entered on September 30, 2003, and 15 U.S.C. 16(e), this Court may now enter the Final Judgment, if it determines that the entry of the Final Judgment is in the public interest.

8. For the reasons set forth in the Competitive Impact Statement and its Motion for Entry of Final Judgment, the United States strongly believes that the Final Judgment is in the public interest and urges the Court to enter the Final Judgment without further proceeding.

Dated: March 15, 2004.

Respectfully submitted,

Anthony E. Harris (IL Bar #1133713),
Joseph M. Miler (DC Bar #439965),
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 305–8462.

Attorneys for Plaintiff

Certificate of Service

I, Anthony E. Harris, hereby certify that on March 15, 2004, I caused copies of the foregoing Notice of Filing and United States' Certificate of Compliance with the Antitrust Procedures and Penalties Act to be served by mail by sending them first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

[3] In fact, defendants recently notified the United States that they soon will request, pursuant to the terms of the Judgment (§ IV(A)), an extension of the ordered deadline for their efforts to find an acceptable purchaser.

[4] Obviously, an "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): divestiture terms must not give defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] * * * efficiency, or otherwise to interfere in * * * [its] ability * * * to compete effectively."

Counsel for Defendants Alcan Inc. and Alcan Aluminum Corp.

D. Stuart Meiklejohn, Esquire, Michael B. Miller, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004–2498

Peter B. Gronvall, Esquire, Sullivan & Cromwell, 1701 Pennsylvania Avenue, NW., Suite 800, Washington, DC 20006

Counsel for Defendants Pechiney, S.A., and Pechiney Rolled Products, LLC

W. Dale Collins, Esquire, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022–6069.

Anthony E. Harris,

Esquire, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, Telephone No.: (202) 307–6583.

Note: Exhibits 1 and 2 are available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee. Exhibit 1 is also available in the December 17, 2003, issue of the **Federal Register,** 68 FR 70287 (2003).

BILLING CODE 4410–11–M

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

The Honorable Bob Wise
Governor
State of West Virginia
Office of the Governor
Charleston, West Virginia 25305

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Governor Wise:

This letter responds to your letter of February 13, 2004, which comments on the terms of the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include, *inter alia*, Pechiney's aluminum rolling mill in Ravenswood, West Virginia, which produces all of the brazing sheet sold by Pechiney in North America.

Your letter raises three major issues related to the proposed divestiture of Pechiney's brazing sheet assets. First, you suggest that the Court should not require the defendants to divest the Ravenswood facility because Alcan's acquisition of Pechiney would not substantially diminish competition in the sale of brazing sheet. Second, you contend that even if the proposed acquisition was anticompetitive, the proposed divestiture is excessive because only a small portion of the Ravenswood facility's production is brazing sheet, the relevant product that precipitated our concerns about the transaction. Third – and what we sense is your primary concern – you point out that the Ravenswood facility has been historically unprofitable, a situation largely attributable to the high costs of pension and retiree health care benefit plans (*i.e.*, "legacy" costs). You note that these legacy costs may not only limit the number of potential purchasers of Ravenswood, but also increase the likelihood that, without a major adjustment in these expenses, any new owner may soon find that the Ravenswood facility is not competitively viable and close it, a development that would adversely affect competition for brazing sheet and the income and livelihoods of Ravenswood's current and retired workers.

The procedures for entering a proposed final judgment in a government antitrust civil case are set forth in the Tunney Act, 15 U.S.C. §§ 16(b)-(h). Before entering a proposed decree, the court must conclude that the relief would be in the "public interest." 15 U.S.C. § 16(e). The public interest determination requires a court to carefully examine the relationship between the relief in the proposed Judgment and the allegations of the government's Complaint. The court must enter the Judgment if it concludes that the relief is "within the *reaches* of the public interest," *United States v. Am. Telephone & Telegraph Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (emphasis original; citations omitted), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), even if the remedy is not what the court itself would have fashioned had it stood in the prosecutor's shoes. *United States v. Microsoft*, 56 F.3d 1448, 1460 (D.C. Cir. 1995). *See also United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving consent decree even though the court would have imposed more restrictive terms).

Although public comments on a proposed decree may inform a court's analysis of the proposed relief and its public interest determination, the Tunney Act proceeding is not an open forum for commenters – or the Court – to second-guess the United States's exercise of its broad discretion to file a civil complaint to enforce the nation's antitrust laws. "[T]he Tunney Act cannot be interpreted as an authorization for a district court to assume the role of Attorney General." *United States v. Microsoft Inc.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995). Indeed, because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," "the court is only authorized to review the decree itself," and it has no authority to "effectively redraft the complaint" to inquire into matters that the government might have but did not pursue, *Microsoft Corp.*, 56 F.3d at 1459-60. Nor, for that matter, does the Tunney Act confer upon a court authority to reject a proposed settlement because it provides relief that is "not necessary" or "to which the government might not be strictly entitled," *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981).

Thus, your contention that the divestiture relief in the proposed Judgment is unnecessary because Alcan's acquisition of Pechiney was not anticompetitive is not a basis under the law to reject a proposed Judgment. *See United States v. Archer-Daniels-Midland Co.*, 2003-3 Trade Cas. (CCH) ¶ 74,097 at 96,872 (D.D.C. 2003) ("[C]ourt must accord due respect to the government's prediction as to the effect of the proposed remedies, its perception of the market structure, and its view as to the nature of the case. . . . [T]he court is not to review allegations and issues that were not contained in the government's complaint, . . . nor should it 'base its public interest determination on antitrust concerns in markets other than those alleged in the government's complaint. . . .'") (citations omitted); *United Sates v. Alex Brown & Sons, Inc.*, 169 F.R.D. 532, 541 (S.D.N.Y. 1996) (purpose of Tunney Act is to ascertain whether proposed relief is in public interest, "not to evaluate the strength of the Government's case"). Also, your suggestion that the Court should require the United States to prove the allegations of its antitrust complaint before the Court can assess the appropriateness of the parties' agreed-upon relief is inconsistent with established law. Imposing such a requirement in a Tunney Act proceeding would turn every government antitrust case into a full-blown trial on the merits of the parties'

claims, and seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. *Microsoft Inc.*, 56 F.3d at 1459; *Alex Brown & Sons, Inc.*, 169 F.R.D. at 541.

As to the proposed Judgment submitted in this case, its entry surely would be "within the reaches" of the public interest (*United States v. Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)). The Judgment would alleviate the United States's serious competitive concerns regarding the defendants' proposal to combine two of North America's three major producers of brazing sheet by requiring defendants promptly to divest Pechiney's Ravenswood rolling mill, which accounts for all of the brazing sheet developed, produced, and sold by Pechiney in North America. The sale of the Ravenswood facility to a viable purchaser would create a new competitor in brazing sheet, and thus leave competition in the North American brazing sheet market no worse off after Alcan's acquisition of Pechiney than before it. In short, "[g]iving due respect to the Justice Department's perception of the market structure and its view of the nature of its case" (*Microsoft Inc.*, 56 F.3d at 1461), the proposed Judgment "responds fully to the anticompetitive concerns raised by the merger because it would maintain the status quo." *Archer-Daniels-Midland Co.*, 2003-2 Trade Cas. (CCH) at 96,874. As such, "it seems reasonable that entering the proposed Final Judgment will eliminate the threats of easier anticompetitive coordination and diminished competition," which would put the proposed relief "well 'within the reaches of the public interest.'" *Id.* (citations omitted).

The competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing, and selling brazing sheet. As you point out in your comment, at Ravenswood brazing sheet is produced on the same production lines that make many other important rolled aluminum alloy products (*e.g.*, common alloy coil, aerospace sheet). The United States is unaware of any evidence that would support a conclusion that dismantling the Ravenswood facility to sell off a few parts exclusively committed to the production of brazing sheet would produce a viable new firm capable of replacing the competition lost by Alcan's acquisition of Pechiney. The Federal Trade Commission, based on a recent empirical study of its own divestiture efforts, observed: "[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business." Federal Trade Commission, *A Study of the Commission's Divestiture Process* 12 (1999).[1] Thus, to ensure that the ordered divestiture produces a viable and effective competitor, it makes good economic and business sense for the Judgment to require a sale of the entire Ravenswood facility, even though defendants' combination would have created serious competitive problems in only one major product produced by that plant.

Finally, the proposed Judgment addresses your concern that the legacy costs associated with the Ravenswood facility may prevent a potential purchaser from profitably operating the facility. A lynchpin of the proposed decree is its requirement that the Ravenswood facility be

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[1]The FTC study is available online at *http://www.ftc.gov/os/1999/08/divestiture.pdf.*

divested to a person who, in the United States's judgment, is able to successfully operate it and provide competition for Alcan (*see* Judgment, § IV(J)). Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[2]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

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[2]Obviously, an "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Note: Exhibit 3 is available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530, (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee. Exhibit 3 is also available on the Antitrust Division's Web site at *http://*

www.usdo.gov/atr/cases/f202800/202847.htm.

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

The Honorable Clair Roseberry
Mayor
City of Ravenswood
212 Walnut Street
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mayor Roseberry:

This letter responds to your letter of February 4, 2004, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

In your letter, you expressed a belief, elaborated upon in the accompanying city council resolution, that in order to safeguard competition and preserve local employment, the Ravenswood facility must be divested to a firm that is, above everything else, competitively viable. The United States, of course, shares this concern, for a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to divest any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, *wherever located,* used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Judgment, §§ II(E)(1)-(3).

Concern that there may not be an acceptable purchaser of these assets may be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser

on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

---

[1] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

January 4, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

Attached is a resolution adopted by the Common Council of the City of Ravenswood expressing the concerns of council of the possible sale of the Pechiney Rolled Products Plant under the terms of a consent decree now pending before the United States District Court in Washington.

We request that the concerns highlighted in the attached resolution be considered and trust that it will assist you in your deliberations.

Respectfully yours,

Clair Roseberry

Clair Roseberry
Mayor

Attachment:
Pechiney Rolled Products Plant, Ravenswood, WV Resolution

PECHINEY ROLLED PRODUCTS PLANT
RAVENWOOOD, WEST VIRGINIA
RESOLUTION

Whereas, the City of Ravenswood is a City of approximately 4100 people with the Pechiney Rolled Products Plant located 6 miles south of the City.

Whereas, the purpose of this resolution is to express the Common Council of the City of Ravenswood's concern over the sale of the Pechiney Rolled Products plant at Ravenswood under the terms of a consent decree now pending before the United States District Court House in Washington.

Whereas, many of the employees of the plant live in the city and the surrounding area thus the well-being of the city is linked to the successful operation of the plant because many of its citizens work there and also because about one-third of the families in the city are retirees, many being former workers at the Pechiney plant. The average age in the city's population is 42. If the plant were to close, many families and retirees in the area as well as the City's revenues would be directly affected.

Whereas, it is vital that any purchaser of the Pechiney plant have the capability and commitment necessary to operate the plant into the future. We are concerned that a buyer will be found to satisfy the requirement of divestiture, but the buyer will lack the resources to keep the plant in operation in the long term.

Therefore, the Common Council of the City of Ravenswood urge those in control of this process-the Court, the parties to the consent decree, and any trustee who might be appointed in the future-to accept as potential buyers only those companies that will clearly be successful. If such a clearly successful buyer cannot be found, we urge that Alcan be allowed to keep the plant. Alcan is clearly capable of keeping the plant going into the future. Its continued ownership of the plant would be in the public interest of our community.

Let it be resolved that on the 3rd day of February 2004, the Common Council of the City of Ravenswood by a majority vote of the body in attendance adopted and authorized the Honorable Clair Roseberry, the Mayor of the City of Ravenswood, to sign the foregoing resolution.

Clair Roseberry

Clair Roseberry
Mayor

Attest:

Lucy J. Harbert

Lucy J. Harbert
Recorder

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Ms. Marci D. Weyer
President
Jackson County Development Authority
104 Miller Drive
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Ms. Weyer:

This letter responds to your February 2004 letter, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include, *inter alia*, Pechiney's aluminum rolling mill in Ravenswood, West Virginia, which produces all of the brazing sheet sold by Pechiney in North America.

In your letter, you express a general concern, reflected in a resolution adopted by the Jackson County Development Authority, that a new owner of the Ravenswood facility may not be able to operate the plant profitably and may close it, a development that would adversely affect competition for brazing sheet and the income and livelihoods of Ravenswood's current and former employees. You have urged the Court to permit Alcan to retain and operate the plant if "no reliable buyer is found."

Your concern that there will not be an acceptable purchaser for the Ravenswood facility may be premature. A lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). Although the defendants have solicited offers for Pechiney's brazing sheet business, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet

assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, §V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

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[1] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Alcan Acquisition of Pechiney

Dear: Ms. Petrizzi:

It is with great concern that I write to you concerning the acquisition of Pechiney by Alcan. I am president of the Development Authority of Jackson County, West Virginia, where Pechiney has a major plant, Pechiney Rolled products. Under the pending consent decree Alcan is required to divest that plant.

The Jackson County Development Authority adopted the following resolution of February 3, 2004 to express its concern about the long term continuation of the Pechiney Rolled Products plant as an employer and taxpayer in the county:

WHEREAS, the Jackson County Development Authority is a body politic created by act of the Jackson County Commission; and

WHEREAS, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia; and

WHEREAS, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant; and

WHEREAS, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner; and

WHEREAS, a shutdown at the plant would be devastating to the people of Jackson County; and

WHEREAS, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant; therefore

IT IS RESOLVED, that the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

I understand that comments made to you will be conveyed to the parties to the consent decree and to the court.

Very truly yours,

Marci D. Weyer
President
Jackson County Development Authority

RESOLUTION

WHEREAS, the Jackson County Development Authority is a body politic created by act of the Jackson County Commission; and

WHEREAS, Pechiney Rolled Products is a major employer and taxpaying business in Jackson County, West Virginia; and

WHEREAS, under a consent decree permitting the acquisition of Pechiney by Alcan, the purchaser is required to divest that plant by selling it to an owner who would continue to produce brazing sheet at the plant; and

WHEREAS, this Authority is concerned that a new owner would lack the capability to operate the plant successfully in light of the plant's lack of profitability and the necessity of integrating it into allied operations of the owner; and

WHEREAS, a shutdown at the plant would be devastating to the people of Jackson County; and

WHEREAS, continued operation of the plant by Alcan, a qualified owner, would avert the danger of a shutdown of the plant; therefore

IT IS RESOLVED, that the foregoing concerns of the Jackson County Development Authority should be made known to the Court considering the consent decree, so that the public interest may be served and the Court might, if no reliable buyer is found for the plant, reconsider the advisability of terminating the requirement of divestiture and permit Alcan to own and operate the plant.

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

The Honorable Ollie M. Harvey
Mayor
City of Ripley
113 South Church Street
Ripley, West Virginia 25271

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mayor Harvey:

This letter responds to your letter of February 9, 2004, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

In your letter, submitted on behalf of Ripley's Common Council, you noted that, in order to preserve local employment opportunities and retiree benefits, the Ravenswood facility must be divested to a firm that is, above everything else, competitively viable. The United States, of course, shares this concern, for a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Judgment, § II(E)(1)-(3).

Concern that there may not be an acceptable purchaser of these assets may be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser

on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

City of Ripley

113 SOUTH CHURCH STREET
RIPLEY, WV 25271
Phone: (304) 372-3482
Fax: (304) 372-6693

Mayor
Ollie M. Harvey

Recorder
William E. Casto

February 9, 2004

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products/288322-00004

Dear Ms. Petrizzi:

On behalf of the Common Council we are concerned about the proposed divestiture of Pechiney Rolled Products under a consent decree provision in the settlement of Alcan's acquisition of Pechiney. This divestiture is causing concern among retirees who depend upon the continued operation of the Pechiney Rolled Products plant for payment of medical benefits.

I am Mayor of Ripley, West Virginia, a town near the plant, where many retirees live. The town has a $3 million operating budget with a tax base that includes many citizens in the retiree group. The concern of the retirees is that a new owner of the plant will fail to operate the plant successfully, so that retirement benefits will be in jeopardy. Three of our council members are plant retirees, and, one is employed by Pechiney.

My husband, Don, is a retired employee of the Ravenswood Works with forty-two (42) years of service as a metallurgical engineer. Are we worried about the sale of the facility to a qualified owner who can successfully keep the plant operating - - **very definitely.**

For the protection of the current employees and the retirement group, the plant must be owned and operated by a company like Pechiney or Alcan that has the capacity to absorb costs of operation when the plant is unprofitable. The retirees observe similar situations where new owners take over plants and shut them down or renounce benefit obligations because the new owners can't afford to do otherwise.

Common Council

Carlis Anderson David Brubaker Don Henthorne

Russ Vanney Victor Yoak

February 9, 2004

It is imperative for the life of this community that the Pechiney plant be owned and operated by a company committed to long-term production and employment. The plant must not be sold to a company that might have financing and good intentions in the short term but lacks the experience and facilities necessary to maintain operations into the future.

Very truly yours,

Ollie M. Harvey
MAYOR

OMH:isb

Cc: Governor Bob Wise
Senator Robert Byrd
Senator Jay Rockefeller

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Mr. L. D. Whitman
Chairman
Ravenswood Aluminum Retired Salary
Association Committee
809 Cypress Street
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Whitman:

This letter responds to your letter of October 29, 2003, commenting on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

In your letter, you expressed a concern that to safeguard competition and preserve local employment opportunities, the Ravenswood facility must be divested to a new owner that is capable of operating the plant as part of a viable ongoing business enterprise. The United States, of course, shares this concern, for a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility, including R&D for aluminum plate used in military and aerospace applications. *See* Judgment, §§ II(E)(1)-(3).

You have noted that the Ravenswood facility is currently unprofitable, and you suggested that the defendants, Alcan and Pechiney, must retain responsibility for the costs of current retiree

pension, health care, and life insurance benefit plans of retirees in order to ensure the competitive viability of any new owner of the Ravenswood facility.

Because the defendants are still soliciting and evaluating offers for Pechiney's brazing sheet assets, it is too early for us to comment on particular terms of any potential divestiture agreement. Even if the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (*see* Judgment, § V(B)). What we can say, however, is that it is certainly inappropriate to conclude at this time that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

---

[1] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

October, 29, 2003

809 Cypress Street
Ravenswood, WV 26164

John Ashcroft
U.S. Dept. of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Regarding: Sale of Ravenswood, West Virginia Rolling Mill

Dear Mr. Ashcroft

The Ravenswood Aluminum Plants' Salaried Retiree Organization is writing this letter to express our concern about the current events as they relate to the Alcan purchase of Pechiney Aluminum.

We understand that the U.S. Justice Department has approved the purchase but Alcan must divest themselves of the Ravenswood Rolling Mill.

It is our understanding that Pechiney purchased the Plant in September 1999 to better compete with Aloca in the critical Aerospace Market. Pechiney has spent in excess of $125 million to improve the Plant's capacity and capability for this Market. The forced sale of Ravenswood will certainly enhance Alcoa's plate position in the world market with a smaller producer's ownership of Ravenswood.

According to the previous and current management, this Plant has not been profitable since it was sold by Kaiser Aluminum in 1989. It is therefore, our desire that Alcan/Pechiney retain the legacy cost, i.e. Pensions, Medical, and Life Insurance for the existing Retirees.

This legacy cost must be addressed to allow this Plant to be profitable. If not, it will in all probability go the way of the Steel Mills and severely impact our State and Community.

As an organization we are willing to have one or more of our Retirees assist the Trustees of the Plant during its transition.

Your immediate attention to this matter is requested!

Sincerely,

L.D. Whitman

L.D. Whitman
Retired Plant Manager
Chairman Ravenswood Aluminum Retired Salary Association Committee.

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Mr. David R. Jury
Assistant General Counsel
United Steelworkers of America
Five Gateway Venter
Pittsburgh, Pennsylvania 15222

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Jury:

This letter responds to your letter of February 13, 2004, commenting on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your union, United Steelworkers of America, represents hourly employees and retirees of the Ravenswood facility. In your letter, you expressed support for Governor Bob Wise's previous comment in which he urged modifying the proposed Judgment either to permit Alcan to retain Ravenswood facility (irrespective of the competitive harm the acquisition would cause in the brazing sheet market), or to allow the Ravenswood facility to "revert" to Alcan in the event a new buyer is unable "to keep the plant open." You also expressed a willingness to work constructively with any purchaser willing "to build a relationship" with your union and negotiate "an appropriate labor agreement that protects active members and retirees."

The United States believes that, in order to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating the assets successfully (*see* Judgment, § IV (J)). Indeed, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires the defendants to divest any tangible and intangible assets used in the

production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Judgment, §§ II(E)(1)-(3).

Any concern that there may not be an acceptable purchaser of these assets may well be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

---

[1] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

United Steelworkers of America
AFL-CIO-CLC

Five Gateway Center
Pittsburgh, PA 15222
412-562-2400 • 412-562-2484 (Fax)

Writer's Direct Dial (412) 562-1164
Writer's Facsimile (412) 562-2429

February 13, 2004

VIA UPS NEXT DAY DELIVERY
1Z 263 055 22 1022 944 4

Ms. Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, N.W.
Suite 3000
Washington, DC 20530

Re: **United States v. Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC**

United States District Court for the District of Columbia, Case No. 1:03CV02012

Dear Ms. Petrizzi:

I write on behalf of the United Steelworkers of America, AFL-CIO-CLC ("USWA"), the exclusive bargaining representative of the hourly production and maintenance employees employed by Pechiney Rolled Products ("Pechiney") at its Ravenswood, West Virginia facility. This letter is submitted under the terms of the Tunney Act, 15 U.S.C. §16, and relates to the Final Judgment that has been proposed in this matter.

It is our understanding that West Virginia Governor Bob Wise has submitted to you a letter in which he proposes that the Final Judgment be modified either to permit Alcan Aluminum Corporation ("Alcan") to retain the brazing sheet business and other operations at the Ravenswood facility (thus obviating the need for the marketing and sale of the plant) or provide that the facility "revert" to Alcan in the event that the buyer of the plant is unable to keep the plant in operation. Governor Wise clearly has acted out of his concern about the future of aluminum making at Ravenswood, a future that is now uncertain as no purchaser for the plant has been identified.

As the representative of the hourly employees and retirees of the Ravenswood plant, it goes without saying that the USWA shares that concern. The USWA is prepared

to work constructively with all parties-in-interest relating to the sale of the facility and to engage with any prospective purchaser that wishes to build a relationship with the USWA and negotiate an appropriate labor agreement that protects both our active members and retirees. Nevertheless, because the results of any sale process cannot be predicted today, the USWA would support modifying the Final Judgment generally in the manner that Governor Wise has suggested, provided, of course, that Alcan consents to such treatment.

Respectfully submitted,

David R. Jury
Assistant General Counsel

DRJ/dd
cc: Leo Gerard, International President
Andrew Palm, International Vice President
Lawrence McBrearty, Canadian National Director
Ernest R. Thompson, Director
Tim Dean, Sub-District Director

U.S. Department of Justice
Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Ms. Renee Martin-Nagle
Vice President and General Counsel
Airbus North America Holdings, Inc.
198 Van Buren Street
Suite 300
Herndon, Virginia 20170-5335

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Ms. Martin-Nagle:

This letter responds to your letter of November 21, 2003, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your company, Airbus North America Holdings, Inc., purchases various rolled aluminum products from the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment. Airbus is concerned that any new owner of Pechiney's brazing sheet assets must have "the technical, financial, and managerial qualifications necessary to operate the plant effectively in extremely competitive global markets." You have requested an opportunity to comment on the qualifications of a prospective buyer before the United States exercises its "sole discretion" and concludes that that firm is an acceptable purchaser of the assets pursuant to the terms of the Judgment, § IV(J).

The United States shares your concern that, to be an effective competitor, the new owner of Pechiney's brazing sheet business must be capable of operating the assets successfully. For that reason, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's sole discretion, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J). To that end, the proposed Judgment

requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, *wherever located,* used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility (*see* Judgment, §§ II (E)(1)-(3)).

Although the United States reserves "sole discretion" as to whether a prospective buyer of Pechiney's brazing sheet business may be a viable and effective competitor (*see* Judgment, § IV(J)), it will consider your company's view before making a final decision on that question.

In any event, the divestiture process is continuing and has yet to produce any proposed purchaser. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not proposed a purchaser for the divested assets. If the defendants are unable to find an acceptable purchaser on their own, the proposed Judgment permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, §V(B)). In short, at this point, we cannot conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

cc: Richard Liebeskind, Esquire

AIRBUS

November 21, 2003

Anthony Harris, Esq.
U.S. Department of Justice
Litigation II Section, Suite 3000
1401 H Street, NW
Washington, DC 20530

Re: U.S. v. Alcan, Inc.

Dear Mr. Harris:

On behalf of Airbus SAS. and Airbus North America Holdings, Inc., I hereby request that Airbus be advised about each potential purchaser of the Ravenswood, West Virginia facility that is considered by the Department of Justice pursuant to the consent decree in the above-captioned case. Specifically, Airbus asks that you provide it with the opportunity to comment in a timely and effective way on the qualifications of any such purchaser. You may send all information to Airbus by addressing it to me at the address below. In addition, I ask that you also send a copy Martyn Brown at Airbus UK, Ltd., B3 New Tech Center, Golf Course Lane, Filton, Bristol, UK BS99 7AR.

As you know, Airbus purchases significant amounts of highly specialized aluminum products from the Ravenswood plant and is very concerned that Ravenswood be owned by a company with the technical, financial, and managerial qualifications necessary to operate the plant effectively in extremely competitive global markets. Further, the sale of the Ravenswood facility has the potential to cause damage to our commercial competitiveness by raising prices for specialized aluminum.

Thank you in advance for your consideration. Please feel free to call me at (703) 834-3545 should you have any questions or concerns.

Sincerely,

Renée Martin-Nagle
Vice-President & General Counsel

cc Martyn Brown
Richard Liebeskid

EADS JOINT COMPANY
ITH BAE SYSTEMS

AIRBUS NORTH AMERICA
HOLDINGS, INC.

198 VAN BUREN STREET, SUITE 300
HERNDON, VA 20170-5335
PHONE (703) 834-3400
FAX (703) 834-3340
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U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Mr. Mark Dempsey
West Virginia President
American Electric Power
707 Virginia Street
Suite 1100
P.O. Box 1986
Charleston, West Virginia 25327-1986

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Dempsey:

This letter responds to your letter of February 13, 2004, which comments on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your company, American Electric Power, supplies electricity to the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment. In your letter, you express a concern that the government may have overreached by proposing that the defendants divest the entire Ravenswood facility, when the only competitive problem was in brazing sheet. You also assert that the new owner of Pechiney's brazing sheet assets may not have "the capacity, technology, and experience" to operate the entire Ravenswood plant, and that the new firm will be significantly more likely to fail without these capabilities.

The competitive problems created by Alcan's acquisition of Pechiney could not be cured simply by requiring a "partial divestiture" of only those portions of the Ravenswood facility devoted to developing, producing, and selling brazing sheet. As you point out in your comment, brazing sheet is produced on the same production lines that make many other important rolled aluminum

alloy products (*e.g.*, common alloy coil, aerospace sheet) at Ravenswood. The United States is unaware of any evidence that would support a conclusion that dismantling the Ravenswood facility to sell off a few parts exclusively committed to the production of brazing sheet would produce a viable new firm capable of replacing the competition lost by Alcan's acquisition of Pechiney. An observation by the Federal Trade Commission, based on a recent empirical study of its own divestiture efforts, is particularly apt here: "[D]ivestiture of an ongoing business is more likely to result in a viable operation than divestiture of a more narrowly defined package of assets and provides support for the common sense conclusion that [antitrust enforcement agencies] should prefer the divestiture of an ongoing business." Federal Trade Commission, A Study of the Commission's Divestiture Process 10-12, esp. 12 (1999).[1]

The United States, of course, shares your concern that in order to be an effective competitor, the new owner of Pechiney's brazing sheet assets must be capable of operating the assets successfully. Indeed, a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* Judgment, §§ II(E)(1)-(3).

Your fear that there may not be an acceptable purchaser of these assets may be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed Judgment permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[2]

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[1]The FTC study is available online at *http://www.ftc.gov/os/1999/08/divestiture.pdf.*

[2]An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

American Electric Power
707 Virginia Street, E., Suite 1100
P O Box 1986
Charleston, WV 25327-1986
www.aep.com

Mark E. Dempsey
West Virginia President

304-348-4120
medempsey@aep.com

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: Pechiney Rolled Products, Ravenswood, West Virginia

Dear Ms. Petrizzi:

This letter is submitted as a comment on the Final Judgment now before the Federal District Court in Washington concerning the purchase of Pechiney by Alcan. Under that Final Judgment, Alcan must divest the Pechiney Rolled Products plant at Ravenswood, West Virginia. The divestiture is of great concern to American Electric Power (AEP).

The Pechiney Rolled Products plant and the Century Aluminum plant adjacent to it use very large amounts of electricity in their manufacturing processes. In addition to providing electric power to the plants, AEP also supplies power to the communities around the plants, including the plants' employees and their families and the businesses that provide additional products and services to them.

AEP's concern about the pending Final Judgment and the divestiture of the Pechiney Rolled Products plant is that such action might lead to a shut down of the plant. The Final Judgment focuses on the brazing sheet business conducted at the plant, and expresses an intent to keep brazing sheet as a product of the plant, but is silent about the major product of the plant, aluminum sheet. The Final Judgment says nothing about keeping that important business going. If the divestiture should lead to the purchase by an owner who lacks the capacity, technology, and experience to produce all of the plant's products, there is substantial danger that the plant would not survive. Failure of the fabricating plant could itself have an adverse impact on competition in the brazing sheet market and would jeopardize the neighboring aluminum plant and the communities that rely on and support the plants and their employees.

Survival of these plants is essential for the economic health of this region . AEP submits this comment to draw attention to the fact that more issues than competition in the brazing sheet market are at stake. Our customers in the area would suffer substantial hardship, and AEP itself would lose industrial, commercial, and residential business.

It appears to AEP that the best solution would be to allow Alcan to continue to operate the Pechiney Rolled Products plant. Alcan has the needed capacity and experience to operate the plant successfully.

We suggest this solution on the basis of our knowledge of the plants and our concern about their future. The suggestion is in no way prompted by any contact with Alcan.

We ask that the Court be informed of these concerns and our suggested solution.

Very truly yours,

Mark Dempsey
West Virginia President

Cc: John Smolak – Economic Development Manager, AEP

Doc #226216.v1 Date: 2/13/2004 2:55 PM

U.S. Department of Justice
Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Mr. Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.
Ravenswood Operations
Post Office Box 98
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Thompson:

This letter responds to your February 12, 2004 letter commenting on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

Your company, Century Aluminum, is a major customer of the Ravenswood facility that would be divested pursuant to the terms of the proposed Judgment, selling the facility between 275 and 325 million pounds of primary aluminum annually. In your letter, you expressed a concern that in order to meet your company's credit standards, the Ravenswood facility must be sold to a firm with the necessary financial, technical, and marketing resources that would enable it to operate the Ravenswood facility as part of a viable, ongoing business enterprise. The United States, of course, shares this concern, for a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, *wherever located*, used to develop and produce any product – not just brazing

sheet – currently rolled at the Ravenswood facility, including R&D for aluminum plate used in military and aerospace applications. *See* Judgment, §§ II(E)(1)-(3).

However, at this stage of the divestiture process, it is premature to speculate as to whether such a purchaser currently exists. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point, it would be speculative to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi
Chief
Litigation II Section

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[1] An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Century ALUMINUM

Ravenswood Operations

February 12, 2004

Ms. Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW Suite 3000
Washington, DC 20530

Re: Pechiney Rolled Products Plant, Ravenswood, West Virginia

Dear Ms. Petrizzi:

I am the manager of the Century Aluminum primary aluminum plant at Ravenswood, West Virginia. The plant is located adjacent to the Pechiney Rolled Products plant which is to be divested by Alcan under a pending consent decree. The two plants operated as an integrated entity from the late 1950s, when they were constructed by Kaiser Aluminum, until 1999 when Century sold the rolling mill portion to Pechiney. Our plant has 700 employees and has pension and health benefits obligations to 300 retirees.

The rolling mill is the major customer for our plant. It contractually purchases between 275 million and 325 million pounds of primary aluminum a year out of our total yearly production of about 375 million pounds. The metal is delivered in molten or liquid form as it comes out of Century's electrolytic cells. This eliminates the need for the metal to be cast by Century and then re-melted by the mill for casting into shapes suitable for rolling. This arrangement and the close proximity of the plants produce savings that are shared by the parties.

Century Aluminum's principal concern with the divestiture process is that prospective new owners may not meet our company's credit standards. Century typically holds as much as $30.0 million in accounts receiveable each month under the existing contract – a significant liability for a company our size. Consequently we would require that a new owner possess a credit rating approximating that of Pechiney/Alcan.

Century Aluminum of West Virginia, Inc.
Post Office Box 98
Ravenswood, WV 26164

(304) 273-6000 Phone

A Century Aluminum Company

The anti-trust implications of Alcan's ownership and operation of the mill – specifically with respect to the rolling of brazing sheet – are not for our company to judge. From first-hand experience in operating the mill, we are able to say with authority, however, that operation of the mill requires substantial financial, technical and marketing resources. Under new ownership, the Ravenswood mill would compete directly against large producers of premium rolled products, including Alcan and Alcoa, the world's two largest aluminum manufacturers.

I hope we have provided you with a fuller understanding of the inter-related manufacturing processes between our reduction plant and the rolling mill. We hope that the mill will continue to operate under the management of an owner with all of the resources required to assure its economic success.

We are available to provide any additional information you may require.

Sincerely,

Ron Thompson

Ron Thompson
Vice President of Operations
Century Aluminum of West Virginia, Inc.

U.S. Department of Justice

Antitrust Division

City Center Building
1401 H Street, NW
Washington, DC 20530

March 15, 2004

Mr. L. D. Whitman
Route 1
Box 79A
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed Sept. 29, 2003)*

Dear Mr. Whitman:

This letter responds to your letter commenting on the proposed Final Judgment ("Judgment") submitted for entry in this case. The United States's Complaint in this case charged that Alcan's acquisition of Pechiney would substantially lessen North American competition in the sale of brazing sheet, a rolled aluminum alloy widely used in fabricating certain critical components of heat exchange systems (*e.g.*, heaters, air conditioners, and radiators) for all types of motor vehicles. The proposed Judgment would resolve those competitive concerns by requiring the defendants to divest Pechiney's "brazing sheet business," a term defined in the Judgment, § II(E), to include Pechiney's entire aluminum rolling mill in Ravenswood, West Virginia, which, *inter alia*, produces all of the brazing sheet sold by Pechiney in North America.

In your letter, you expressed a concern that to safeguard competition and preserve local employment opportunities, the Ravenswood facility must be divested to a new owner that is capable of operating the plant as part of a viable ongoing business enterprise. The United States, of course, shares this concern, for a lynchpin of the proposed decree is its requirement that the Ravenswood facility be divested to a person who, in the United States's judgment, is able to operate it successfully in competition with Alcan and others (*see* Judgment, § IV(J)). To that end, the proposed Judgment requires defendants to sell any tangible and intangible assets used in the production and sale of brazing sheet, including the entire Ravenswood facility, and any research, development, or engineering facilities, *wherever located*, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility, including R&D for aluminum plate used in military and aerospace applications. *See* Judgment, §§ II(E)(1)-(3).

Your concern that there will not be an acceptable purchaser of these assets may be premature. Although the defendants have solicited offers for Pechiney's brazing sheet assets, they have not selected a proposed purchaser. In the event the defendants are unable to find an acceptable purchaser

on their own, the proposed decree permits the Department of Justice to nominate, and the Court to appoint, a trustee responsible for conducting an independent search for an acceptable purchaser and selling Pechiney's brazing sheet assets "at such price and on such terms as are then obtainable upon reasonable effort" (Judgment, § V(B)). At this point in the divestiture process, however, it would be inappropriate to conclude that the defendants' – or if necessary, the trustee's – efforts to sell Pechiney's brazing sheet assets will not produce an acceptable, viable purchaser capable of vigorously competing in the development, production, and sale of brazing sheet in North America.[1]

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,

Maribeth Petrizzi

Maribeth Petrizzi
Chief
Litigation II Section

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[1]An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is unviable. *See* Judgment, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively."

Route 1
Box 79A
Ravenswood, WV 26164

Maribeth Petrizzi
Chief, Litigation II Section
Antitrust Division
United States Department of Justice
1401 H Street, NW
Suite 3000
Washington , DC 20530

Re: US v. Alcan et al., Case No. 1:03CV02012
in the United States District Court for the District of Columbia

Dear Ms. Petrizzi:

I am writing to comment on the potential effects of the consent decree now before the Court in connection with the purchase of Pechiney by Alcan. My concern is particularly about the divestiture of Pechiney Rolled Products which is required by that consent decree.

The plant of Pechiney Rolled Products is located at Ravenswood, West Virginia. I was at one time plant manager there, and I am now chairman of the retiree group of former employees of the plant. I live not far from the plant.

My chief concern is that the divestiture of the plant might result in its being sold to new owners who will not operate the plant successfully and will cause its shutdown. A shutdown of that plant would be devastating to the entire community, and particularly to the thousands of employees and retirees who would be left without work or the means to live decent lives.

I know that efforts are being made to locate a buyer who would commit itself to operating the plant into the future. However, my knowledge of the plant and its history leads me to worry about the ability of a new owner to fulfill that commitment. It would not be enough for a buyer simply to have the capital to acquire the plant and take on the legacy costs associated with it. The new owner must have a high level of technical capability. It must be able to do the testing necessary to satisfy the safety requirements and to test new alloys for the plant's products, aluminum plate and brazing sheet. Because aluminum plate is used for military purposes and by the

aerospace industry, intense safety testing is needed on the products. The present owner, Pechiney, has facilities in France where technological work can be done. Alcan also has the technological capability required to operate the plant. A new owner would have to possess the same high level of technological capability. Very few potential buyers would qualify.

If the plant should close because a new owner lacks the necessary experience or technological backup, the retirees whom I represent would be in life threatening circumstances. I regularly receive calls from retired people or their families who tell me how little they have to live on, particularly in light of the medical bills they must pay to maintain themselves. If the medical benefits they now receive were to be shut off because of plant closing or the owner's bankruptcy or the inability of the owner to meet pension obligations, these people would have nothing to show for lives of hard work and they would be left in desperate circumstances.

If no buyer can be found as capable as Alcan to operate the Ravenswood plant, I suggest that Alcan be allowed to retain the plant.

Very truly yours,

L. D. Whitman

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

March 10, 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your fax to the Department of Justice forwarding concerns of Governor Wise regarding the proposed final judgment in *United States v. Alcan Inc.* The proposed final judgment requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia.

Governor Wise recommends that Alcan be allowed to keep Pechiney's Ravenswood plant, or that a purchaser for the plant be chosen who possesses the same operational capabilities as Alcan. The Department appreciates having the benefit of Governor Wise's perspective.

The proposed consent decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan. This ability to compete effectively is a cornerstone of the decree. Closing the plant or selling the plant to an entity that is not able to compete would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for an appropriate purchaser.

Please be assured that the Antitrust Division will take Governor Wise's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

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Web site: http://www.usdoj.gov/atr

FEB 25 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your letter to the Department of Justice, which forwarded concerns of your constituent, L.D. Whitman, Chairman of the Ravenswood Aluminum Retired Salary Association Committee, regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties must divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Mr. Whitman, a former manager of the Ravenswood rolling mill, expresses his concern that in order for Ravenswood's new owner to compete effectively, Alcan and Pechiney must agree to retain this facility's substantial legacy costs (*i.e.*, pension, medical, and life insurance benefits for current retirees) – expenses, which, in Mr. Whitman's view, have been a major impediment to the continued profitability and viability of Ravenswood.

The requirement in the proposed consent decree is that the Ravenswood rolling mill be sold to someone who will be able to successfully operate the facility and provide competition for Alcan, Alcoa, and others; this is a cornerstone of the decree. Alcan and Pechiney have recently retained an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Antitrust Division has no reason to believe that these efforts will not be successful. Please be assured that the Antitrust Division will take Mr. Whitman's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest.

If we can be of further assistance on this or any other matter, please contact this office.

Yours sincerely,

R. Hewitt Pate

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510–6025

December 30, 2003

Mr. William Moschella
Assistant Attorney General for Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 1145
Washington, D.C. 20530

Dear Mr. Moschella:

The enclosed communication is respectfully referred for your consideration, since it concerns a matter within the jurisdiction of your office.

I would appreciate your looking into the matter referenced in the accompanying letter, and providing me with your views on the concerns raised by my constituent.

With kind regards, I am

Sincerely yours,

Robert C. Byrd

RCB: kh
Enclosures

October, 29, 2003

809 Cypress Street
Ravenswood, WV 26164

Senator Robert C. Byrd
311 Hart Senate Office Building
Washington D.C., 20510

Regarding: Sale of Ravenswood, West Virginia Rolling Mill

Dear Senator Byrd,

The Ravenswood Aluminum Plants' Salaried Retiree Organization is writing this letter to express our concern about the current events as they relate to the Alcan purchase of Pechiney Aluminum.

We understand that the U.S. Justice Department has approved the purchase but Alcan must divest themselves of the Ravenswood Rolling Mill.

It is our understanding that Pechiney purchased the Plant in September 1999 to better compete with Aloca in the critical Aerospace Market. Pechiney has spent in excess of $125 million to improve the Plant's capacity and capability for this Market. The forced sale of Ravenswood will certainly enhance Alcoa's plate position in the world market with a smaller producer's ownership of Ravenswood.

According to the previous and current management, this Plant has not been profitable since it was sold by Kaiser Aluminum in 1989. It is therefore, our desire that Alcan/Pechiney retain the legacy cost, i.e. Pensions, Medical, and Life Insurance for the existing Retirees.

This legacy cost must be addressed to allow this Plant to be profitable. If not, it will in all probability go the way of the Steel Mills and severely impact our State and Community.

As an organization we are willing to have one or more of our Retirees assist the Trustees of the Plant during its transition

Your immediate attention to this matter is requested!

Sincerely,

L.D. Whitman

L.D. Whitman
Retired Plant Manager
Chairman Ravenswood Aluminum Retired Salary Association Committee.

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

FEB 25 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your letter to the Department of Justice forwarding concerns of your constituent Toni Burks regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Ms. Burks is concerned that if there is no attractive buyer for the facility, Alcan might decide to close it.

The decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan; this is a cornerstone of the decree. Simply closing the plant would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for a purchaser.

Please be assured that the Antitrust Division will take Ms. Burks's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Yours sincerely,

R. Hewitt Pate

DEPARTMENT OF JUSTICE
Antitrust Division

R. HEWITT PATE
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
(202) 514-2401 / (202) 616-2645 (Fax)
E-mail: antitrust@usdoj.gov
Web site: http://www.usdoj.gov/atr

NOV 20 2003

The Honorable Shelley Moore Capito
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Capito:

This responds to the e-mail you forwarded from your constituent Toni Burks regarding the proposed consent decree in *United States v. Alcan Inc.* The proposed decree requires that, to resolve the Department of Justice's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia. Ms. Burks expresses concern that if there is no buyer for this facility, Alcan might retain it and later decide to close it.

The requirement that the Ravenswood plant be sold to someone who will be able to successfully operate the facility and provide competition for Alcan is a cornerstone of the proposed consent decree. Alcan and Pechiney have recently retained an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Antitrust Division has no reason to believe that these efforts will not be successful. Please be assured that the Antitrust Division will take Ms. Burks's and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest.

If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Yours sincerely,

R. Hewitt Pate
Assistant Attorney General

cc: Toni Burks

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

December 30, 2003

Mr. William Moschella
Assistant Attorney General for Office of Legislative Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 1145
Washington, D.C. 20530

Dear Mr. Moschella:

The enclosed communication is respectfully referred for your consideration, since it concerns a matter within the jurisdiction of your office.

I would appreciate your looking into the matter referenced in the accompanying e-mail, and providing me with your views on the concerns raised by my constituent.

With kind regards, I am

Sincerely yours,

Robert C. Byrd

RCB: kh
Enclosures

Snapshot Report: Incoming Constituent Message

Imported through Webrespond Daemon

Report Date: 9/30/2003

Assign Staff:	email				
Address To:	General				
Name:	Mrs.	Toni		Burks	
Address:	705 Chambers Drive				
	Ravenswood	WV	26164	USA	
Email Addr:	burkst@charter.net				**URL:**
Home Phone:	(304) 273-9680		**Cell Phone:**		
Work Phone:			**Fax:**		
Salutation:	Dear Mrs. Burks:		**In Type:**		**Reply Ltr:**
Interest Code:	W-BUSINESS		**Org Name:**		**Assign Ltr:**
Classification:			**P. Code:**		**Category 1:**
Ref. Number:			**Grp Id:**	W030930	**Category 2:**
			Title:		**Category 3:**

Message Body:
Subject Desc: Business

Date Received: 9/29/2003 10:01:27 PM

Dear Senator Byrd,

We have just heard the Justice Department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations.

Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.

Jobs in West Virginia are so precious and few, is there anything you can do?

Thank you,

Toni Burks
Ravenswood, WV

SHELLEY MOORE CAPITO
2nd District, West Virginia

COMMITTEES:
TRANSPORTATION & INFRASTRUCTURE
FINANCIAL SERVICES
SMALL BUSINESS

Congress of the United States
House of Representatives
Washington, DC 20515-4802

1431 LONGWORTH H.O.B.
WASHINGTON, DC 20515-4802
202-225-2711

4815 MACCORKLE AVE.
CHARLESTON, W.V. 25304
304-925-5964

300 FOXCROFT AVE.
SUITE 102
MARTINSBURG, W.V. 25401
304-264-8810

WWW.HOUSE.GOV/CAPITO

October 3, 2003

Christopher Rizzuto
Director of Congressional and Public Affairs
U.S. Department of Justice
810 Seventh Street, N.W. 6th Floor
Washington, DC 20531

Dear Director:

Recently a constituent of mine, Toni Burks, contacted my office with concerns about a recent Justice Department ruling. After reviewing the request, I have forwarded the letter to you so that the matter can be more directly handled.

Thank you for your time and effort. Please send any response directly to the constituent.

Sincerely,

Shelley

Shelley Moore Capito, M.C.

View e:\emailobj\200309\2\929220203.txt

From: Write your representative <writerep@www6.house.gov>
Date: 9/29/2003 10:01:56 PM
To: wv02wyr@housemail.house.gov
Subject: WriteRep Responses

We have just heard the justice department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations. Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.
Jobs in West Virginia are so precious and few, is there anything you can do?
Thank you,

Toni Burks
Ravenswood, WV

===== Original Formatted Message Starts Here =====

DATE: September 29, 2003 8:19 PM
NAME: Toni Burks
ADDR1: 705 Chambers Drive
ADDR2:
ADDR3:
CITY: Ravenswood
STATE: West Virginia
ZIP: 26164-1305
PHONE: 304-273-9680
EMAIL: burkst@charter.net
msg:

We have just heard the justice department has approved the Alcan purchase of Pechiney subject to the divestiture of the Ravenswood Aluminum operations. Those of us in Ravenswood have also heard there is very likely no buyer and that Pechiney will be shutting the plant down "if that's what it takes to seal the deal." The closure may be rumor, but sounds plausible.
Jobs in West Virginia are so precious and few, is there anything you can do?
Thank you,

Toni Burks
Ravenswood, WV

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 10, 2004

The Honorable Robert C. Byrd
United States Senate
Washington, DC 20510

Dear Senator Byrd:

This responds to your fax to the Department of Justice forwarding concerns of Governor Wise regarding the proposed final judgment in *United States v. Alcan Inc.* The proposed final judgment requires that, to resolve the Department's concern that Alcan's acquisition of Pechiney would harm competition in the production and sale of brazing sheet in North America, the parties divest Pechiney's aluminum rolling mill in Ravenswood, West Virginia.

Governor Wise recommends that Alcan be allowed to keep Pechiney's Ravenswood plant, or that a purchaser for the plant be chosen who possesses the same operational capabilities as Alcan. The Department appreciates having the benefit of Governor Wise's perspective.

The proposed consent decree requires that the Ravenswood plant be sold to someone able to successfully operate it and provide competition for Alcan. This ability to compete effectively is a cornerstone of the decree. Closing the plant or selling the plant to an entity that is not able to compete would not address the competitive problem. Alcan and Pechiney have hired an investment banking firm to identify prospective purchasers and help arrange the purchase, and the Department has no reason to believe that these efforts will not be successful. Furthermore, even if the parties do not find a purchaser acceptable to the Department on their own, the Department would appoint a trustee to conduct an independent search for an appropriate purchaser.

Please be assured that the Antitrust Division will take Governor Wise's comments and all other public comments into consideration before asking the court in this case to consider whether entry of the consent decree is in the public interest. If we can be of further assistance on this or any other matter, please do not hesitate to contact this office.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

BILLING CODE 4410–11–C

Note: Exhibit 15 is available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee. Exhibit 15 is also available on the Antitrust Division's website at <*http://www.usdoj.gov/atr.cases/f202800/202847.htm*>.

Defendants' Description and Certification of Written or Oral Communications Concerning the Proposed Final Judgment in This Action

Pursuant to Section 2(g) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(g), defendants Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, ("Defendants") by their attorneys, submit the following description and certification of all written or oral communications by or on behalf of any of the Defendants with any officer or employee of the United States concerning or relevant to the proposed Final Judgment filed in this action on September 29, 2003. In accordance with Section 2(g), the description excludes any communications "made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone."

Description

From September 2, 2003 to October 1, 2003, Defendants had numerous meetings and telephone conferences with employees of the United States concerning a possible settlement; from October 1, 2003 to the present date, Defendants have had additional conversations relating to the settlement. All of those contacts related to negotiation of a settlement in the general form contained in the proposed Final Judgment. Listed below are the individuals who participated in one or more of the meetings or telephone conferences.

Defendants

David McAusland, Alcan Inc.
Mac Tracy, Alcan Inc.
Martha Brooks, Alcan Inc.
D. Stuart Meiklejohn, Sullivan & Cromwell LLP
Steven Holley, Sullivan & Cromwell LLP
Michael Miller, Sullivan & Cromwell LLP

United States Department of Justice

Deborah Majoras, Antitrust Division
J. Robert Kramer II, Antitrust Division
Maribeth Petrizzi, Antitrust Division
Anthony Harris, Antitrust Division
Joseph Miller, Antitrust Division
Ronald Drennan, Antitrust Division

II. Certification

Defendants certify that they have complied with the requirements of Section 2(g) and that the descirption above of communications by or on behalf of Defendants, known to Defendants, of which Defendants reasonably should have known, or otherwise required to be reported under Section 2(g), is true and complete.

Dated: March 15, 2004.

Respectfully submitted,

Sullivan & Cromwell LLP
Peter Gronvall (Bar #475630)
Counsel for Alcan, Inc., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC.

Certificate of Service

I hereby certify that on this 15 day of March, 2004, I caused a true copy of the foregoing Defendants' Description and Certification of Written or Oral Communications Concerning the Proposed Final Judgement in this Action to be served via messenger to: Anthony E. Harris, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530. (202) 307–6583.

Attorney for Plaintiff United States of America

Dated: March 15, 2004.

Peter B. Gronvall (Bar No. 475630),
Sullivan & Cromwell, LLP,
1701 Pennsylvania Avenue NW., Washington, DC 20006–5805, Tel: (202) 956–7500.

[FR Doc. 04–7264 Filed 4–8–04; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitiled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT030001 (Jun. 13, 2003)
CT030002 (Jun. 13, 2003)
CT030003 (Jun. 13, 2003)
CT030004 (Jun. 13, 2003)
CT030005 (Jun. 13, 2003)
New York
NY030001 (Jun. 13, 2003)

Volume II

Maryland
MD030057 (Jun. 13, 2003)

Volume III

Florida
FL030001 (Jun. 13, 2003)
FL030009 (Jun. 13, 2003)
FL030017 (Jun. 13, 2003)
FL030032 (Jun. 13, 2003)
FL030103 (Jun. 13, 2003)
FL030004 (Jun. 13, 2003)

Volume IV

Illinois
IL030001 (Jun. 13, 2003)
IL030004 (Jun. 13, 2003)
IL030011 (Jun. 13, 2003)
IL030012 (Jun. 13, 2003)
IL030013 (Jun. 13, 2003)
IL030014 (Jun. 13, 2003)
IL030015 (Jun. 13, 2003)
IL030016 (Jun. 13, 2003)
IL030017 (Jun. 13, 2003)
IL030020 (Jun. 13, 2003)
IL030021 (Jun. 13, 2003)
IL030022 (Jun. 13, 2003)
IL030024 (Jun. 13, 2003)
IL030027 (Jun. 13, 2003)
IL030028 (Jun. 13, 2003)
IL030029 (Jun. 13, 2003)
IL030031 (Jun. 13, 2003)
IL030032 (Jun. 13, 2003)
IL030033 (Jun. 13, 2003)
IL030034 (Jun. 13, 2003)
IL030036 (Jun. 13, 2003)
IL030037 (Jun. 13, 2003)
IL030039 (Jun. 13, 2003)
IL030043 (Jun. 13, 2003)
IL030044 (Jun. 13, 2003)
IL030045 (Jun. 13, 2003)
IL030046 (Jun. 13, 2003)
IL030050 (Jun. 13, 2003)
IL030051 (Jun. 13, 2003)
IL030054 (Jun. 13, 2003)
IL030063 (Jun. 13, 2003)
IL030066 (Jun. 13, 2003)
IL030067 (Jun. 13, 2003)
IL030068 (Jun. 13, 2003)
IL030069 (Jun. 13, 2003)
IL030070 (Jun. 13, 2003)
Minnesota
MN030005 (Jun. 13, 2003)
MN030007 (Jun. 13, 2003)
MN030008 (Jun. 13, 2003)
MN030010 (Jun. 13, 2003)
MN030015 (Jun. 13, 2003)

Volume V

Kansas
KS030010 (JUN. 13, 2003)
KS030011 (JUN. 13, 2003)
KS030021 (JUN. 13, 2003)
Missouri
MO030003 (JUN. 13, 2003)
MO030010 (JUN. 13, 2003)
MO030041 (JUN. 13, 2003)
MO030051 (JUN. 13, 2003)
MO030055 (JUN. 13, 2003)
MO030056 (JUN. 13, 2003)
MO030059 (JUN. 13, 2003)
Oklahoma
OK030013 (JUN. 13, 2003)
Texas
TX030009 (JUN. 13, 2003)
TX030064 (JUN. 13, 2003)

Volume VI

Montana
MT030001 (JUN. 13, 2003)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to Subscribers.

Signed at Washington, DC this 1st Day of April 2004.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–7772 Filed 4–8–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The Sabine Mining Company

[Docket No. M–2004–012–C]

The Sabine Mining Company, 6501 Farm Road 968 West, Hallsville, Texas 75650–7413 has filed a petition to modify the application of 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems) to its South Hallsville No. 1 Mine (MSHA I.D. No. 41–03101) located in Harrison County, Texas. The petitioner requests a modification of the existing standard to allow an alternative method of compliance when the boom/mast is raised or lowered during necessary repairs. The petitioner states that during the procedure for raising and lowering the boom for construction/maintenance, the machine will not be performing mining operations. The procedure would also be applicable in instances of disassembly or major maintenance which require the boom to be raised or lowered. The petitioner further states that the procedures of raising and lowering the boom/mast during disassembly or major maintenance would be performed on an as needed basis; and training and review of the

procedures would be conducted prior to each time it is needed since raising and lowering the boom is done infrequently with long intervals of time between each occurrence, and all persons involved in the process will be trained or retrained at that time. The petitioner has listed specific guidelines in this petition that would be followed to minimize the potential for electrical power loss during this critical boom procedure. The petitioner asserts that this procedure does not replace other mechanical precautions or the requirements of 30 CFR 77.405(b) that are necessary to safely secure boom/masts during construction or maintenance procedures and that its proposed alternative method would not result in a diminution of safety to the miners.

2. CONSOL of Kentucky, Inc.

[Docket No. M–2004–013–C]

CONSOL of Kentucky, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (Water sprinkler systems; arrangement of sprinklers) to its Raccoon E–1 Mine (MSHA I.D. No. 15–18709) located in Floyd County, Kentucky. The petitioner requests a modification of the existing standard to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors in the Raccoon E–1 Mine. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi. The petitioner also proposes to have automatic sprinklers located not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; conduct a test to Insure proper operation during the installation of each new system and during any subsequent repair or replacement of any critical part of the sprinkler system; conduct a functional test to ensure proper operation during subsequent repair or replacement of any critical part of the sprinkler system; and conduct a functional test on an annual basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Acme Brick Company

[Docket No. M–2004–003–M]

Acme Brick Company, 2825 Crockett, Fort Worth, Texas 76107 has filed a petition to modify the application of 30 CFR 56.9300 (Berms and guardrails) to its Perla Pit & Plant (MSHA I.D. No. 03–00132) located in Hot Springs County, Arkansas; Bennett Plant (MSHA I.D. No. 41–00243) located in Parker County, Texas; Bridgeport Plant (MSHA I.D. No. 41–00244) located in Wise County, Texas; Standard Pit (MSHA I.D. No. 41–00264) located in Bastrop County, Texas; Harbert, Hobson, Sewell (MSHA I.D. No. 41–00368) located in Denton County, Texas; Chew Mine (MSHA I.D. No. 41–03361) located in Austin County, Texas; Edmond Pit & Plant (MSHA I.D. No. 34–00110) located in Oklahoma County, Oklahoma; Tulsa #665 (MSHA I.D. No. 34–00108) located in Tulsa County, Oklahoma; McQueeny Pits & Plant (MSHA I.D. No. 41–00241) located in Guadalupe County, Texas; AWC, JEN, RSP, FRK, MLC, HLP Pits (MSHA I.D. No. 41–00305) located in Henderson County, Texas; Jamestown Pit (MSHA I.D. No. 16–00391) located in Bienville County, Louisiana; and Garrison Pit & Plant (MSHA I.D. No. 41–00242) located in Nacogdoches County, Texas. The petitioner proposes to use an alternative method of compliance for stockpiling mined clay in lieu of using berms or guardrails. The petitioner is presently using two scrapers to haul mined clay up onto the stockpile and a motor grader to level off the stockpile as the scrapers dump their belly pans. The petitioner is requesting a variance from the existing standard to permit continued use of this procedure for stockpiling mined clay.

The petitioner has listed specific procedures in this petition that will be followed when using its proposed alternative method. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative will provide the same or greater degree of safety than the existing standard.

5. Acme Brick Company

[Docket No. M–2004–004–M]

Acme Brick Company, 2825 Crockett, Fort Worth, Texas 76107 has filed a petition to modify the application of 30 CFR 56.9301 (Dump site restraints) to its Perla Pit & Plant (MSHA I.D. No. 03–00132) located in Hot Springs County, Arkansas; Bennett Plant (MSHA I.D. No. 41–00243) located in Parker County, Texas; Bridgeport Plant (MSHA I.D. No. 41–00244) located in Wise County, Texas; Standard Pit (MSHA I.D. No. 41–00264) located in Bastrop County, Texas; Harbert, Hobson, Sewell (MSHA I.D. No. 41–00368) located in Denton County, Texas; Chew Mine (MSHA I.D. No. 41–03361) located in Austin County, Texas; Edmond Pit & Plant (MSHA I.D. No. 34–00110) located in Oklahoma County, Oklahoma; Tulsa #665 (MSHA I.D. No. 34–00108) located Tulsa County, Oklahoma; McQueeny Pits & Plant (MSHA I.D. No. 41–00241) located in Guadalupe County, Texas; AWC, JEN, RSP, FRK, MLC, HLP Pits (MSHA I.D. No. 41–00305) located in Henderson County, Texas; Jamestown Pit (MSHA I.D. No. 16–00391) located in Bienville County, Louisiana; and Garrison Pit & Plant (MSHA I.D. No. 41–00242) located in Nacogdoches County, Texas. The petitioner proposes to use an alternative method of compliance for stockpiling mined clay in lieu of using berms or guardrails. The petitioner is presently using two scrapers to haul mined clay up onto the stockpile and a motor grader to level off the stockpile as the scrapers dump their belly pans. The petitioner is requesting a variance from the existing standard to permit continued use of this procedure for stockpiling mined clay. The petitioner has listed specific procedures in this petition that will be followed when using its proposed alternative method. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and that the proposed alternative will provide the same or greater degree of safety than the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before May 10, 2004. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 2nd day of April 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–8034 Filed 4–8–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

OMB Extension of a Currently Approved Information Collection

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Notice of OMB extension under the Paperwork Reduction Act of 1995.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that the Office of Management and Budget (OMB) has extended, under the Paperwork Reduction Act of 1995, a currently approved collection of information under the Energy Employees Occupational Illness Compensation Program Act of 2000, the Federal Employees' Compensation Act, and the Black Lung Benefits Act. This notice announces both the OMB number and expiration date.

Compliance Date: As of April 9, 2004, affected parties must continue to comply with the information collection requirements described below, which have been extended by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 25, 2003, OWCP requested that OMB extend under the PRA a currently approved information collection for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.*, the Federal Employees' Compensation Act, as amended (FECA), 5 U.S.C. 8101 *et seq.*, and the Black Lung Benefits Act, as amended (BLBA), 30 U.S.C. 901 *et seq.* The information collection requirements that needed to be extended by OMB are derived from regulations that implement these three statutes at 20 CFR 10.801, 30.701, 725.701 and 725.705, and consist of pharmacy billing data requirements that must be followed so bills that are submitted to OWCP for payment by the responsible program can be processed automatically.

On March 31, 2004, OMB approved this extension of a currently approved collection of information for three years. The OMB control number assigned to this information collection is 1215–0194. The approval for this information collection will expire on March 31, 2007.

Signed at Washington, DC, this 2nd day of April, 2004.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 04–8053 Filed 4–8–04; 8:45 am]

BILLING CODE 4510–CR–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–284]

Idaho State University Research Reactor Facility Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment for Facility Operating License No. R–110, issued to the Idaho State University (the licensee or ISU) for operation of the Idaho State University Reactor Facility (ISURF) located in Pocatello, Bannock County, Idaho.

Environmental Assessment

Identification of the Proposed Action

Renewal of the license (the proposed action) would allow an additional 20 years of operation for the Idaho State University Reactor Facility (ISURF). The proposed action is in accordance with the licensee's application for amendment dated November 21, 1995, as supplemented on January 31, 2003 and July 10, 2003. The licensee submitted an Environmental Report for license renewal. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Need for the Proposed Action

The proposed action is needed to allow continued operation of the ISURF to continue educational training and academic research beyond the current term of the license.

Environmental Impacts of the Proposed Action

The research reactor is on the campus of the Idaho State University in the Lillibridge Engineering Laboratory. Lillibridge Engineering Laboratory has research and teaching laboratories, lecture halls, classrooms, library/study room, offices, and workshops. It is surrounded by similar facilities in the immediate area.

The ISURF is authorized by an NRC license to operate at steady-state thermal power levels up to a maximum of 5 watts(t). The operating license was issued on October 11, 1967. Facility modifications have been minor as outlined in the SAR. The licensee has not indicated any plans to significantly change the design or usage. Since initial operation, the gaseous Argon-41 radiological release has been conservatively estimated to be less than 185,000 becquerels per year (5 microcuries per year). Average concentrations of Argon-41 are conservatively estimated to be less than 1.0×10^{-12} microcuries/milliliter. This concentration is well below the 10 CFR 20, Appendix B, Table 2 limit of 1.0×10^{8} microcuries/milliliter. Since 1992, the facility has had no radiological liquid or solid radiological releases. Material has been stored as required. Radioactive waste has been transferred and disposed of following the requirements of the licensee's byproduct license. Currently, there are no plans to change any operating or radiological release practices or characteristics of the reactor during the license renewal period.

The NRC concludes that conditions are not expected to change and that the radiological effects of the continued operation will continue to be minimal. The radiological exposures for facility operations have been within regulatory limits and should remain so..

Currently, there are no plans to change any operating or radiological release practices or characteristics of the reactor during the license renewal period. The NRC concludes that conditions are not expected to change and that the radiological effects of operation during the renewal period will continue to be minimal.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off-site, and there is no significant increase to occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

Potential non-radiological impacts related to the proposed action were evaluated. The license renewal does not involve any historic sites. The facility is wholly located within the Lillibridge building on the campus of Idaho State University. The licensee does not plan any major refurbishment activities, therefore, there will be no new

construction or ground disturbance. The proposed license renewal does not affect non-radiological facility effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is given in the attached generic evaluation. This evaluation concludes that no significant environmental impact is associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal. The NRC staff has determined that this generic evaluation is applicable to operation of the ISURF and, that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). If the NRC denied license renewal, ISURF operations would stop with no change in current environmental impacts. The environmental impacts of the proposed action and alternative action are similar.

Agencies and Persons Contacted

On November 13, 2003, the staff consulted with the Idaho State official, Mr. Doug Walker, Senior Health Physicist, Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 21, 1995, as amended on January 31, 2003, and July 10, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Documents from November 24, 1999, may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of March 2004.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Acting Chief, Research and Test Reactors Section, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Attachment to Environmental Assessment and Finding of No Significant Impact

Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities

Introduction

This discussion deals with research reactors and critical facilities designed to operate at low power levels, 2 MWt and lower. These small research reactors are used primarily for basic research in neutron physics, neutron radiography, isotope production, experiments associated with nuclear engineering, training, and as a part of a nuclear physics curriculum. Generally, these facilities are operated less than 8 hours per day and fewer than 5 days per week, or about 2000 hours per year. These reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

These reactors are usually housed in appropriately modified existing structures, or placed in new buildings that are designed and constructed to blend in with existing facilities on the campuses of large universities. However, the environmental considerations discussed herein are not limited to those facilities which are part of universities.

Facility

There are no exterior conduits, pipelines, electrical or mechanical structures or transmission lines attached to or adjacent to the facility other than for utility services, which are similar to those required in other similar facilities, specifically laboratories. Heat dissipation, if required, is generally accomplished by a heat exchanger whose secondary side includes a cooling tower located on the roof of or nearby the reactor building. The size of these cooling towers typically are on the order of 10 ft by 10 ft by 10 ft (3 m by 3 m by 3 m) and are comparable to cooling towers associated with the air-conditioning systems of large office buildings. Heat dissipation may also be accomplished by transfer through a heat exchanger to water flowing directly to a sewer or a chilled water system. Make-up for the cooling system is readily available and usually obtained from the local water supply.

Radioactive gaseous effluents during normal operations are usually limited to argon–41. The release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring prior to dilution and release to the sanitary sewer system or the environment. This liquid waste may also be solidified and disposed of as solid waste. Solid radioactive wastes are packaged and shipped offsite for storage or disposal at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC–DOT regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those existing at other similar laboratories and buildings.

Environmental Effects of Site Preparation and Facility Construction

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife or nearby waters or aquatic life. The societal, economic and aesthetic impacts of construction would be no greater than those associated with the construction of an office building or similar research facility.

Environmental Effects of Facility Operation

Release of thermal effluents from a reactor of less than 2 MWt will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level. The small amount of waste heat released to sewers, in the case of heat exchanger secondary flow directly to the sewer, will not raise average water temperatures in the environment.

Release of routine gaseous effluents can be limited to argon–41, which is

generated by neutron activation of air. In most cases, this will be kept as low as practicable by using gases other than air for supporting experiments. Experiments that are supported by air are designed to minimize production of argon–41. Yearly doses to persons in unrestricted areas will be at or below established 10 CFR part 20 limits. Routine releases of radioactive liquid effluents can be carefully monitored and controlled in a manner that will ensure compliance with the regulations. Solid radioactive wastes will be shipped in approved containers to an authorized disposal site or to a facility licensed to treat and consolidate radioactive waste. These wastes should not require more than a few shipping containers a year.

Based on experience with other research reactors, specifically TRIGA reactors operating in the 1 to 2 MWt range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies (1,110,000 MBq) and 0.01 curies (370 MBq), respectively.

No release of potentially hārmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments. The quality of secondary cooling water may be maintained using biocides, corrosion inhibitors and pH control chemicals. The use of these chemicals for this purpose is approved by the Environmental Protection Agency (EPA). The small amounts of laboratory chemicals that may be used in research laboratories are disposed of in accordance with EPA and state requirements.

Other potential effects of the facility, such as aesthetics, noise, societal or impact on local flora and fauna are expected to be too small to measure.

Environmental Effects of Accidents

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR part 20 limits and are considered negligible with respect to the environment.

Unavoidable Effects of Facility Construction and Operation

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

Alternatives to Construction and Operation of the Facility

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

Long-Term Effects of Facility Construction and Operation

The long-term effects of research facilities are considered to be beneficial as a result of the contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible and irretrievable commitment is associated with such facilities.

Costs and Benefits of Facility Alternatives

The costs are on the order of several millions of dollars with very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

Conclusion

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at power levels of 2 MWt or lower and that no environmental impact statements are required to be written for the issuance of construction permits, operating licenses or license renewals for such facilities.

Revised: March 30, 2004.

[FR Doc. 04–8046 Filed 4–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 21, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss Duke Power or Framatome proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows: Wednesday, April 21, 2004—8:30 a.m. until the conclusion of business.

The purpose of this meeting is to review proposed license amendment to authorize the use of mixed oxide (MOX) Lead Test Assemblies at the Catawba Nuclear Station. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Duke Power, Framatome, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Ralph Caruso (telephone 301–415–8065) 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 8 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 2, 2004.

Michael R. Snodderly,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–8044 Filed 4–8–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on April 23, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, April 23, 2004—8:30 a.m. until the conclusion of business.*

The purpose of this meeting is to discuss the resolution of post-fire safe shutdown circuit analysis issues, revisions to the Reactor Oversight Process (ROP) Fire SDP, and the preliminary results of the staff's Fire Risk Requantification Study. The Subcommittee will hear presentations by and hold discussions with the NRC staff, representatives of the Nuclear Energy Institute, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or the Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 2, 2004.

Michael R. Snodderly,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–8045 Filed 4–8–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49528; File No. PCAOB–2003–10]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board

April 6, 2004.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), notice is hereby given that on December 22, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule described in Items I and II below, which items have been prepared by the Board.[1] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

On December 17, 2003, the Board adopted a rule, Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board ("the proposed rule"). The text of the proposed rule is set out below.

The text of the proposed rule, including an appendix of illustrative auditor's reports, is as follows:

Auditing Standard No. 1—References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board

1. The Sarbanes-Oxley Act of 2002 authorized the Public Company Accounting Oversight Board ("PCAOB") to establish auditing and related professional practice standards to be used by registered public accounting firms. PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, requires the auditor to comply with all applicable auditing and related professional practice standards of the PCAOB.

2. The Board has adopted as interim standards, on an initial, transitional basis, the generally accepted auditing standards, described in the American Institute of Certified Public Accountants' ("AICPA") Auditing Standards Board's Statement on Auditing Standards No. 95, *Generally Accepted Auditing Standards*, in existence on April 16, 2003.[2]

3. Accordingly, in connection with any engagement performed in accordance with the auditing and related professional practice standards of the PCAOB, whenever the auditor is required by the interim standards to make reference in a report to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, or standards established by the AICPA, the auditor must instead refer to "the standards of the Public Company Accounting Oversight Board (United States)." An auditor must also include the city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's report has been issued.

4. This auditing standard is effective for auditors' reports issued or reissued on or after the 10th day following approval of this auditing standard by the Securities and Exchange Commission.

5. Audit reports issued prior to the effective date of this standard were required to state that the audits that supported those reports were performed in accordance with generally accepted auditing standards. The PCAOB adopted those generally accepted auditing standards, including their respective effective dates, as they existed on April 16, 2003, as interim standards. Therefore, reference to "the standards of the Public Company Accounting Oversight Board (United States)" with respect to audits of financial statements performed prior to the effective date of this standard is equivalent to the previously-required reference to generally accepted auditing standards. Accordingly, upon adoption of this standard, a reference to generally accepted auditing standards in auditors' reports is no longer appropriate or necessary.

Note: The term "auditor" in this standard is intended to include both registered public accounting firms and associated persons thereof.

APPENDIX

Illustrative Reports

The following is an illustrative report on an audit of financial statements:

Report of Independent Registered Public Accounting Firm

We have audited the accompanying balance sheets of X Company as of December 31, 20X3 and 20X2, and the related statements of operations, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 20X3. These

[1] Section 3(c) of the Act provides that "[n]othing in this Act or the rules of the Board shall be construed to impair or limit * * * (2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law * * *." When an independent accountant prepares a report for submission or filing with the Commission, the independent accountant would be considered to be representing that it has complied with the applicable federal securities laws and Commission rules and staff guidance, as well as with the standards of the Public Company Accounting Standards Board (United States) as referenced explicitly in the Board's proposed Auditing Standard No. 1. In a note to PCAOB Rule 3600T, Interim Independence Standards, the Board specifically provided that the PCAOB's rules do not supersede the Commission's rules, and, therefore, registered public accounting firms must comply with the more restrictive of the Commission's or the Board's rules.

[2] The Board's rules on interim standards were adopted by the Board on April 16, 2003, and approved by the Commission on April 25, 2003. *See* Release No. 33–8222 (April 25, 2003).

financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of [at] December 31, 20X3 and 20X2, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 20X3, in conformity with U.S. generally accepted accounting principles.

[*Signature*]

[City and State or Country]

[*Date*]

The following is an illustrative report on a review of interim financial information:

Report of Independent Registered Public Accounting Firm

We have reviewed the accompanying [*describe the interim financial information or statements reviewed*] of X Company as of September 30, 20X3 and 20X2, and for the three-month and nine-month periods then ended. This (these) interim financial information (statements) is (are) the responsibility of the Company's management.

We conducted our review in accordance with the standards of the Public Company Accounting Oversight Board (United States). A review of interim financial information consists principally of applying analytical procedures and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with the standards of the Public Company Accounting Oversight Board, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our review, we are not aware of any material modifications that should be made to the accompanying interim financial (statements) for it (them) to be in conformity with U.S. generally accepted accounting principles.

[*Signature*]

[City and State or Country]

[*Date*]

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

Section 103(a)(1) of the Act authorized the PCAOB to establish, by rule, auditing standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by the Act. PCAOB Rule 3100, "Compliance with Auditing and Related Professional Practice Standards," requires auditors to comply with all applicable auditing and related professional practice standards established by the PCAOB. The Board has adopted as interim standards, on an initial, transitional basis, the generally accepted auditing standards, described in the American Institute of Certified Public Accountants' ("AICPA") Auditing Standards Board's Statement on Auditing Standards No. 95, *Generally Accepted Auditing Standards*, in existence on April 16, 2003 (the "interim standards").

The Board's interim standards—as did the profession's generally accepted auditing standards that preceded the Board's standards—require auditors to make reference in their audit and review reports to the standards that they followed in conducting the audits and reviews. To conform the language of auditors' reports to the requirement that auditors comply with PCAOB standards, the Board's proposed rule would require auditors' reports to refer to "the standards of the U.S. Public Company Accounting Oversight Board (United States)."

In addition, to make the Board's interim standards consistent with the Act and Rule 3100, this proposed rule provides that all references in the interim standards to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, and standards established by the AICPA, would mean "the standards of the Public Company Accounting Oversight Board (United States)."

(b) Statutory Basis

The statutory basis for the proposed rule is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Pursuant to the Act and PCAOB Rule 3100, registered public accounting firms must comply with all applicable auditing and related professional practice standards established by the PCAOB. The proposed rule would simply require a registered public accounting firm to make reference in the auditor's report to the standards of the PCAOB whenever the engagement was performed pursuant to the Board's auditing and related professional practice standards.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board released the proposed rule for public comment in PCAOB Release No. 2003–021 (November 12, 2003). A copy of PCAOB Release No. 2003–021 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *www.pcaobus.org*. The Board received eight written comments. The Board has clarified and modified certain aspects of the proposed rule and the instructions to the related form in response to comments it received, as discussed below.

The Board received several comments related to transitional issues, including how the proposed standard would affect the reissuance of a report originally issued before the proposed standard became effective; issuance of a report on comparative financial statements when the audits of the financial statements for periods presented for comparative purposes were conducted before the proposed standard became effective and/or before the Board adopted its interim standards; and issuance of a dual-dated report that include dates that

straddle the effective date of this standard.

In the proposed standard, the Board had recommended the standard be effective for auditors' reports dated on or after the later of January 1, 2004 or the 10th day after SEC approval of the standard as adopted by the Board. In evaluating the comments with regard to transition, the Board decided to modify the effective date of this standard. Rather than linking the effective date of this standard to the date of the report, this auditing standard will be effective for reports issued or reissued on or after the 10th day following SEC approval of this auditing standard. After this standard becomes effective, any auditor's report issued or reissued with respect to the financial statements of a public company must state that the engagement was performed in accordance with "the standards of the Public Company Accounting Oversight Board (United States)."

One commenter also expressed concern that the proposed standard's requirement that a report state that an audit performed prior to the PCAOB's adoption of interim standards was performed in accordance with PCAOB standards would, in essence, require the auditor to re-audit the prior period's financial statements in order to bring that audit or review into conformity with current PCAOB standards. The Board does not intend to require auditors to bring audits that were performed in accordance with then-prevailing standards into conformity with later-prevailing standards in order to reissue a previously-issued report. When the Board adopted as interim standards the generally accepted auditing standards established by the ASB, the Board also adopted the effective dates of those standards. Therefore, reference in auditors' reports to the standards of the PCAOB with respect to financial statements audited or reviewed prior to the effective date of Auditing Standard No. 1 is equivalent to the previously-required reference to generally accepted auditing standards. The reference relates to those standards that were in effect when the audit or review was completed and should not be interpreted to imply a representation that the audit or review complied with standards that became effective after the audit or review was completed.

Several commenters recommended that the Board only require auditors' reports to refer to the auditing standards of the PCAOB for audits of financial statements and not to the standards of the PCAOB generally. The Board intends for report references to "the standards of the Public Company Accounting Oversight Board (United States)" to mean those auditing and related professional practice standards that are applicable to the particular engagement. For example, if an issuer does not use any outside service organization that would affect its internal control over financial reporting, then the interim auditing standard on service organizations " described in the Codification of Statements on Auditing Standards at AU section 324 (*Service Organizations*), would not be applicable. On the other hand, the Board's independence standards apply to registered public accounting firms, and associated persons thereof, in connection with the preparation and issuance of audit reports for issuers.

As another example, quality control standards generally apply to a firm's system of quality control over its accounting and auditing practice and not to individual audit engagements. Thus, a breakdown in the system of quality control does not necessarily mean that a particular audit was not conducted in accordance with the standards of the PCAOB. However, such a breakdown might result in a deficient audit if it caused or contributed to an audit deficiency. The determination as to whether a particular auditing or related professional practice standard is applicable in the context of a particular audit is dependent on the nature of the standard in question and on the nature of the engagement at issue.

Thus a reference to "auditing standards" of the PCAOB would be too narrow and preclusive to other standards applicable to the audit. The Board believes that reference to "the standards of the Public Company Accounting Oversight Board (United States)" is a more descriptive reference to the standards applied in the audit.

The Board received a number of comments recommending that auditors' reports, with respect to financial statement audits, describe PCAOB standards as generally accepted auditing standards. The notion of general acceptance developed at a time when auditing and accounting standards were not established with the force of law by governmental or other authoritative bodies, but rather were established by consensus among the members of the accounting profession.

As far as auditing and related professional practice standards are concerned, the Board gained authority to establish such standards by the enactment of the Act. Professional consensus is no longer sufficient to establish auditing standards, and therefore the Board believes that it is no longer appropriate to refer to the standards with which an auditor of the financial statements of a public company must comply as "generally accepted." While those standards may be generally accepted in a variety of contexts, what gives them the force of law in the context of public company audits is adoption by the PCAOB and approval by the SEC.

Therefore, for purposes of any engagement performed in accordance with the applicable auditing and related professional practice standards of the PCAOB, references in the interim standards to generally accepted auditing standards, U.S. generally accepted auditing standards, auditing standards generally accepted in the United States of America, and standards established by the AICPA, mean the standards of the PCAOB.

The Board also received comments recommending that the Board continue to require auditors to state in their reports that the standards according to which they performed their engagements were those standards applicable in the United States. Adopting this recommendation will make it easier for readers of audit reports that are used in cross-border offerings and listings of securities to quickly identify the jurisdiction in which the standards were promulgated. As such, the Board has required in Auditing Standard No. 1 that auditors' reports describe the PCAOB's standards as "the standards of the Public Company Accounting Oversight Board (United States)."

Another commenter recommended that auditors identify in their reports the city and state (or country) of the registered firms issuing the reports. The SEC's rules require disclosure in the auditor's report of the city and state of the accounting firm's office issuing the report. (17 CFR 210.2–02). The Board also concurs with this recommendation and, accordingly, has modified the auditing standard and the illustrative reports in the appendix to Auditing Standard No. 1.

The Board was asked to clarify the applicability of this standard, and the Board's standards generally, to circumstances where more than one auditing firm contributes to an audit of a consolidated entity. For example, a firm other than the firm engaged to report on the company's consolidated financial statements may be hired to audit the financial statements of a subsidiary company. In such circumstances, the auditor that conducts the majority of the audit is referred to as the principal auditor and the auditor of the subsidiary company is referred to as the other auditor. (See Codification of

Auditing Standards, AU section 543). Depending on the significance of the portion of the financial statements audited by the other auditor, the principal auditor may divide responsibility with the other auditor by making reference to the audit of the other auditor in his or her report, or the principal auditor may take responsibility for the work of the other auditor by not making any reference to the other auditor.

In either event, the entire audit must be performed in accordance with the Board's standards. Section 103 of the Act, and the Board's Rule 3100, require registered public accounting firms, and associated persons thereof, to comply with all applicable auditing and related professional practice standards in connection with the preparation and issuance of audit reports on the financial statements of issuers. Whether the other auditor is a registered public accounting firm or an associated person of a registered public accounting firm, the other auditor must comply with the standards of the PCAOB.

Another commenter asked the Board to clarify whether non-U.S. public accounting firms—who are not required to register with the PCAOB until 2004—will be permitted, until registered with the PCAOB, to continue to reference "auditing standards generally accepted in the United States of America" when reporting on an issuer's financial statements. Like the Board's interim standards, with which a public accounting firm is required to comply even before the firm's mandatory registration date, during the period preceding the mandatory registration date, standards of the PCAOB apply to firms engaged in work that requires their registration. Therefore, non-U.S. public accounting firms that have not yet registered, that engage in work that would require them to be registered as of the mandatory registration date, are nevertheless required to reference "the standards of the Public Company Accounting Oversight Board (United States)."

Another commenter recommended that the Board expand the proposed standard to specifically address the various scenarios that auditors will encounter with respect to reporting in conjunction with initial public offerings. The SEC's Rule 3–01 of Regulation S–X requires that, like other SEC filings that must comply with Regulation S–X, a registration statement filed in connection with an initial public offering must include or otherwise incorporate "for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years." (17 CFR 210.3–01). In addition, Rule 3–02 of Regulation S–X requires that there "be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet." (17 CFR 210.3–02). Thus an issuer desiring to register a transaction involving the sale of securities must have financial statements audited in accordance with standards as required by the securities laws.

In Section 103 of the Act, Congress has provided the Board authority to establish auditing and related professional practice standards "to be used by registered public accounting firms in the preparation and issuance of audit reports." In addition, the PCAOB has adopted, and the SEC has approved, PCAOB Rule 3100, which requires registered public accounting firms to comply with all applicable auditing and related professional practice standards of the PCAOB in connection with the preparation and issuance of audit reports on the financial statements of issuers. Accordingly, audit reports on the financial statements of issuers must now comply with—and under Auditing Standard No. 1 auditors must state that they performed the audit in accordance with—the standards of the PCAOB. So long as audits that were performed prior to April 25, 2003, were performed in accordance with then-prevailing generally accepted auditing standards, an auditor need not re-audit any financial statements that relate to periods preceding April 25, 2003. Further, as discussed above, because the Board adopted the "generally accepted auditing standards" in effect as of April 16, 2003, the Board believes it is appropriate to require auditors who issue or reissue reports on periods prior to the date Auditing Standard No. 1 becomes effective to state that their audits were performed in accordance with PCAOB standards, so long as they were performed in accordance with the "generally accepted auditing standards" prevailing at the time the audits were performed.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(a) By order approve such proposed rule; or

(b) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (*http://www.sec.gov*) or (2) e-mail to *rule-comments@sec.gov*. Mail 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 No. PCAOB–2003–10; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet Web site (*http://www.sec.gov*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 30, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8084 Filed 4–8–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49525; File No. SR–BSE–2004–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Boston Stock Exchange, Inc. to Retroactively Apply and Extend Its Specialist Evaluation Program Pilot

April 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 23, 2004 the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by BSE. On April 1, 2004 and April 2, 2004, the Commission received Amendment Nos. 1[3] and 2,[4] respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend its Specialist Performance Evaluation Program ("SPEP") pilot retroactively from September 30, 2002 and to renew it prospectively until September 30, 2004.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks a two-year extension of its SPEP pilot to be applied retroactively from September 30, 2002, and prospectively until September 30, 2004.[5]

Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it believes that modifications are necessitated as a result of changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested. The Exchange requests accelerated approval of the extension of the pilot program so that the Exchange will be able to continue evaluating the performance of its specialists without interruption, pending approval by the Commission of the Exchange's anticipated proposed changes to the program.

2. Statutory Basis

BSE believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] in that the proposed rule change is designed 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 transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–BSE–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–BSE–2004–12 and should be submitted by April 30, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Exchange's proposal to retroactively extend the SPEP pilot from September 30, 2002 until September 30, 2004 is consistent with the requirements of the Act and rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change, as amended, is consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2004 ("Amendment No. 1"). In Amendment No. 1, BSE requested a two-year extension of its Specialist Performance Evaluation Program pilot applied retroactively from September 30, 2002 to September 30, 2004 (the original proposal sought only an extension of the pilot through June 30, 2004). In addition, BSE changed the basis of the proposal from Section 19(b)(3)(A) of the Act to Section 19(b)(2) of the Act and requested accelerated approval.

[4] *See* letter from John Boese, Vice President, Legal and Compliance, BSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 2, 2004 ("Amendment No. 2"). In Amendment No. 2, the BSE conformed its rule text to reflect the extension of the pilot until September 30, 2004.

[5] *See* Securities Exchange Act Release No. 46220 (July 17, 2002), 67 FR 48236 (July 23, 2002) (extending the SPEP pilot until September 30, 2002). *See also* Amendment No. 1, *supra* note 3 (requesting retroactive approval).

[6] 15 U.S.C. 78f(b)(5).

with Section 6(b)(5) of the Act,[7] which requires that the rules of the Exchange be designed 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 transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the retroactive application of the SPEP pilot should allow the Exchange to continue to assess specialist performance without interruption, while allowing the Exchange adequate time to evaluate the program.

The Commission expects that, during the SPEP pilot, the Exchange will continue to monitor threshold levels and propose adjustments, as necessary, and continue to assess whether each SPEP measure is assigned an appropriate weight. In addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review.

The Commission finds good cause for granting the Exchange's request for a two-year extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.[8] Among the obligations imposed upon specialists by the Exchange, and by the Act and rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation of specialist performance and accelerated approval of the proposed rule change would permit the SPEP pilot to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the SPEP pilot from September 30, 2002 until September 30, 2004, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[9]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–BSE–2004–12), as amended is hereby approved on an accelerated basis until September 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8087 Filed 4–8–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49524; File No. SR–CBOE–2004–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Extension of Its Prospective Fee Reduction Program

April 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 26, 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, II and III below, which Items have been prepared by CBOE. CBOE filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, as one establishing or changing a due, fee, or other charge imposed by the Exchange, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to make a change to its Fee Schedule to extend the Prospective Fee Reduction Program through the close of the current Exchange Fiscal Year on June 30, 2004.

Below is the text of the proposed rule change. Proposed new language is *italics;* proposed deletions are in [brackets].

* * * * *

FEE SCHEDULE—APRIL 1, 2004

1–18 No Change.

19 PROSPECTIVE FEE REDUCTION PROGRAM

A Prospective Fee Reduction Program will be in effect for February [and March] *through June* 2004. CBOE Market Maker (as defined in CBOE Rule 8.1) transaction fees will be reduced from standard rates by $.02 per contract side. In addition, floor brokerage fees will be reduced by $.003 (three-tenths of one cent) per contract side.

Remainder of Fee Schedule No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE represents that in recognition of high trading volume and positive financial results to date during its current fiscal year, the Exchange recently re-implemented a Prospective Fee Reduction Program for February and March 2004.[5] The Exchange now proposes to extend the current Prospective Fee Reduction Program through the close of the current CBOE fiscal year on June 30, 2004. Under the extended program, CBOE Market-Makers (as defined in CBOE Rule 8.1) will continue to have their transaction fees reduced from standard rates by $.02 per contract side. In addition, under the extended program, CBOE will continue to reduce all floor brokerage fees by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004).

$.003 per contract side. As before, the Exchange will continue to monitor its financial results to determine whether the Prospective Fee Reduction Program should be continued, modified, or eliminated in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2004–18. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–CBOE–2004–18 and should be submitted by April 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8086 Filed 4–8–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 C.F.R. 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49517; File No. SR–CHX–2004–01]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

April 1, 2004.

On January 21, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its membership dues and fees schedule (the "Fee Schedule") to clarify the applicability of certain Fee Schedule provisions relating to transaction fees, and to establish a schedule of maximum monthly transaction fees for certain agency orders executed through a CHX floor broker. The Exchange proposed to apply the Fee Schedule changes on a retroactive basis effective as of November 1, 2003.[3] On February 19, 2004, the Exchange submitted an amendment to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 1, 2004.[5] The Commission received no comments on the proposal.

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[6] and, particularly, Section 6(b)(4) of the Act, which requires that the rules of an exchange provides for the equitable allocation of reasonable dues, fees, and other charges among its members.[7] The Commission believes that the Exchange's proposal to apply its current Fee Schedule on a retroactive basis to November 1, 2003, should allow the Exchange to provide eligible order-sending firms that route significant levels of order flow to the CHX a transaction fee credit. The Commission notes that the retroactive application of the proposal will not result in the assessment of any additional fees against CHX members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change, as amended, (SR–CHX–2004–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–8085 Filed 4–8–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 31, 2003, the Exchange filed an identical amendment to the Fee Schedule, as immediately effective. *See* SR–CHX–2003–39. Because the Exchange also sought to apply the Fee Schedule amendments on a retroactive basis (*i.e.*, to the months November and December, 2003), the Exchange submitted the proposed rule change for notice and comment.

[4] *See* facsimile from Ellen J. Neely, Senior Vice President & General Counsel, CHX, to A. Michael Pierson, Attorney, and Marisol Rubecindo, Law Clerk, Division of Market Regulation ("Division"), Commission, dated February 19, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the proposed rule change in its entirety.

[5] *See* Securities Exchange Act Release No. 49298 (February 23, 2004), 69 FR 9660.

[6] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4656]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Tuesday, April 20, 2004, to consider the draft instrument on the International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1:30 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in determining the U.S. views for the next meeting of the UNCITRAL Working Group on this draft instrument, to be held in New York from May 3 to 14, 2004.

The current draft text of the instrument and related documents of Working Group III (Transport Law) are available on the UNCITRAL Web site, *http://www.uncitral.org*. The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., Monday through Friday, except federal holidays. An electronic version of this document, along with all documents entered into this docket, is available on the World Wide Web at *http//dms.dot.gov*. For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@state.gov*.

Dated: April 2, 2004.

Mary Helen Carlson,

Attorney-Adviser, Office of the Assistant Legal Adviser for Private International Law, Department of State.

[FR Doc. 04–8109 Filed 4–8–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[DELEGATION OF AUTHORITY 272]

Delegation of Authority: Office of the Under Secretary for Management, Department of State

1. General Delegation

By virtue of the authority vested in me by Delegation No. 198, dated September 16, 1992, I hereby delegate to the Director of the Office of Foreign Missions and the Deputy Director of the Office of Foreign Missions all functions relating to certifications and reports to Congress regarding the payment by countries of parking fines and penalties owed to the government of the District of Columbia, the City of New York, or any other jurisdiction, and required by section 544 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004 (Div. D, Pub. L. 108–199) or any other similar provision of law.

2. Technical Provisions

(a) Notwithstanding any provision of this Delegation of Authority, the Secretary of State or the Deputy Secretary of State or the Under Secretary for Management may at any time exercise any function delegated by this Delegation of Authority.

(b) Any act, executive order, regulation or procedure affected by this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

(c) This Delegation of Authority shall be published in the **Federal Register**.

Dated: February 17, 2004.

Grant Green, Jr.,

Under Secretary of State for Management, Department of State.

[FR Doc. 04–8110 Filed 4–8–04; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34458]

The Kansas City Southern Railway Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant non-exclusive overhead trackage rights to the Kansas City Southern Railway Company (KCS) over a portion of BNSF's railroad, on BNSF's Fort Worth subdivision between milepost 386.80 near Metro Junction, Denton County, TX, and BNSF's Red Rock subdivision milepost 479.81 near Davis, Murray County, OK, a total distance of approximately 93.01 miles.

The transaction was scheduled to be consummated on or after March 29, 2004, the effective date of the exemption (7 days after the notice was filed).

The purpose of the trackage rights is to allow KCS to handle its own non-revenue, company material ballast trains, using its own power and crews, over the subject trackage to and from the ballast facility operated by Martin Marietta near Davis. The trackage rights are overhead rights only and KCS has no right to: (1) Set out, pick up or store cars, or switch upon the subject trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; (2) handle any traffic other than KCS company material ballast trains; (3) serve any industry, team or house track now existing or constructed in the future along the subject trackage; or (4) permit or admit any third party to the use of all or any portion of the subject trackage.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). 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. 34458, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–8083 Filed 4–8–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34465]

Mendocino Railway—Acquisition Exemption—Assets of the California Western Railroad

Mendocino Railway (Mendocino), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, through California Western Railroad's (CWR) trustee in bankruptcy and with the approval of the Bankruptcy Court for the Northern District of California, the rail assets of CWR.[1] The assets consist of all rail lines owned by CWR between milepost 0 and milepost 40. Mendocino states that, on February 11, 2004, the sale of CWR's assets was authorized by order of the Bankruptcy Court and that CWR's trustee was authorized to sell the railroad assets of CWR to SRC.

Mendocino intends initially to operate CWR with the help of Mendocino's affiliated entities: Sierra Northern Railway (a Class III rail carrier), Midland Railroad Enterprises Corporation (a railroad construction and track maintenance company), and Sierra Entertainment (a tourism, entertainment, and passenger operations company). Mendocino states that it is negotiating an agreement with Hawthorne Timber Company, LLC (Hawthorne) for the transfer to Mendocino of Hawthorne's fee interest in the real property underlying CWR's tracks. Mendocino anticipates completing the acquisition by mid March 2004 and to begin operations on or about May 1, 2004.

Mendocino certifies that its projected revenues as a result of this transaction do not exceed $5 million per year and do not exceed those that would qualify it as a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34465, 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 Torgny Nilsson, General Counsel, 341 Industrial Way, Woodland, CA 95776.

[1] Mendocino is a California corporation formed for the purpose of acquiring and operating CWR. It is a wholly owned subsidiary of Sierra Railroad Company (SRC).

Board decisions and notices are available on the Board's Web site at *www.stb.dot.gov*.

Decided: April 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–8082 Filed 4–8–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Report of International Transportation of Currency or Monetary Instruments—Accompanied by an Individual, FinCEN Form 105 (CMIR Form 105), and Report of International Transportation of Currency or Monetary Instruments—Shipment, Mailing, or Receipt, FinCEN Form 106 (CMIR Form 106)

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in the Report of International Transportation of Currency or Monetary Instruments ("CMIR"), which is being separated into two forms, as explained below. As a result of this change, individuals who accompany the transportation of more than $10,000 in currency or other monetary instruments into or from the United States will use the Report of International Transportation of Currency or Monetary Instruments—Accompanied by an Individual (revised FinCEN Form 105). Persons that mail, ship, or receive more than $10,000 in currency or other monetary instruments into or from the United States will use the Report of International Transportation of Currency or Monetary Instruments—Shipment, Mailing, or Receipt (new FinCEN Form 106). This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before June 8, 2004.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CMIR-Forms 105 and 106. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—CMIR-Forms 105 and 106."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Daniel Haley, Regulatory Compliance Program Specialist, Office of Regulatory Programs, FinCEN, at (202) 354–6400, and Cynthia Clark, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Report of International Transportation of Currency or Monetary Instruments—Accompanied by an Individual, and Report of International Transportation of Currency or Monetary Instruments—Shipment, Mailing, or Receipt.

OMB Number: 1506–0014—FinCEN Form 105 (an OMB number for FinCEN Form 106 has not yet been assigned).

Form Number: FinCEN Form 105 and FinCEN Form 106 respectively.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5332) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically states that "a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) from a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the

United States from or through a place outside the United States." 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the CMIR.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

Current Actions: The current CMIR is being separated into two forms—revised FinCEN Form 105 for currency and other monetary instruments accompanied by an individual, and new FinCEN Form 106 for currency and other monetary instruments that are shipped, mailed, or received. FinCEN believes that the use of separate forms will make it easier for individuals departing or entering the United States to complete the CMIR.

In addition, minor changes are made to the information that is collected on the CMIR. FinCEN Form 105 includes new items for the individual's occupation and telephone number and the reason for transporting the currency or monetary instruments. Similarly, FinCEN Form 106 includes new items asking for the telephone number of the sender and the reason for the shipment. Both forms include an item about the recipient of the currency or monetary instruments and revise the section about the currency or monetary instruments to provide more space and a standardized format for the information. The instructions to both forms provide more detailed guidance on how to fill out the form.

The draft FinCEN Form 105 and FinCEN Form 106 are presented only for purposes of soliciting public comment. These draft forms should not be used at this time to report the transportation of currency or other monetary instruments. A final version of each form will be made available at a later date. Until that time, the current version of FinCEN Form 105 should continue to be used by all persons required to file a CMIR whether or not they accompany the transportation of the currency or monetary instruments.

Type of Review: Revision of currently approved collection into two separate reports.

Affected public: Individuals, business or other for-profit institutions, and not-for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 15 minutes per response for each form.

Estimated number of respondents: 165,000 for FinCEN Form 105.

Estimated number of respondents: 15,000 for FinCEN Form 106.

Estimated Total Annual Burden Hours: 41,250 hours for FinCEN Form 105.

Estimated Total Annual Burden Hours: 3,750 hours for FinCEN Form 106.

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. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

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.

Dated: March 31, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

Attachments: Report of International Transportation of Currency or Monetary Instruments " Accompanied by an Individual, FinCEN Form 105 (CMIR-Form 105) and Report of International Transportation of Currency or Monetary Instruments—Shipment, Mailing, or Receipt, FinCEN Form 106 (CMIR-Form 106).

BILLING CODE 4810–02–P

FinCEN Form 105
(Eff. October 2005)
Department of the Treasury
FinCEN

REPORT OF INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS – ACCOMPANIED BY AN INDIVIDUAL

31 U.S.C. 5316; 31 CFR 103.23 and 103.27
To be filed with U.S. Customs and Border Protection

OMB NO. 1506-0014

CUSTOMS AND BORDER PROTECTION USE ONLY

CONTROL NUMBER	☐ INBOUND ☐ OUTBOUND	COUNT VERIFIED ☐ YES ☐ NO	VOLUNTARY REPORT ☐ YES ☐ NO
DATE / AIRLINE/FLIGHT/VESSEL	LICENSE PLATE: STATE/COUNTRY / NUMBER		OFFICER BADGE NO. AND INITIALS

PART I INDIVIDUAL ACCOMPANYING CURRENCY OR OTHER MONETARY INSTRUMENTS

1. NAME (Last or family, title, first, middle)			2. IDENTIFICATION NUMBER
3. DATE OF BIRTH ___/___/___ MM DD YYYY	4. COUNTRY OF CITIZENSHIP	5. PASSPORT COUNTRY	6. PASSPORT NUMBER
7. DATE US VISA ISSUED ___/___/___ MM DD YYYY	8. PLACE US VISA ISSUED	9. IMMIGRATION ALIEN NUMBER	10. OCCUPATION

11. PERMANENT ADDRESS IN UNITED STATES OR ABROAD	12. CITY	13. STATE	14. ZIP OR POSTAL CODE	15. COUNTRY

16. TELEPHONE NUMBER	17. REASON FOR TRANSPORTING CURRENCY/MONETARY INSTRUMENTS	18. DATE TRANSPORTED ___/___/___ MM DD YYYY

19. THE MONETARY INSTRUMENTS WERE ☐ EXPORTED FROM THE UNITED STATES ☐ IMPORTED INTO THE UNITED STATES	20. DEPARTED FROM (CITY/STATE/COUNTRY)	21. ARRIVED AT (CITY/STATE/COUNTRY)

PART II OWNER/SENDER OF CURRENCY OR OTHER MONETARY INSTRUMENTS (IF DIFFERENT FROM PART I)

22. NAME (Business or last or family, title, first, middle)		23. OCCUPATION	24. IDENTIFICATION NUMBER

25. ADDRESS	26. CITY	27. STATE	28. ZIP OR POSTAL CODE	29. COUNTRY

PART III RECIPIENT OF CURRENCY OR OTHER MONETARY INSTRUMENTS (IF DIFFERENT FROM PART I)

30. NAME (Business or last or family, title, first, middle)		31. OCCUPATION	32. IDENTIFICATION NUMBER

33. ADDRESS	34. CITY	35. STATE	36. ZIP OR POSTAL CODE	37. COUNTRY

PART IV CURRENCY AND OTHER MONETARY INSTRUMENT INFORMATION (COMPLETE ALL ITEMS THAT APPLY)

38. TYPES AND AMOUNTS (IN WHOLE U.S. DOLLARS)		39. FOREIGN COIN AND CURRENCY INVOLVED IN TRANSPORTATION (IN WHOLE U.S. DOLLARS)		
		a. COIN/CURRENCY NAME	b. COUNTRY	c. AMOUNT
a. CURRENCY	$ .00			
b. CHECKS	$ .00			$ .00
c. TRAVELER'S CHECKS	$ .00			$ .00
d. MONEY ORDERS	$ .00			$ .00
e. BANK DRAFTS	$ .00			$ .00
f. BONDS	$ .00			$ .00
g. COINS	$ .00	40. TYPE, ISSUER, DATE, AND IDENTIFYING NUMBER OF ITEM 37 c - 41 h MONETARY INSTRUMENTS		
h. OTHER	$ .00			
TOTAL	$ .00			

PART V SIGNATURE OF PERSON COMPLETING THIS REPORT (COMPLETION OF THIS SECTION IS MANDATORY)

Under penalties of perjury, I declare that I have examined this report and, to the best of my knowledge and belief, it is true, correct, and complete.

41. SIGNATURE	42. DATE OF SIGNATURE ___/___/___ MM DD YYYY

For Paperwork Reduction Act Notice and Privacy Act Notice, see back of form

FinCEN FORM 105

GENERAL INSTRUCTIONS

WHO MUST FILE:

A Report of International Transportation of Currency or Monetary Instruments must be made by:

(1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States.

(2) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time that have been transported, mailed, or shipped to the person from any place outside the United States.

See 31 U.S.C. 5316 and Treasury Department regulations (31 CFR 103).

WHICH FORM:

Use this **FinCEN Form 105** if you are an individual accompanying the currency or monetary instruments.

All others--including mailers, shippers, and recipients--use **FinCEN Form 106**.

An additional report of a particular transportation of currency or monetary instruments is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms are available at any United States Customs and Border Protection office. Forms are available on the FinCEN web site at www.fincen.gov/reg_bsaforms.html.

WHEN AND WHERE TO FILE:

Individuals who must file FinCEN Form 105 shall file Form 105 at the time of entry into the United States or at the time of departure from the United States with the Customs and Border Protection officer in charge at any Customs port of entry or departure.

EXCEPTIONS:

A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported.

In addition, **FinCEN Forms 105** and **106** are not required to be filed by: (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, (8) a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated, nor by (9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

DEFINITIONS:

BANK: Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, or a building and loan association organized under the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any State or of the United States; (7) any other organization (other than a money services business) chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State; (8) a bank organized under foreign law; and (9) any national banking association or corporation acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections611-632).

FOREIGN BANK: A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

BROKER OR DEALER IN SECURITIES: A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

MONETARY INSTRUMENTS: (1) Coin or currency of the United States or of any other country, (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; (4) incomplete instruments (including checks, promissory notes, and money orders) that are signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include: (i) checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements, (ii) warehouse receipts, or (iii) bills of lading.

PERSON: An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, a joint venture or other unincorporated organization or group, an Indian Tribe (as the term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

PENALTIES:

Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years, are provided for failure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See 31 U.S.C. 5321 and 31 CFR 103.47; 31 U.S.C 5322 and 31 CFR 103.49; 31 U.S.C. 5317 and 31 CFR 103.48.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on form 105 in accordance with 5 U.S.C. 552(e)(3) is Public Law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations. The information collected may be provided to those officers and employees of the U.S. Customs and Border Protection and any other consultant unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also be provided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

Disclosure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Part 103. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 103.27(d). The social security number will be used as a means to identify the individual who files the record.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The collection of this information is mandatory pursuant to 31 U.S C. 5318, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FinCEN).

Statement Required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden association with this collection of information is 15 minutes per respondent or record keeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183. **DO NOT** send completed form(s) to this office.

SPECIAL INSTRUCTIONS

PART I: INDIVIDUAL WHO IS PHYSICALLY TRANSPORTING CURRENCY OR OTHER MONETARY INSTRUMENTS

Complete all items that apply to the individual who is accompanying the currency or other monetary instruments described in Part IV.

ITEM 1, NAME: Enter your name in the order of last name (such as "Jones") or names (such as "Santiago-Vargas"), title (such as "Jr.," "SR.," "III," etc.), first name, and middle name or initial.

ITEM 2, IDENTIFICATION NUMBER: Enter any Social Security Number, Individual Taxpayer Identification Number, or other number that identifies you to either the United States government or to the government of your country of citizenship. If the number entered is a foreign identifying number, enter the type of number with the number (example: "cedular # 123456789").

ITEM 3, DATE OF BIRTH: Enter your date of birth in MM/DD/YYYY format where MM = month, DD = day, and YYYY = year. Include a leading zero in front of single digit months or days. For instance, June 2, 1980 would be entered as 06/02/1980.

ITEM 4, COUNTRY OF CITIZENSHIP: Enter the name of any country in which you hold citizenship rights.

ITEM 5, PASSPORT COUNTRY: If you are entering or leaving the U.S. with a passport, enter the name of the country that issued your passport.

ITEM 6, PASSPORT NUMBER: Enter the identification number on the passport issued by the country named in Item 5.

ITEM 7, DATE US VISA ISSUED: If you are entering or leaving the United States on a foreign passport containing a U.S. Visa, enter the date the U.S. Visa was issued in MM/DD/YYYY format. See Item 3 for additional information on date format.

ITEM 8, PLACE US VISA ISSUED: Enter the name of the city and country where the visa was issued at a U.S. Consulate or Embassy.

ITEM 9, IMMIGRATION ALIEN NUMBER: If you are residing in the U.S. as a legal alien, enter your Immigration Alien Number.

ITEM 10, OCCUPATION: Enter the name or title of your occupation.

ITEM 11, PERMANENT ADDRESS...: Enter the street number and street name of your permanent address in the U.S. or country of residence.

ITEM 12, CITY: Enter the name of the city of your permanent address.

ITEM 13, STATE: Enter the two-digit state postal code of your permanent address if you are a resident of the U.S., Canada, or Mexico. If the address is in a different country, leave Item 18 blank.

ITEM 14, ZIP OR POSTAL CODE: Enter the ZIP Code if the permanent address is in the U.S. Enter any applicable postal code if the address is in a country other than the U.S.

ITEM 15, COUNTRY: Enter the name of the country of the permanent home address. If that country is the U.S., leave Item 15 blank.

ITEM 16, TELEPHONE NUMBER: Enter your telephone number. If your telephone number is in a country other than the U.S., include any international telephone codes required to access your telephone number from the U.S.

ITEM 17, REASON FOR TRANSPORTING...: Enter the reason you are transporting currency or other monetary instruments into or out of the U.S.

ITEM 18, DATE TRANSPORTED: Enter the date the currency or other monetary instruments were transported into or out of the U.S.

ITEM 19, THE MONETARY INSTRUMENTS...: Check the appropriate box to indicate if the currency or monetary instruments are being exported from the U.S. or imported into the U.S.

ITEM 20, DEPARTED FROM...: Enter your departure city, state, and country.

ITEM 21, ARRIVED AT...: Enter your arrival city, state, and country.

PART II: OWNER/SENDER OF CURRENCY OR OTHER MONETARY INSTRUMENTS

If the individual in Part I is not the owner/sender of the currency or other monetary instruments, complete all Part II items that apply to the owner/sender. If the individual in Part I is the owner/sender, leave Part II blank.

If the individual transporting the currency or monetary instruments is acting on behalf of another person or individual who owns the currency or monetary instruments, complete Part II.

ITEM 22, NAME: Enter the business name of the person or full name of the individual who owns and is sending the currency or other monetary instruments. See Item 1 for directions for entering the names of individuals.

ITEM 23, OCCUPATION: Enter the type of business of the person or the name or title of the occupation of the individual named in Item 22.

ITEM 24, IDENTIFICATION NUMBER: If the person or individual named in Item 22 is a U.S. person, enter the person's Employer Identification Number if a business or Social Security Number if an individual. If the person is a foreign business or individual, enter the identification number that identifies that person to the person's country of citizenship.

ITEM 25 - 29, ADDRESS: Enter the address of the person listed in item 22. See Items 11 through 15 for instructions for entering addresses.

PART III: RECIPIENT OF CURRENCY OR OTHER MONETARY INSTRUMENTS

Complete all Part III items that apply to the intended recipient of the currency or other monetary instruments. If the currency or other monetary instruments are being transported for the intended use of the individual in Part I, leave Part III blank.

Complete this section if you are transporting the currency or other monetary instruments to a recipient instead of for personal use.

ITEM 30, RECIPIENT NAME: Enter the full name of the recipient of the currency or monetary instruments. Follow the instructions in Item 1 when entering the name.

ITEM 31, OCCUPATION: Enter the recipient's type of business or occupation.

ITEM 32, IDENTIFICATION NUMBER: If the recipient named in Item 30 is a U.S. person, enter the person's Employer Identification Number if a business or Social Security Number if an individual. If the person is a foreign business or individual, enter the identification number that identifies that person to the person's country of citizenship.

ITEM 33 - 37, ADDRESS: Enter the address of the person listed in item 30. See Items 11 through 15 for instructions for entering addresses.

PART IV: CURRENCY AND OTHER MONETARY INSTRUMENT INFORMATION

ITEM 38, TYPES AND AMOUNTS: Enter the amount in whole U.S. Dollars of each type of currency or other monetary instrument being transported. When converting foreign currency or other monetary instruments into U.S. Dollars, use the exchange rate as of the date of transportation.

ITEM 39, FOREIGN COIN AND CURRENCY...: Enter the name, country, and amount in whole U.S. Dollars of any foreign coin or currency being transported.

ITEM 40, TYPE, ISSUER, DATE...: Enter the type, issuer, date, and identifying numbers of the monetary instruments listed in Items 38e through 38h.

PART V: SIGNATURE OF PERSON COMPLETING THIS REPORT

ITEM 41, SIGNATURE: This report must be signed by the person transporting the currency or other monetary instruments into or out of the U.S.

ITEM 42, DATE OF SIGNATURE: Enter the date the report was signed in MM/DD/YYYY format. See Item 3 for instructions on date formats.

FinCEN Form 106 (Eff. October 2005) Department of the Treasury FinCEN	REPORT OF AN INTERNATIONAL TRANSPORTATION OF CURRENCY OR MONETARY INSTRUMENTS – SHIPMENT, MAILING, or RECEIPT 31 U.S.C. 5316; 31 CFR 103.23 and 103.27 To be filed with the U.S. Customs and Border Protection	OMB NO. 1506-0014

CUSTOMS AND BORDER PROTECTION USE ONLY

CONTROL NUMBER	☐ INBOUND ☐ OUTBOUND	COUNT VERIFIED ☐ YES ☐ NO	VOLUNTARY REPORT ☐ YES ☐ NO

DATE	AIRLINE/FLIGHT/VESSEL	LICENSE PLATE		OFFICER BADGE NO. AND INITIALS
		STATE/COUNTRY	NUMBER	

PART I PERSON SHIPPING OR MAILING CURRENCY OR MONETARY INSTRUMENTS (COMPLETE ALL ITEMS THAT APPLY)

1. SHIPPER'S NAME			2. IDENTIFICATION NUMBER
3. ADDRESS			4. TELEPHONE NUMBER
5. CITY	6. STATE	7. ZIP OR POSTAL CODE	8. COUNTRY

9. TYPE OF BUSINESS ACTIVITY (CHECK ☐ IF A FINANCIAL INSTITUTION)	10. REASON FOR MOVING CURRENCY OR MONETARY INSTRUMENTS

11. DATE SHIPPED _____ / _____ / _____ MM DD YYYY	12. METHOD OF SHIPMENT (U.S. MAIL, COMMON CARRIER, ETC.)	13. NAME OF CARRIER
14. THE SHIPPED INSTRUMENTS WERE ☐ EXPORTED FROM THE UNITED STATES ☐ IMPORTED INTO THE UNITED STATES	15. SHIPPED FROM (CITY/STATE/COUNTRY)	16. RECEIVED AT (CITY/STATE/COUNTRY)

PART II PERSON RECEIVING THE SHIPMENT OF CURRENCY OR MONETARY INSTRUMENTS (COMPLETE ALL ITEMS THAT APPLY)

17. RECIPIENT'S NAME			18. IDENTIFICATION NUMBER
19. ADDRESS			20. TELEPHONE NUMBER
21. CITY	22. STATE	23. ZIP OR POSTAL CODE	24. COUNTRY

25. DATE RECEIVED _____ / _____ / _____ MM DD YYYY	26. METHOD OF SHIPMENT (U.S. MAIL, COMMON CARRIER, ETC.)	27. NAME OF CARRIER

PART III CURRENCY AND MONETARY INSTRUMENT INFORMATION (COMPLETE ALL ITEMS THAT APPLY)

28. TYPES AND AMOUNTS (IN WHOLE U.S. DOLLARS)		29. FOREIGN COIN AND CURRENCY INVOLVED IN TRANSPORTATION (IN WHOLE U.S. DOLLARS)		
a. CURRENCY	$ .00	a. COIN/CURRENCY NAME	b. COUNTRY	c. AMOUNT
b. CHECKS	$ .00			$ .00
c. TRAVELER'S CHECKS	$ .00			$ .00
d. MONEY ORDERS	$ .00			$ .00
e. BANK DRAFTS	$ .00			$ .00
f. BONDS	$ .00			$ .00
g. COINS	$ .00	30. TYPE, ISSUER, DATE, AND IDENTIFYING NUMBER OF ITEM 28 c - h MONETARY INSTRUMENTS		
h. OTHER	$ .00			
TOTAL	$ .00			

PART IV SIGNATURE OF INDIVIDUAL COMPLETING THIS REPORT (COMPLETION OF THIS SECTION IS MANDATORY)

Under penalties of perjury, I declare that I have examined this report and, to the best of my knowledge and belief, it is true, correct, and complete.

31. NAME	32. TITLE
33. SIGNATURE	34. DATE OF SIGNATURE _____ / _____ / _____ MM DD YYYY

For Paperwork Reduction Act Notice and Privacy Act Notice, see back of form.

FinCEN FORM 106

GENERAL INSTRUCTIONS

WHO MUST FILE:

A Report of International Transportation of Currency or Monetary Instruments must be made by:

(1) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed or shipped, currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time from the United States to any place outside the United States or into the United States from any place outside the United States.

(2) Each person who receives in the United States currency or other monetary instruments in an aggregate amount exceeding $10,000 at one time that have been transported, mailed, or shipped to the person from any place outside the United States.

See 31 U.S.C. 5316 and Treasury Department regulations (31 CFR 103).

WHICH FORM:

Use this **FinCEN Form 106** if you are shipping, mailing, or receiving the currency or monetary instruments.

If you are accompanying the currency or monetary instruments, use **FinCEN Form 105**.

An additional report of a particular transportation of currency or monetary instruments is not required if a complete and truthful report has already been filed. However, no person otherwise required to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed. Forms are available at any United States Customs and Border Protection office. Forms are available on the FinCEN web site at www.fincen.gov/reg_bsaforms.html.

WHEN AND WHERE TO FILE:

Mailers and shippers of currency or monetary instruments who must file **FinCEN Form 106** must file **Form 106** at the time of mailing or shipping.

Recipients of currency or monetary instruments who must file **FinCEN Form 106** must file **Form 106** within 15 days after receipt of the currency or other monetary instruments.

FinCEN Form 106 shall be filed with the Customs and Border Protection officer in charge at any Customs port of entry or departure, or may be filed by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington DC 22029.

EXCEPTIONS:

A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or other monetary instruments is not required to be reported.

In addition, **FinCEN Forms 105** and **106** are not required to be filed by: (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry, or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, (8) a person with a restrictively endorsed traveler's check that is in the collection and reconciliation process after the traveler's check has been negotiated, nor by (9) a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

DEFINITIONS:

Bank: Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed: (1) a commercial bank or trust company organized under the laws of any State or of the United States; (2) a private bank; (3) a savings association, savings and loan association, or a building and loan association organized under the laws of any State or of the United States; (4) an insured institution as defined in section 401 of the National Housing Act; (5) a savings bank, industrial bank or other thrift institution; (6) a credit union organized under the laws of any State or of the United States; (7) any other organization (other than a money services business) chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State; (8) a bank organized under foreign law; and (9) any national banking association or corporation acting under the provisions of section 25A of the Federal Reserve Act (12 U.S.C. Sections611-632).

Foreign Bank: A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

Broker or Dealer in Securities: A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Monetary Instruments: (1) Coin or currency of the United States or of any other country, (2) traveler's checks in any form, (3) negotiable instruments (including checks, promissory notes, and money orders) in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; (4) incomplete instruments (including checks, promissory notes, and money orders) that are signed but on which the name of the payee has been omitted, and (5) securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. Monetary instruments do not include: (i) checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements, (ii) warehouse receipts, or (iii) bills of lading.

Person: An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, a joint venture or other unincorporated organization or group, an Indian Tribe (as the term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

PENALTIES:

Civil and criminal penalties, including under certain circumstances a fine of not more than $500,000 and imprisonment of not more than ten years, are provided for failure to file a report, filing a report containing a material omission or misstatement, or filing a false or fraudulent report. In addition, the currency or monetary instrument may be subject to seizure and forfeiture. See 31 U.S.C. 5321 and 31 CFR 103.47; 31 U.S.C 5322 and 31 CFR 103.49; 31 U.S.C. 5317 and 31 CFR 103.48.

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on form 105 in accordance with 5 U.S.C. 552(e)(3) is Public Law 91-508; 31 U.S.C. 5316; 5 U.S.C. 301; Reorganization Plan No. 1 of 1950; Treasury Department Order No. 165, revised, as amended; 31 CFR 103; and 44 U.S.C. 3501.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations. The information collected may be provided to those officers and employees of the U.S. Customs and Border Protection and any other consultant unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the Federal Government upon the request of the head of such department or agency. The information collected may also be provided to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

Disclosure of this information is mandatory pursuant to 31 U.S.C. 5316 and 31 CFR Part 103. Failure to provide all or any part of the requested information may subject the currency or monetary instruments to seizure and forfeiture, as well as subject the individual to civil and criminal liabilities.

Disclosure of the social security number is mandatory. The authority to collect this number is 31 U.S.C. 5316(b) and 31 CFR 103.27(d). The social security number will be used as a means to identify the individual who files the record.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The collection of this information is mandatory pursuant to 31 U.S.C. 5318, of Title II of the Bank Secrecy Act, which is administered by Treasury's Financial Crimes Enforcement Network (FinCEN).

Statement Required by 5 CFR 1320.8(b)(3)(iii): The estimated average burden association with this collection of information is 15 minutes per respondent or record keeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, Virginia 22183. **DO NOT** send completed form(s) to this office.

SPECIAL INSTRUCTIONS

PART I: PERSON SHIPPING THE CURRENCY OR MONETARY INSTRUMENTS

ITEM 1, SHIPPER'S NAME: If the shipper or mailer is a person as defined above, enter the sender's full legal name, i.e. the name found on the charter or other document that created the sender. If the sender is an individual, enter the individual's name in "last name, first name/middle name/title (such as Jr, Sr, or III) format. Examples would be "Doe, John James II" or "Mendez-Castillo, Jose Jorge."

ITEM 2, IDENTIFICATION NUMBER: If the shipper or mailer is a U.S. person, enter the person's Employer Identification Number, Taxpayer Identification Number, or Social Security Number. If the sender is a foreign person, enter the identification number and type of identification by which the person is known to the country of origin.

ITEM 3, ADDRESS: Enter the street number and name for the address of the person listed in Item 1.

ITEM 4, TELEPHONE NUMBER: Enter the person's primary telephone number. If the telephone number is a foreign number, include any international telephone codes required to access the telephone number from the U.S.

ITEM 5, CITY: Enter the name of the address city.

ITEM 6, STATE: Enter the two-digit state code if the address is in the U.S., Canada, or Mexico. If the address is in a different country, leave Item 6 blank.

ITEM 7, ZIP OR POSTAL CODE: Enter the ZIP Code for a U.S. address. Enter any applicable foreign postal code if the address is in a country other than the U.S.

ITEM 8, COUNTRY: Enter the name of the address country. If that country is the U.S., leave Item 8 blank.

ITEM 9, TYPE OF BUSINESS ACTIVITY: List the shipper or mailer's principal business activity. If the sender is a financial institution, check the indicated box.

ITEM 10, REASON FOR MOVING...: Explain the reason for exporting or importing the currency or other monetary instruments.

ITEM 11, DATE SHIPPED: Enter the date the currency and/or monetary instruments were shipped or mailed into or out of the U.S. Use the format MM/DD/YYYY.

ITEM 12, METHOD OF SHIPMENT: Describe the method of shipment, such as common carrier, air freight, postal service, etc.

ITEM 13, NAME OF CARRIER: Enter the name of the carrier, such as United States Postal Service, Aeropostal, etc.

ITEM 14, THE SHIPPED INSTRUMENTS...: Check the appropriate box to indicate if the currency or monetary instruments were exported from or imported into the U.S.

ITEM 15, DEPARTED FROM...: Enter the city, state, and country from which the currency or monetary instruments were shipped or mailed.

ITEM 16, ARRIVED AT...: Enter the city, state, and country at which the currency or monetary instruments will or did arrive.

PART II: PERSON RECEIVING THE CURRENCY AND MONETARY INSTRUMENTS

ITEM 17, Recipient's Name: Enter the full name of the recipient of the currency or monetary instruments. See Item 1 for more information on entering names.

ITEM 18, Identification Number: If the recipient is a U.S. person, enter the Employer Identification Number, Taxpayer Identification Number or Social Security Number of the person. If the recipient is a foreign person, enter the identification number and type of identification by which the person is known to the country of origin.

Items 19 and 21-24, Address: Enter the address of the person listed in Item 17. See Items 3 and 5 through 8 for instructions on completing the address items.

ITEM 20, TELEPHONE NUMBER: Enter the person's primary telephone number. If the telephone number is a foreign number, include any international telephone codes required to access the telephone number from the U.S.

ITEM 25, DATE RECEIVED: If known, enter the date the currency or other monetary instruments were received by the recipient. See Item 11 for instructions on formatting the date.

ITEM 26, METHOD OF SHIPMENT: Describe the method of shipment, such as common carrier, air freight, postal service, etc.

ITEM 27, NAME OF CARRIER: Enter the name of the carrier, such as United States Postal Service, Aeropostal, etc.

PART III: CURRENCY AND MONETARY INSTRUMENT INFORMATION

ITEM 28, TYPES AND AMOUNTS: Enter the amount in whole U.S. Dollars of each type of currency or other monetary instrument transported or shipped. When converting foreign currency or other monetary instruments into U.S. Dollars, use the exchange rate as of the date the currency or other monetary instruments were shipped or received, which ever is greater.

ITEM 29, FOREIGN COIN AND CURRENCY...: Enter the name, country, and amount in whole U.S. Dollars of any foreign coin or currency transported or shipped.

ITEM 30, TYPE, ISSUER, DATE...: Enter the type, issuer, date, and identifying numbers of the monetary instruments listed in Items 28e through 28h.

PART IV: SIGNATURE OF INDIVIDUAL COMPLETING THIS REPORT

ITEM 31, NAME: Enter the name of the individual who is reporting the shipment or receipt of the currency or other monetary instruments.

ITEM 32, TITLE: Enter the individual's title.

ITEM 33, SIGNATURE: This report must be signed by the individual named in Item 31.

ITEM 34, DATE OF SIGNATURE: Enter the date the report was signed in MM/DD/YYYY format.

[FR Doc. 04–8028 Filed 4–8–04; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, the Agencies), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). The Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC, FDIC, and OTS are soliciting comment concerning an extension of OMB approval of the information collections contained in their respective Consumer Protections for Depository Institution Sales of Insurance regulations. The Board has approved this information collection under its delegated authority from OMB.

DATES: Comments should be submitted by May 10, 2004.

ADDRESSES: Comments should be directed to the Agencies and the OMB Desk Officer for the Agencies as follows:

OCC: Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Mail Stop 1–5, Attention: 1557–0220, Washington, DC 20219. Due to delays in delivery of paper mail in the Washington area, commenters are encouraged to submit comments by fax or electronic mail. Comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy comments at the OCC's Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room M-P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, Legal Division, Room MB–3064, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Insurance Sales Consumer Protections, 3064–0140." You may also hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., or fax comments to (202) 898–3838.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0106, Fax number (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

OMB Desk Officer for the Agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection and supporting documentation submitted to OMB by contacting:

OCC: John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Long, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., M/S 41, Washington, DC 20551.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Marilyn K. Burton, OTS Clearance Officer, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The agencies are proposing to extend OMB approval of the following information collections:

Titles:

OCC: Consumer Protections for Depository Institution Sales of Insurance—12 CFR 14.

Board: Disclosure Requirements in Connection With Regulation H (Consumer Protections in Sales of Insurance).

FDIC: Insurance Sales Consumer Protections.

OTS: Consumer Protections for Depository Sales of Insurance.

OMB Control Numbers:

OCC: 1557–0220.

Board: 7100–0298.

FDIC: 3064–0140.

OTS: 1550–0106.

Type of Review: Extension, without revision, of a currently approved collection.

Form Number: None.

Description: This submission covers an extension of the Agencies' currently approved information collections in their regulations (12 CFR part 14 (OCC), 12 CFR part 208 (Board), 12 CFR part 343 (FDIC), and 12 CFR part 536 (OTS)). This submission involves no change to the regulations or to the information collections embodied in the regulations.

The information collections contained in the regulations are as follows:

Covered persons must make insurance disclosures before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure must be made orally and in writing to the consumer that: (1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the financial institution or an affiliate of the financial institution; (2) the insurance product or annuity is not insured by the FDIC or any other agency of the United States, the financial institution, or (if applicable) an affiliate of the financial

institution; and (3) in the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

Sections __.40(a) (OCC), __.84(a) (Board), __.40(a) (FDIC), and __.40(a) (OTS).

Covered persons must make a credit disclosure at the time a consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold. The disclosure must be made orally and in writing that the financial institution may not condition an extension of credit on either: (1) The consumer's purchase of an insurance product or annuity from the financial institution or any of its affiliates; or (2) the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Sections __.40(b) (OCC), __.84(b) (Board), __.40(b) (FDIC), and __.40(b) (OTS).

Affected Public: Businesses or other for-profit.

Burden Estimates: The agencies received no comments in response to their initial PRA renewal notice published in the **Federal Register** on November 12, 2003 (68 FR 64192). Nevertheless, as part of this renewal, an interagency working group reviewed the estimates of the paperwork burden in the underlying regulations. Although there is no change to the underlying regulations, the agencies have adjusted the estimated burden to improve the accuracy of their estimates. The agencies' new burden estimates follow.

Estimated Number of Respondents:
OCC: 1,563.
Board: 955.
FDIC: 2,760.
OTS: 928.
Estimated Number of Responses:
OCC: 1,563.
Board: 601,650.
FDIC: 5,520.
OTS: 601,347.
Estimated Annual Burden Hours:
OCC: 7,815 hours.
Board: 15,041 hours.
FDIC: 13,350 hours.
OTS: 15,034 hours.
Frequency of Response: On occasion.
Comments: The Agencies have a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments regarding any aspect of these collections of information. All comments become a matter of public record.

Dated: April 5, 2004.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 18, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Dated in Washington, DC., this 30th day of March, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–8035 Filed 4–8–04; 8:45 am]
BILLING CODE 4810–33; 6210–01; 6714–01; 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Office of Thrift Supervision (OTS), Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, the OTS and the FDIC (collectively, the agencies) give notice that they plan to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of an information collection titled "Interagency Guidance on Asset Securitization Activities." The agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid control number.

DATES: Comments must be submitted on or before May 10, 2004.

ADDRESSES: You are invited to submit a comment to the OMB Desk Officer and any or all of the agencies. Please direct your comments as follows:

OMB: Mark Menchik, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Alternatively, you may send a comment by facsimile transmission to (202) 395–6974, or by electronic mail to *mmenchik@omb.eop.gov*.

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0217, Washington, DC 20219. Alternatively, you may send a comment by facsimile transmission to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0104. You may fax your comments to (202) 906–6518, or e-mail them to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FDIC: Steven F. Hanft, Paperwork Control Officer, Legal Division Room MB–3064, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–3907, Attention: 3064–0137. You may also hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., or fax comments to (202) 898–3838.

FOR FURTHER INFORMATION CONTACT:

OCC: John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OTS: Marilyn K. Burton, (202) 906–6467, Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FDIC: Steven F. Hanft, (202) 898–3907, at the address listed earlier.

SUPPLEMENTARY INFORMATION:

Title: Interagency Guidance on Asset Securitization Activities.

OMB Numbers:

OCC: 1557–0217.

OTS: 1550–0104.

FDIC: 3064–0137.

Type of Review: Renewal, without change, of a currently approved collection.

Estimate of Annual Burden:

Estimated Number of Respondents:

OCC: 42.

OTS: 33.

FDIC: 20.

Estimated Responses per Respondent:

OCC: 1 per year.

OTS: 1 per year.

FDIC: 1 per year.

Estimated Total Annual Burden:

OCC: 306 hours.

OTS: 693 hours.

FDIC: 149 hours.

Abstract: The collection applies to institutions engaged in asset securitization and consists of a written asset securitization policy, the documentation of fair value of retained interests, and a management information system to monitor securitization activities. Institution management uses the collection as the basis for the safe and sound operation of their asset securitization activities. The agencies use the information to evaluate the quality of an institution's risk management practices.

FURTHER INFORMATION: You may obtain information about this submission, including a copy of the Interagency Guidance, by calling or writing the appropriate agency contact.

The Board of Governors of the Federal Reserve System has participated in the development and review of this information collection and will process its renewal of its information collection under its Paperwork Reduction Act delegated authority.

COMMENTS ARE INVITED ON: (a) Whether the collections of information are necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on the respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 25, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: March 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

Dated in Washington, DC, this 25th day of March, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–8036 Filed 4–8–04; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–3–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–3–91 (TD 8456), Capitalization of Certain Policy Acquisition Expenses (§§ 1.848–2(g)(8), 1.848–2(h)(3) and 1.848–2(i)(4)).

DATES: Written comments should be received on or before June 8, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn 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 regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Certain Policy Acquisition Expenses.

OMB Number: 1545–1287.

Regulation Project Number: FI–3–91.

Abstract: Internal Revenue Code section 848 provides that insurance companies must capitalize "specified policy acquisition expenses." In lieu of identifying the categories of expenses that must be capitalized, section 848 requires that a company capitalize an amount of otherwise deductible expenses equal to specified percentages of net premiums with respect to certain types of insurance contracts. Insurance companies that enter into reinsurance agreements must determine the amounts to be capitalized under those agreements consistently. This regulation provides elections to permit the parties to a reinsurance agreement to shift the burden of capitalization for their mutual benefit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,070.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 2,070.

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: April 1, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–8123 Filed 4–8–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Advisory Committee on Education will meet on Thursday, May 6, 2004, from 8:30 a.m. to 4 p.m. and Friday, May 7, 2004, from 8:30 a.m. to 12 p.m. at the Servicemembers Opportunity Colleges, 1307 New York Avenue, NW., Fifth Floor, Washington, DC 20005–4701. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans and servicepersons, reservists and dependents of veterans under chapters 30, 32, 35, and 36 of title 38, and chapter 1606 of title 10, United States.

On May 6, the meeting will begin with opening remarks by Mr. James Bombard, Committee Chair. Agenda items will include an introduction of new members, ethics training, review of pending legislation, equity issues for reserve components, electronic transmission of VA certification, raising of reporting fees to certifying officials, and any other issues that the Committee members may choose to introduce. On May 7, the Committee will review and summarize current and past issues and discuss future meeting location and topics.

Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, to Mr. Stephen Dillard, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements from the public will be heard at 9:05 a.m., Friday, May 7, 2004. Anyone wishing to attend the meeting should contact Mr. Stephen Dillard or Mr. Michael Yunker at (202) 273–7187.

Dated: April 2, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–8065 Filed 4–8–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held June 1, 2004, in Room 830, and June 2, 2004, in Room 742, at VA Headquarters, 810 Vermont Avenue, NW., Washington, DC. Meeting sessions will convene at 8:30 a.m. on both days and will adjourn at 4:30 p.m. on June 1 and 12 noon on June 2. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on VA's prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also provides advice to the Secretary on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of June 1, the Committee will review and discuss the Fiscal Year 2003 draft Capacity Report. In the afternoon, the Committee will have briefings by the Chief Consultants, Rehabilitation Strategic Healthcare Group, Prosthetics and Sensory Aids, and Spinal Cord Injury. On the morning of June 2, the Committee will be briefed by the Acting Director of the Blind Rehabilitation Service and the Chief Consultant Medical/Surgical Services on the Seamless Transition program.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Ms. Cynthia Wade, Designated Federal Officer, Veterans Health Administration, Patient Care Services, Rehabilitation Strategic Healthcare Group (117), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Wade at (202) 273–8485.

Dated: April 2, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–8066 Filed 4–8–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 69, No. 69
Friday, April 9, 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.

OFFICE OF PERSONNEL MANAGEMENT

Sumbission for OMB Review: Comment Request for Reclearance of a Revised Information Collection: RI 92–19

Correction

In notice document 04–6520 appearing on page 13913 in the issue of Wednesday, March 24, 2004, make the following correction:

On page 13913, in the third column, in the third paragraph, in the fourth line, "*mbtoomy@opm.gov*'' should read "*mbtoomey@opm.gov*''.

[FR Doc. C4–6520 Filed 4–8–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
April 9, 2004

Part II

Department of Labor

Employment and Training Administration

20 CFR Part 641
Senior Community Service Employment Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

RIN 1205–AB28

Senior Community Service Employment Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (the Department) rescinds the regulations for the Senior Community Service Employment Program (SCSEP) and issues these new regulations to implement the 2000 amendments to title V of the Older Americans Act (OAA Amendments) (Pub. L. 106–501). These regulations provide administrative and programmatic guidance and requirements for the implementation of the SCSEP.

The Final Rule contains some modifications to the Proposed Rule in response to public comments received during the comment period. The comments were thoroughly evaluated and are discussed in the Preamble to the Final Rule to clarify ETA's interpretation of the OAA Amendments through these final regulations and their application to some of the challenges that may arise during the OAA Amendments implementation. This Final Rule applies to all grantees and local project operators, including subgrantees that provide services under the SCSEP.

DATES: *Effective dates:* This Final Rule is effective May 10, 2004.

Compliance dates: Affected parties do not have to comply with the information and recordkeeping requirements in § 641.879 until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Ria Moore Benedict, Chief, Division of Older Worker Programs. Telephone: (202) 693–3198 (this is not a toll-free number). E-mail: *benedict.ria@dol.gov*. Toll free to the ETA Help Line: 1–877–US2–JOBS. TTY: 1–877–889–5627. Copies of the Final Rule are available in the following formats: electronic file on computer disk and audio tape. They may be obtained at the above office.

SUPPLEMENTARY INFORMATION: This document is divided into four sections. Section I provides general background information. Section II discusses the major changes implemented by the Older Americans Act Amendments of 2000. Section III summarizes and responds to the comments received in response to the Notice of Proposed Rulemaking (NPRM) during the comment period and provides the Final Rule. Section IV discusses miscellaneous administrative requirements, such as Paperwork Reduction Act requirements.

I. Background

The Senior Community Service Employment Program (SCSEP) was originally authorized in 1965 by the Economic Opportunity Act (EOA), Public Law 89–73. Under the EOA, the Department established the SCSEP in 1973. As authorized by title V of the Older Americans Act Amendments of 2000 (OAA Amendments or 2000 Amendments) (42 U.S.C. 3056, *et. seq.*), the SCSEP fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are 55 years of age or older and assists older workers in transitioning to unsubsidized employment.

The OAA Amendments expand the program's purpose to include increasing participants' economic self-sufficiency and increasing the number of persons who may benefit from unsubsidized employment. The Employment and Training Administration of the Department of Labor administers the program by means of grant agreements with eligible organizations, such as governmental entities, and public and private agencies and organizations.

The SCSEP regulations were last revised in 1995 (20 CFR part 641, 60 FR 26574 (May 17, 1995)). The 2000 Amendments are the first major legislative changes to the SCSEP since 1995.

On April 28, 2003, the Department published in the **Federal Register** (68 FR 22520) an NPRM implementing the OAA Amendments and requested comments. The comments submitted in response to the NPRM have been fully considered in drafting this Final Rule. This document issues the Final Rule to conform to the OAA Amendments and to make technical changes based on the Department's experience in administering the SCSEP.

II. Changes Implemented by the OAA Amendments of 2000

Congress amended the SCSEP to combine requirements that were formerly in the SCSEP legislation as last amended in 1992 by Public Law 102–375, the accompanying regulations at 60 FR 26574 (May 17, 1995) (codified at 20 CFR part 641), and SCSEP program administration materials provided to the grantee community as bulletins, or training and employment information notices. New provisions of the OAA include requirements for: Greater coordination with the Workforce Investment Act (WIA); a greater proportion of funds for States when appropriations exceed current funding levels; the submission of State plans; grants for a period up to 3 years; new performance measures; and corrective action and sanctions for poor performance.

With the enactment of the Workforce Investment Act of 1998 (Public Law 105–220), the SCSEP became a required partner in the workforce investment system. As a result, Congress amended the SCSEP to require greater coordination with the One-Stop Delivery System, including reciprocal use of Individual Employment Plans and other assessment mechanisms.

Under both WIA and the OAA, any grantee operating an SCSEP project in a local area must now negotiate a Memorandum of Understanding (MOU) with the Local Workforce Investment Board (Local Board), which details the SCSEP's involvement in the One-Stop Delivery System. Further, because of the SCSEP's closer coordination with the One-Stop Delivery System, the "joint program" language contained in section 510 of the 1992 amendments to the OAA, Public Law 102–375 (1992), and section 203 of the Job Training Partnership Act, Public Law 97–300 (1982) (29 U.S.C. 1603 *et seq.*) for "automatically" qualifying participants for training or intensive services has been replaced with language that permits Local Boards to deem SCSEP participants eligible for those services.

The 2000 Amendments require a different distribution of funding between State and national SCSEP grantees if the SCSEP appropriation increases. The legislation requires the Department to reserve amounts for section 502(e) (authorizing second career training projects), the territories, and the Indian and Asian Pacific aging organizations before funds are distributed between the State and national SCSEP grantees. From the amounts remaining after the reservation, the legislation holds grantees harmless

at the 2000 level of activity, which requires the Department to allocate 22 percent of funding to State grantees and 78 percent of funding to national grantees. Funding in excess of the Fiscal Year 2000 level of activity distribution must be divided as follows: Up to $35 million will be divided to provide 75 percent to the States and 25 percent to the national grantees. Amounts over $35 million will be divided 50 percent to the States and 50 percent to the national grantees.

The 2000 Amendments require Governors to submit an annual plan that discusses the number and distribution of eligible individuals in the State, the employment opportunities, the skills of the local eligible population, the locations and populations for which community service projects are most needed, and plans for coordinating with WIA. As part of the planning process, the legislation requires the Governor to obtain the advice of title V stakeholders in developing a plan that addresses the equitable distribution of positions in each State. The legislation also allows the Governor to make recommendations on grant proposals to the Department related to the proposed distribution of positions within the State.

Another new provision of the legislation is the establishment of performance measures. The performance measures are designed to monitor the performance of each grantee and provide a mechanism to assist those grantees that need technical assistance to perform better. The performance measures are based on the required indicators listed in section 513(b) of the OAA. For grantees that do not meet the established performance measures, section 514 of the OAA provides for corrective action and sanctions. Section 514 of the OAA also codifies prior regulatory eligibility and responsibility criteria that grantees must meet before receiving SCSEP funds. Finally, section 514 authorizes the Department to fund grants for up to 3 years after the establishment of the regulations and performance measures.

III. Summary and Explanation of the Final Rule

As this legislation has many new provisions, the Department has drafted regulations that respond both to the SCSEP community's concerns and to the Department's interpretation of the statute.

Developing the Final Rule was a multi-stage process that included the creation of a Proposed Rule and a request for comments. To assist in the development of the Proposed Rule, the Department obtained viewpoints of the public, including individuals and members of the grantee community, on the new SCSEP provisions, as well as existing SCSEP provisions, regulations, or policies. Five work groups were established that included representatives from the national grantee organizations and several States. The work groups addressed the following areas: Performance accountability; operational and policy issues; grant and administrative issues; the State Senior Employment Services Coordination Plan; and technical assistance and consultation. These work groups provided the Department with issue papers and recommendations. Further, the Department held a series of Town Hall Meetings and requested comments through **Federal Register** notices to ensure that the regulations take the ideas of interested individuals into account.

During the public comment period for the Proposed Rule, the Department received a number of suggestions. The comments were thoroughly evaluated and are discussed below to clarify the Department's interpretation of the OAA Amendments through this Final Rule and to address some of the challenges that may arise during the implementation of the OAA Amendments. Every effort was made to incorporate these suggestions into the drafting of the Final Rule to the greatest extent practicable and consistent with applicable statutory requirements. The following discussion presents a section-by-section summary of the comments and the Department's responses to them. For those sections of the NPRM on which we received no comments and on which we made no substantive changes, there is no commentary following the listing of the section. We also have made some minor editorial changes which are not intended to change the meaning of the regulations and which are not discussed in the commentary below. WIA's authorization expired on September 30, 2003 but continues to operate through continuing appropriations. Since WIA may be reauthorized and its regulations may change, citations to the WIA regulations may change.

When publishing a Final Rule following a comment period it is customary to publish only changes made to the rule. However, in order to be more user friendly, we are publishing the entire rule, including those parts that have not been changed. This means that you can consult one document which contains all of the regulations and commentary, rather than needing to compare various documents.

Subpart A—Purpose and Definitions

What Part Does This Cover? (§ 641.100)

What Is the SCSEP? (§ 641.110)

What Are the Purposes of the SCSEP? (§ 641.120)

This section listed the SCSEP's purpose, including providing employment and self-sufficiency for older Americans.

The Department received numerous comments on this section. Most of them requested that the term "underemployment" either be added or substituted for the term "unemployment." Additionally, another comment noted that "persons 'who have poor employment prospects' were excluded." One commenter simply disliked any references to unemployment or underemployment because they indicate a shift in the SCSEP program away from community service and toward unsubsidized employment. Another commenter echoed this concern and asserted that unsubsidized employment is counterproductive to State agencies that rely on community service programs for participants in rural areas. One commenter supported the statutory language, and requested that this definition be cross-referenced in §§ 641.400 and 641.500.

The Department has no authority to expand the statutory SCSEP purpose to include underemployed persons. The commenters were correct, however, in pointing out that the statutory statement of purpose, in section 502(a)(1), does include persons who have poor employment prospects. We have revised the rule accordingly. We note, however, that having poor employment prospects is not an alternative criterion to being unemployed and low income; rather, it is an additional condition. Thus, revised § 641.120 tracks the language of section 502(a)(1) of the OAA Amendments. Even with the more narrow statutory purpose, the number of persons eligible for the program far exceeds the number of available positions. (*See* subpart G).

As for the comments that indicate a shift away from community service towards the unsubsidized goal, the Department recognizes that the 2000 Amendments do, in fact, represent a shift in emphasis for the SCSEP. In the 2000 Amendments, Congress has significantly increased the program's emphasis on placements into unsubsidized employment recognizing that more individuals age 55 and over are seeking employment opportunities. Rather than viewing this new focus as counterproductive, the Department encourages grantees to view the focus

on unsubsidized employment as a means to assist individuals age 55 and over in their pursuit of self-sufficiency. Encouraging unsubsidized placements also increases the number of individuals the program is able to serve. While this change in emphasis may require some grantees to change the way they administer the program, the Department believes that ultimately these changes will provide for better service to older workers.

What Is the Scope of This Part? (§ 641.130)

What Definitions Apply to This Part? (§ 641.140)

This section provided specific or contextual definitions for the terms used in this part.

The Department received numerous comments on this section with suggestions on how to better define, amend, or clarify twelve (12) definitions. They were the definitions of community service, comprehensive One-Stop, equitable distribution report, greatest social need, host agency, other participant (enrollee) cost, participant, placement into public or private unsubsidized employment, poor employment prospects, retention in public or private unsubsidized employment, subgrantee, and training services.

Generally, commenters were concerned about whether community service is considered employment. Commenters discussed whether:

- SCSEP mandatory partners need to maintain a physical presence at comprehensive One-Stops;
- Equitable distribution reports address underserved counties or States;
- The term greatest social need includes isolation caused by racial or ethnic status;
- Host agencies can include faith-based organizations and SCSEP grantees;
- Other participant (enrollee) costs include costs associated with a community service assignment;
- Participants are those who receive only services as opposed to services and wages;
- The phrase "placement into public or private unsubsidized employment" should consider certain wage rates;
- Poor employment prospects includes limited or a lack of transportation; whether the phrase "retention in public or private unsubsidized employment" is calculated more in accord with the Workforce Investment Act or the Older Americans Act;
- The definition of subgrantee should include technical changes; and
- Training services should be limited to the Workforce Investment Act parameters or expanded.

Regarding the definition of "Community service," the Department has decided not to add a statement here on participant employment status. The definition indicates the kinds of activities that are considered community services and thus, is not the proper place to address other issues.

Regarding the definition of "Comprehensive One-Stop Center," because the regulation does not use the term "Comprehensive One-Stop Center," the Department agrees that the defined term should be changed to "One-Stop Center." Under WIA's program design, One-Stop Centers may be organized in a variety of different ways. All One-Stop systems must, however, have at least one comprehensive One-Stop Center through which all One-Stop partners must provide applicable core services. We have revised the definition to read, "One-Stop Center means the One-Stop center system in a WIA Local Area that must include a comprehensive One-Stop Center through which One-Stop partners provide applicable core services and which provides access to other programs and services carried out by the One-Stop partners."

Additionally, any SCSEP required One-Stop partner need not maintain a physical presence at a comprehensive One-Stop Center. Under WIA, all required partners must provide WIA core services, use a portion of their funds (not inconsistent with Federal law) to help maintain the One-Stop Delivery System, enter into the appropriate MOU, and participate in the One-Stop system consistent with the MOU. However, these services may be made available by the provision of appropriate technology, by collocating personnel, through cross-training staff, or other arrangements, as described in the MOU. See WIA Final Rule at 20 CFR 662.200 through 662.310 for the specific partner requirements.

Regarding the definition of "Equitable distribution report," the Department accepts the commenters' suggestion and clarifies that the definition applies to underserved counties.

Regarding the definition of "Greatest social need," the Department will retain the definition as it is based on section 101(28) of the OAA. As the use of the word "include" in the definition makes clear, the factors listed in the definition are not exclusive. Grantees may use other reasonable factors in determining if an individual meets this criterion. The Department realizes that it is difficult to quantify "greatest social need" as defined for reporting purposes. The Department plans to provide further clarification on how to capture these individuals through reporting instructions.

Regarding the definition of "Host agency," the Department agrees that, in appropriate circumstances, SCSEP grantees may serve as host agencies. SCSEP grantees may be host agencies as long as they meet the criteria (*i.e.*, public agency or private non-profit organization exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986) already established in the definition. Therefore, the Department sees no need to amend the definition to specifically include SCSEP grantees as host agencies. Due to the wording in the Proposed Rule some commenters were confused about whether faith-based organizations could be host agencies. Faith-based organizations may be host agencies, as long as the work of the participant does not involve the construction, operation, or maintenance of any facility used or to be used as a place for religious worship (OAA section 502(b)(1)(C) . The regulation has been amended to more closely track the statutory language in order to clear up the confusion. Following the phrase "political party" we have added the phrase: "and projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship."

Regarding the definition of "Other participant (enrollee) cost," the Department agrees with the comments. The phrase "or in conjunction with a community service assignment" is added after "and which may be provided on the job" and the phrase "the cost of" is inserted after the word "means."

Regarding the definition of "Participant," the Department disagrees with those commenters who suggested that a participant should be defined as an individual who receives any services. The Department believes that an SCSEP participant is an individual who receives services as outlined in subpart E. Thus, a participant may only be an individual who is enrolled in the program under subpart E (*i.e.*, has been assessed and has been assigned to a community service position, etc.) and is legally filling an authorized position. This definition is consistent with previous regulations and program policy that require an individual to be enrolled in a community service position to be considered a participant.

Regarding the definition of "Placement into public or private unsubsidized employment," one

commenter asked for clarification about whether an individual who worked 20 days at a certain wage rate that would exceed $5.15 per hour for 20 hours per week would be considered an unsubsidized placement. The Department emphasizes that such a situation would not be an unsubsidized placement. The 2000 Amendments clearly require employment for "30 days within a 90 day period" to qualify as a placement in public or private unsubsidized employment. (OAA section 513(c)(2)(A))

A commenter also asked whether participants should be able to accept private sector employment for less than 20 hours if they are economically better off and the hours fit their individual needs. Grantees are permitted to place participants in unsubsidized positions for less than 20 hours per week. The figure of 20 hours is only used at OAA sec. 515(a)(2) for budgeting purposes. The Department will make this position clear in the administrative guidance on performance measures.

Regarding the definition of "Poor employment prospects," the Department notes that this definition uses the language "include, but are not limited to." This means that the list in the definition is not exclusive and that grantees may use other relevant factors in determining whether an individual meets this criterion. The Department will provide further guidance on this issue in performance reporting instructions. We see no need to revise the definition to include other suggested factors.

Regarding the definition of "Retention in public or private unsubsidized employment," the regulatory definition mirrors the statutory definition (OAA section 513(c)(2)(B)). The Department interprets this definition to allow for brief periods of inactivity or unemployment. The Department will provide further guidance on this issue in performance reporting instructions.

Regarding the definition of "Subgrantee," the Department deletes the word "which" after the term "subcontract."

Regarding the definition of "Training services," the Department's definition reflects those services authorized by section 134(d)(4) of the Workforce Investment Act. This WIA definition, however, is very broad. The list of services referenced at section 134(d)(4) of the WIA is not intended to be exhaustive. Rather, it only enumerates examples of authorized training services. Therefore, SCSEP community service assignments and those available through work experience at host agencies, are included in the definition and as discussed in subpart E.

The Department also received several suggestions to add definitions of certain terms. These terms included Disability, Dual eligibility, Residence, Pre-registration (as it appears in § 641.710(9)), Permissible information collection methods, and Part-time.

The Department agrees that it is appropriate to add some definitions that were not included in the Proposed Rule. Consequently, we have added certain definitions in the Final Rule, namely Co-enrollment, Disability, and Residence.

The term "Disability" is defined at section 101(8) of the OAA as follows: a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (A) Self-care, (B) receptive and expressive language, (C) learning, (D) mobility, (E) self-direction, (F) capacity for independent living, (G) economic self-sufficiency, (H) cognitive functioning, and (I) emotional adjustment.

The Department has decided not to define Dual eligibility. However, we have added a roughly synonymous term, Co-enrollment. Co-enrollment applies to any individual who meets the qualifications for SCSEP participation as well as the qualifications for any other relevant program as defined in the Individual Employment Plan. The Department will provide guidance on reporting for dual enrolled participants in performance reporting instructions.

As used in § 641.710(b)(9), the term "Pre-registration," is intended to refer to the value of a participant's earnings before his/her enrollment in the SCSEP. We did not add this definition to the Final Rule because the subject will be covered in performance reporting instructions.

The Department has decided not to define Part-time in this rule; however, grantees should note that "Part-time" is defined at section 515(a)(2) of the OAA as a work week of at least 20 hours. We suggest that grantees use this statutory definition for budgeting purposes when assigning individuals to community service, which is consistent with its use in the statute.

We decided not to include a definition of the term "Permissible information collection methods" in the Final Rule because the Department will provide guidance through performance reporting instructions.

The term "Residence" is defined as an individual's declared dwelling place or address, as demonstrated by appropriate documentation. No requirement for length of residence prior to enrollment is imposed. (See also subpart E, § 641.500 and discussion of State agreements pertaining to "cross-border registrations.")

Subpart B—Coordination With the Workforce Investment Act

What Is the Relationship Between the SCSEP and WIA? (§ 641.200)

This section specified that SCSEP grantees are required to follow all applicable rules under WIA and its regulations and must ensure that they are familiar with the WIA statutory and regulatory provisions, especially WIA section 121(b)(1)(B)(vi) (29 U.S.C. 2841(b)(1)(B)(vi) and 29 CFR part 662 subpart B (§§ 662.200 through 662.280). The WIA operational requirements generally do not apply to SCSEP operations. As required partners under WIA, grantees are obligated to be familiar with the WIA requirements when they are acting as a WIA/One-Stop partner.

Several commenters stated that One-Stop Centers are not equipped for or interested in meeting the needs of older job seekers, particularly those 60 and over. For example, a commenter noted that One-Stop Centers are not equipped to address issues such as care giving, medication needs, and other health issues often faced by older adults. Commenters noted that older individuals often seek part-time employment, which would negatively affect One-Stop performance measures. One commenter noted the differences between the SCSEP and WIA programs, stating that the SCSEP requires a close working relationship with the individual, while WIA relies more on the initiative of the job seeker. Similarly, a commenter stated that Area Agencies on Aging operate on a more encompassing philosophy that meets all the needs of the person. Another commenter stated that the title V program must maintain individuality in order to best serve older workers and should be a part of a focused network of social and community support. One commenter noted the importance of educating Local Boards to the needs of older populations.

A few commenters discussed reciprocity between the SCSEP and WIA, asking that the Department make WIA aware of the provisions of the SCSEP. One commenter specifically discussed the eligibility reciprocity between the two programs, noting that the workers in the Dislocated Worker Program were not eligible for the SCSEP because of the six-month and 12-month

look back periods for determining income eligibility. Another requested that a mechanism be developed to resolve conflicts between the SCSEP and WIA regulations. One commenter noted that this section does not properly distinguish the SCSEP mission and participants from those of WIA and urged the Department to specify which WIA rules apply to the SCSEP. Two commenters stated that the expectation of familiarity with WIA statutory and regulatory requirements is excessive.

One commenter suggested that we specify that a One-Stop's failure to negotiate MOUs must be presented to the Department for appropriate action. Another stated that a title V grantee has no authority to require cooperation of the One-Stop system to provide appropriate services, to serve the title V priority groups, or to work with community service programs. The commenter argued that title V cannot be held accountable if the One-Stop system fails to meet expectations for older workers.

The SCSEP is a required WIA partner, as provided in 20 CFR 662.200 of the WIA regulations. Partner coordination requirements for One-Stops are articulated at 20 CFR 662.310(b)–(c) of the WIA regulations. The Department acknowledges that there have been substantial differences in the degree to which such partnerships have been established in the past, and is actively exploring strategies to have One-Stops form more inclusive relationships with SCSEP grantees. Failure to coordinate with One-Stops may lead to a finding of ineligibility (OAA section 514(c)(5)). Other consequences for failure to coordinate are established at 20 CFR 662.310(b)–(c).

The comments appear to reflect a concern that the coordination requirements of the 2000 Amendments will have the effect of diluting or undercutting the focus and mission of the SCSEP. The Department does not believe this is true and does not intend the regulations to convey this message. WIA envisions a coordinated workforce development system in which a variety of programs work more closely together to make access to workforce development services easier and more efficient. WIA includes as required partners a number of programs that serve special populations and is very careful to assure that program boundaries are respected. The Department intends that these regulations will enable grantees and subgrantees to concentrate better on the core missions of the SCSEP, providing community service assignments and unsubsidized placements to hard to serve older individuals. The Department intends that the One-Stop system be used to provide services both to older individuals who are not eligible for the SCSEP and to those who are eligible but need the intensive services that the SCSEP is unable to provide. The kinds of partnerships that the regulations envision will enable SCSEP grantees and subgrantees to focus more of their efforts on the core population that the SCSEP is intended to serve.

As discussed in more detail elsewhere, nothing in WIA or the OAA precludes grantees from negotiating MOUs that recognize and use their expertise in serving older workers as part of the One-Stop system. Thus, grantees are encouraged to negotiate such arrangements in their MOU with the One-Stops so that it counts toward their contribution to the One-Stop.

Required partnerships with the One-Stop Delivery System do not preclude voluntary relationships with other partners such as Area Agencies on Aging. The Department actively encourages such additional partnerships.

The Department does not think that the requirement that SCSEP grantees follow applicable WIA rules is excessive. In order to effectively play their role as required partners and participants in the One-Stop system, SCSEP grantees will have to operate under those WIA rules which apply to those WIA partners and to the operation of the One-Stops. In order to be able to fully use the WIA system as a source for additional services, grantees will have to know how the system works. The comments appear to reflect a desire for a more productive relationship between the SCSEP and WIA and a desire to make the WIA system more responsive to the needs of older workers. The Department believes that this goal can best be accomplished if SCSEP grantees become knowledgeable about how the WIA system operates.

There were several funding-related comments. Some questioned whether SCSEP funds could be used to support One-Stop operations. One commenter stated that the SCSEP should provide for essential contributions to WIA, suggesting that the Department make SCSEP funds specifically available for WIA through the regular funding process or allow the match that grantees provide to be used to support WIA activities.

SCSEP grantees are required One-Stop partners and therefore have certain responsibilities as One-Stop Partners. As explained in the WIA regulations, at 29 CFR 662.230, SCSEP grantees must assist in creating and maintaining the One-Stop Delivery System. This requires negotiating financial arrangements, including in-kind contributions when possible, in the MOU with their WIA Local Board. Because coordination with the WIA system is an SCSEP requirement, grantees are authorized to use grant funds for that purpose. However, grantees also may use their non-Federal resources or cash to support WIA activities as well as a portion of their grant funds. The WIA regulations, at 29 CFR 662.230, explain these and other responsibilities of required One-Stop partners. The extent to which grant funds or in-kind contributions are needed to fund the SCSEP partner's share of One-Stop support will depend on the MOU and the services that each party provides in the One-Stop setting. With regard to the development of MOUs, the Department will follow the larger WIA system which makes the development of MOUs a local decision.

One commenter requested that the Department specify that title V host agencies do not need to be co-located to meet the definition of a One-Stop partner.

There is no requirement that grantees, subgrantees or host agencies be co-located in the One-Stop. That is a matter to be negotiated in the MOU, although the Department believes it is a good practice. SCSEP grantees are required to do no more and no less than other required One-Stop partners. Section 134(c) of WIA requires that core services be provided, at a minimum, at one comprehensive physical One-Stop Center. The WIA regulations at § 662.250 require that core services applicable to a partner's program must be made available by each partner at that comprehensive One-Stop Center. As explained in the Preamble to the WIA regulations, at 65 FR 49309 (August 11, 2000), in order to avoid duplication of services traditionally provided under the Wagner-Peyser Act, this requirement is limited to those applicable core services that are in addition to the basic labor exchange services traditionally provided in the local area under the Wagner-Peyser program. Furthermore, 29 CFR 662.250(c) also provides significant flexibility about how the core services are made available at the One-Stop Center by allowing for services to be provided through appropriate technology at the center, through co-location of personnel, cross-training of staff, or through contractual or other arrangements between the partner and the service providers at the center.

What Services, in Addition to the Applicable Core Services, Must SCSEP Grantees Provide Through the One-Stop Delivery System? (§ 641.210)

Section 641.210 provided that SCSEP grantees must provide their participants, eligible individuals the grantees are unable to serve, and other SCSEP ineligible individuals, with access to services, activities, and programs carried out by other One-Stop partners.

Several commenters stated that it is not practical to make such arrangements because One-Stop services are not accessible for all individuals in all locations, particularly those in rural areas. Another commenter asked that the Department clarify to what extent such arrangements need to be made. One commenter asked that the language be changed to state "a referral to access other activities and programs * * *." Another commenter argued that the Department should promote coordination between the SCSEP and local community-based and faith-based organizations, not only with the One-Stop Centers.

The Department acknowledges that rural locations may present particular challenges and encourages coordination with other organizations in addition to One-Stops that may be more accessible and/or appropriate. Coordination with One-Stops is essential to ensuring a seamless, comprehensive workforce development system that identifies the service options available to individuals and takes the critical next step of facilitating access to these services.

This provision is simply a reminder of a basic premise of the WIA One-Stop system: the broadening of customers' access to a wide variety of services. The regulation implements the "no wrong door" approach of the One-Stop system by reminding grantees and subgrantees that they must be part of the One-Stop system and must participate in providing access to the other services that the One-Stop partners offer. The regulation requires that grantees make arrangements to provide "access" to services; it does not require that the person referred be able in every case to use the services. To make it clear that the regulation imposes no more than the obligation to be a part of the One-Stop system and to participate in its efforts to make services more widely accessible to customers, we have added the words "through the One-Stop Delivery System" to the regulation. Of course, the regulation does not preclude grantees and subgrantees from establishing other partnerships, which will help eligible and ineligible individuals access needed services.

Two commenters questioned the manner in which entities receive credit for job placement services. One suggested that referrals be tracked so agencies may receive appropriate recognition.

The allocation of placement credit will be addressed in administrative guidance as the performance accountability system is further refined.

One commenter recommended that title V programs be encouraged to offer core services through the One-Stop.

SCSEP grantees are free to negotiate the services to be provided by and through the One-Stop Delivery System in their MOU, as described at 29 CFR 662.300 of the WIA regulations. The Department agrees that grantees are required to offer core services applicable to SCSEP through the One-Stop; but grantees also may decide whether to offer core services in other ways. As to other services, grantees must decide which of the One-Stop's services to use and how to use them. The Department believes that the One-Stop system can provide additional services not otherwise available to the SCSEP because of funding constraints and agrees that grantees should be encouraged to make use of the One-Stop system and other available sources of services.

Does Title I of WIA Require the SCSEP To Use OAA Funds for Individuals Who Are Not Eligible for SCSEP Services or for Services That Are Not Authorized Under the OAA? (§ 641.220)

Section 641.220 provided that grantees should refer individuals who are ineligible for the SCSEP to the One-Stop system and to the WIA partner programs for services, as agreed to in the MOU.

Several commenters addressed perceived problems associated with the inability of title V to provide funds for ineligible individuals. One commenter noted that WIA does not provide services for older workers and that only limited WIA funds are available. The commenter also stated that the section does not address how ineligible individuals will receive services from WIA, if the SCSEP cannot use its resources as a full partner. Another commenter recommended that all grantees operating in a One-Stop share the responsibility of meeting core services, as well as providing for any cash contribution to the One-Stop system. Another commenter asked whether SCSEP funds will be allocated for the cost of providing ineligible individuals with access to other activities and programs.

Title V resources may only be used to provide title V services to title V-eligible individuals. Although not considered a "service," title V resources may also be used to determine if an individual is eligible to participate in the SCSEP program and to a limited extent, to provide the individual with referrals or access to other services. Such expenditures are considered allowable costs. SCSEP grantees are responsible for negotiating services to be provided by the One Stop Delivery System to both SCSEP-eligible and SCSEP-ineligible individuals in their MOU, as described at 20 CFR 662.300 of the WIA regulations. The underlying notion of the One-Stop is the coordination of programs, services and governance structures so that the customer has access to a seamless system of workforce investment services. The success of the reformed workforce investment system is dependent on the development of true partnerships and honest collaboration at all levels and among all stakeholders.

One commenter recommended that the SCSEP serve all older job seekers, stating that many Area Agencies on Aging have established the necessary local infrastructure to place SCSEP-ineligible older job seekers in unsubsidized jobs.

The regulation is not intended to govern any services that Area Agencies on Aging or similar multi-function groups may provide other than SCSEP-funded activities. Area Agencies on Aging remain free to provide other services to the elderly and to refer SCSEP-ineligible individuals to those services. It would be most beneficial to these agencies and to the One-Stop system if this referral system were included in the MOU.

Some commenters suggested that the Department clarify that SCSEP participants assigned to work in a One-Stop are not prohibited from serving non-SCSEP eligible individuals who are seeking appropriate One-Stop services.

Naturally, SCSEP participants assigned to work in a One-Stop are allowed to serve non-SCSEP eligible individuals who are seeking appropriate One-Stop services. In such an instance, the One-Stop simply acts as a host agency and the participants simply provide the services ordinarily provided by the host agency.

Must the Individual Assessment Conducted by the SCSEP Grantee and the Assessment Performed by the One-Stop Delivery System Be Accepted for Use By Either Entity To Determine the Individual's Need for Services in the SCSEP and Adult Programs Under Title IB of WIA? (§ 641.230)

This section required that an assessment or Individual Employment Plan (IEP) completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa (OAA sec. 502(b)(4)(A)). These reciprocal arrangements and contents of the SCSEP IEP and WIA IEP should be negotiated in the MOU.

One commenter suggested that the section state that both entities must coordinate on the IEP, not that one must be accepted by the other entity. Another commenter recommended that the Department clarify that we expect One-Stop operators to accept SCSEP IEPs and SCSEP grantees to accept One-Stop-originated IEPs.

Under section 502(b)(4) of the OAA and § 641.230 of the SCSEP regulations, SCSEP assessments and service strategies satisfy any condition for an assessment and service strategy or IEP for an adult participant under title IB of WIA, in order to determine whether such individual qualifies for intensive or training services. Similarly, WIA assessments must be accepted by SCSEP grantees. As noted in the Preamble to the SCSEP Proposed Rule, as a practical matter, this means that the SCSEP IEP and the WIA IEP must be sufficiently comprehensive to provide the information needed to place a participant who is eligible for both programs in the correct service mix. This may well require modifying existing SCSEP IEP and WIA IEP information collection practices, which should be negotiated during the development of the local MOU. For a more in-depth discussion of this issue, see the Preamble to the proposed SCSEP regulations at 65 FR 22522 (April 28, 2003).

Are SCSEP Participants Eligible for Intensive and Training Services Under Title I of WIA? (§ 641.240)

Section 641.240 provided that, although SCSEP participants are not automatically eligible for intensive and training services under title I of WIA, Local Boards may deem them as satisfying the requirements for receiving adult intensive and training services under title I of WIA. It also provided that an SCSEP assessment and IEP qualify as an intensive service under WIA and that SCSEP participants seeking unsubsidized employment may require training to meet their objective and may obtain such training through the SCSEP, the WIA program or a WIA partner, as negotiated in the MOU. Finally, the regulation provided that an SCSEP community service assignment is analogous to work experience assignments under WIA. The Preamble to the NPRM suggested that SCSEP stipends should not be considered income for WIA income eligibility purposes.

A few commenters recommended that a reciprocal arrangement be established between the SCSEP and title I of WIA. The commenters suggested that SCSEP-eligible participants who receive intensive and training services under title I of WIA, who are placed in unsubsidized employment, be counted as placements by the SCSEP.

The Department agrees that reciprocal arrangements for determining eligibility, as well as for establishing how services to older workers will be provided, is a good idea and encourages grantees and subgrantees to negotiate such arrangements in their MOUs. The Department is aware that there have been problems in some areas in providing services to older workers and recommends that grantees and subgrantees use the negotiation of MOUs to address those problems, either by negotiating for additional services through the One-Stop or by negotiating a greater role in providing services to older workers as a One-Stop partner.

Two commenters suggested that WIA performance measures be modified to address the special needs of older workers. Another commenter stated that the Department wrongly assumes that greater coordination with WIA One-Stop Centers will result in SCSEP participants being deemed eligible for service and having access to a broad range of intensive and training opportunities because of performance measures disincentives under WIA. We cannot address WIA performance measures in this rule, but the Department is aware of these concerns and is reviewing this issue.

One commenter stated that it is unreasonable that most low-income older job seekers with poor employment prospects are not automatically eligible for WIA intensive and training services.

The Department is constrained by the language of the statute, which provides that SCSEP participants "may be deemed" eligible for WIA title I services. This is a change from the prior version of the statute, which required that SCSEP participants be deemed eligible. This change gives the discretion to the Local Board and emphasizes the importance of negotiating the MOU with the Local Board.

One commenter recommended that the Department clarify that title V funds can be used to pay wages during participant training. Another noted that wages paid to participants are included in their initial income if they later seek to enroll in WIA. The commenter argued that this makes it more difficult for WIA to meet performance goals.

The Department agrees that title V funds can be used to pay wages to SCSEP participants receiving intensive and training services under title I of WIA, provided that SCSEP participants are assigned to a community service assignment. The Department has amended § 641.240 accordingly. Training may be provided as part of the community service assignment or in addition to a community service assignment. A participant need not be performing the community service assignment when the training is provided, *i.e.*, the training may occur before the participant begins the community service assignment or the participant may take the training while assigned to a community service assignment. The Department's intent is to assure that SCSEP funds spent for participant training are spent on those participants who most need the services available through the SCSEP.

Finally, because the OAA statute only provides authority for regulations governing the SCSEP program, these regulations cannot speak to whether SCSEP community service wages will be considered income for eligibility purposes in other programs. The Department will only address income in § 641.507.

Subpart C—The State Senior Employment Services Coordination Plan

This entire subpart represents a change from the current regulations, as the 2000 Amendments established a new, more thorough planning process for the SCSEP in each State.

What Is the State Plan? (§ 641.300)

Who Is Responsible for Developing and Submitting the State Plan? (§ 641.305)

In §§ 641.300 and 641.305, the Department reiterated the statutory requirement that the Governor is responsible for developing and submitting a State Plan to the Department.

One commenter noted that there is no discussion on what will happen to the Governor's recommendations and expressed particular concern that the

distribution of slots be balanced so as not to disadvantage rural areas. Another commenter asked who will be responsible for developing the State Plan and whether a forum or other method of development will be specified.

The concerns about review of the Governor's recommendations and allocation of slots are addressed in the 2000 Amendments, at section 503(a)(7), which notes that "each State shall make available for public comment its senior employment services coordination plan" and that the Secretary may review "the distribution of projects and services * * * including the distribution between urban and rural areas within the State."

The State Plan is to be developed by the Governor or his/her designee, in consultation with national grantees, State and Local Workforce Investment Boards, and the State and Area Agencies on Aging, as specified in § 641.315 and in the 2000 Amendments, at section 503(a)(2), in a manner specified by the Governor. The Department is not inclined to set rules to constrain the Governor's discretion in setting the procedures for this consultation. The Department may provide guidelines for the planning process in an administrative issuance. As noted in § 641.300, the purpose of the State Plan is to encourage coordination among SCSEP grantees and assist stakeholders to work together in furtherance of the SCSEP program's goals.

May the Governor Delegate Responsibility for Developing and Submitting the State Plan? (§ 641.310)

Section 641.310 specified that the Governor may delegate preparation of the State Plan and also described how this will be done. A commenter thought that the Department should define the time period during which the Governor should submit a signed statement indicating who will submit the State Plan on the Governor's behalf.

The Department will be issuing instructions about State Plans, which will address their administrative requirements, including time frames. Any State Plan submitted by a designee for whom a signed designation statement has not previously or simultaneously been submitted will be considered a non-submission.

Who Participates in Developing the State Plan? (§ 641.315)

Section 641.315 listed the parties from whom the Governor must seek advice on the State Plan. One commenter stated that national grantees should be required to designate a person to participate in the planning process of each State where they have slots, while another commenter suggested that the Department include all One-Stop partners in developing the State Plan to foster collaboration once the State Plan is implemented.

It is not clear whether the first commenter is suggesting that each national grantee designate one person to participate in the planning efforts of all States where that national grantee operates an SCSEP project or designate one particular person to participate in each State's planning process. However, without describing the individual who will take this role, section 503(a)(2)(B) of the 2000 Amendments requires "each grantee operating * * * in the State" to be consulted as part of the planning process. Section 641.320 addresses the importance of national grantee participation in the planning process, and the Department anticipates that grantees will honor both the letter and the spirit of the law with respect to collaboration. The precise details of how each national grantee will fulfill this role are best left to the national grantee and the Governor involved.

One-Stop partners are included in the planning process through the required consultation with the State and Local Workforce Investment Boards (also known simply as State and Local Boards), which operate under the WIA. To make this relationship clearer, § 641.315(a)(2) has been amended to read "State and Local Boards under the Workforce Investment Act (WIA)" to make this relationship clear.

Although the Department wishes to allow Governors wide latitude in designing the State's planning process, the Department agrees that the Governor must provide a reasonable time for consultation and comments.

Must All National Grantees Operating Within a State Participate in the State Planning Process? (§ 641.320)

Section 641.320 required all national grantees (except for those serving older American Indians) to participate in the planning process. One commenter commended this requirement, while another outlined how her agency would implement it. Two commenters addressed whether the participants need be physically present for these discussions, rather than communicate by correspondence or phone, and another commenter recommended that the Department require each Governor to provide "sufficient written notice of the state planning process to all national grantees operating in the state."

Each Governor is responsible for setting the parameters of the planning process for his or her State, including time frames and methods of consultation. Nothing in the law or regulations states, however, that participants in this process must be physically present for these discussions.

As noted in the Preamble to the Proposed Rule, the Department believes that a coordinated planning process will benefit national grantees both in terms of the services they provide to older workers and in terms of the grantees' continuing eligibility to provide those services. Although the statute does not require grantees serving older American Indians to participate in the planning process, they are encouraged to do so. (*See also* § 641.315.)

What Information Must Be Provided in the State Plan? (§ 641.325)

Section 641.325 detailed the information that must be contained in the State Plan. Most of the commenters felt that the proposed requirements "entail a huge data collection effort and a significant administrative burden for SCSEP grantees' and requested that these requirements be simplified. Most of these commenters argued that the resources needed to collect this information would negatively impact their ability to provide services the to SCSEP participants.

Section 641.325 listed the minimum requirements of the State Plan consistent with section 503(a)(4) of the 2000 Amendments. This information includes data on the number and distribution of eligible individuals, as well as their employment situations and the locations and populations for which community service projects are needed. The State Plan also is to define how the activities of SCSEP grantees will be coordinated and how and when the planning process will proceed. Finally, the State Plan is to explain how disruptions to participants will be avoided.

Depending on the amount of information already available for preparation of the respective State Plans, some grantees may be asked to supply some of the data required by the statute. While such data collection may prove to be challenging, it will benefit the program as a whole through more equitable distribution of slots and greater coordination among the various parties providing services to older workers. The Department believes that most of the data required for the State Plan are available from generally available data sources, *e.g.*, census data. We anticipate that, to the extent the Governor will seek data from national grantees, the grantees will primarily be required to provide data on their actual

activities: Data that the grantees already possess and/or report.

How Should the State Plan Reflect Community Service Needs? (§ 641.330)

Section 641.330 described the requirements of the State Plans with respect to community services: What services are needed, and where they are most needed.

Some commenters thought the State Plan should reflect community service needs only in a very general way because specific needs often change and thus are best determined locally. The commenters pointed out that the SCSEP requires that community service opportunities be developed based upon participants' Individual Employment Plans, and the training and employment needs of the participants should come first. These commenters also noted that there is no established, uniform process for identifying and collecting information on community service needs, and they believe such effort would require substantial work and diminish staff time needed to implement the program. They also believe the law does not require collection of information on community service needs, but only the documentation of the locations and populations for which community service projects are most needed. Other commenters stated that local entities such as subgrantees are in a better position than the Governor to determine local needs.

The Department agrees that the needs of the participants must be fully considered in developing community service opportunities, and the inclusion of these factors in the State Plan is addressed in section 503(a)(4)(D). However, the OAA also specifically calls for identification of community service needs, as described in section 503(a)(4)(E). The Department anticipates that the State Plans will reflect a balance between these complementary factors. Identification of community service needs ultimately helps individual older workers target the specific skills needed for employment in their particular communities, thus affording them greater employability in the future.

With respect to the documentation issue, the Department does not believe that a separate data-collection effort will be necessary to obtain information about community service needs. As part of the application process, each national grantee will have identified these needs in the areas to be served and, through administering services, this information will be refined and modified over time. Also, given the variety of organizations involved in the SCSEP program, including State and Local Boards and Area Agencies on Aging as well as grantees and subgrantees, information should be available from a variety of sources. For example, national grantees will be able to use the experience of local subgrantees with respect to local needs as the grantees formulate their contributions to the State Plans. The Department believes that this kind of collaboration will lead to a better program, one that can address the specific needs of each State and locality.

How Should the Governor Address the Coordination of SCSEP Services With Activities Funded Under Title I of WIA? (§ 641.335)

Section 641.335 addressed the ways in which the Governor, the SCSEP, and WIA must work together. One commenter noted that collaborative efforts would foster best practices. Another suggested that obtaining this information may be difficult in States that have numerous national sponsors.

The Governor is responsible for consulting each national grantee that operates in the State, and all national grantees except those serving older American Indians are required to participate in this process. Such consultation is necessary to administer an effective program, provide services that are most needed and of the best possible quality, and avoid duplication of services. Moreover, the OAA Amendments, at section 503(a)(2), require the Governor to obtain advice and recommendations from a variety of parties, including the Area Agencies on Aging, in developing the State Plan. While obtaining information on coordination may be a bit more complicated where there are several national grantees in a State, we believe that if the Governor has set up a good consultation process, obtaining the information should not be difficult.

Must the Governor Submit a State Plan Each Year? (§ 641.340)

Proposed § 641.340 provided that the Governor need not submit a full Plan each year. However, at a minimum, the Governor must seek advice and recommendations about any needed changes from the individuals and organizations identified both at OAA Amendments section 503(a)(2) and § 641.315. The Governor must then publish the changes for comment and submit a Plan modification to the Department.

Two commenters agreed with this interpretation of the statute, stating that it allows the Governor to consult with interested parties and annually update the Plan as needed, and at the same time provides relief from unnecessary burdens.

What Are the Requirements for Modifying the State Plan? (§ 641.345)

How Should Public Comments Be Solicited and Collected? (§ 641.350)

Who May Comment on the State Plan? (§ 641.355)

How Does the State Plan Relate to the Equitable Distribution (ED) Report? (§ 641.360)

Section 641.360 addressed how the State Plan will use information provided in the equitable distribution (ED) report and how, in turn, the ED report will reflect the State Plan. One commenter observed that the States do not have enough authority under current legislation to truly modify the distribution of slots within the State. Another commenter stated that these documents are valuable planning tools that foster collaboration among the State and national grantees, but that they are not intended as mandates on either grantees or the Department regarding the ultimate allocation of positions.

The OAA Amendments strengthen the role of the Governors in the planning process. OAA Amendments section 503(a)(5)(B) and § 641.365 of this subpart specifically address inclusion of recommendations for redistribution of slots in State Plans, while OAA Amendments section 503(a)(7)(A) describes the process by which the Secretary of Labor will review and make decisions about the State Plan. The Department believes that this process will allow the States to modify distributions of slots as necessary, and that, given its oversight authority, the Department must in fact ensure that equitable distribution is occurring. As stated in § 641.365, the Department does not intend that slots be redistributed while they are encumbered because to do so would cause disruption. As slots become unencumbered, however, it is appropriate to redistribute them to provide equitable distribution.

Also, in accordance with its intent that the ED report and the State Plan work together to ensure that services are fairly distributed in the State, the Department agrees that these documents are valuable tools that foster collaboration among the State and national grantees. The process is an iterative one in that it allows for transfer of authorized positions from overserved to underserved areas over a period of time. These documents thus pave the way for efficient transition to the most effective use of resources. The Department will issue administrative guidance to clarify the relationship

between the ED report and the State Plan.

How Must the Equitable Distribution Provisions Be Reconciled With the Provision That Disruptions to Current Participants Should Be Avoided? (§ 641.365)

In § 641.365, the Department discussed how positions should be moved due to shifts in populations of eligible individuals. Two commenters stated that grantees should not trade or move slots without first consulting with the State agency responsible for preparing the State Plan and ED report. To do otherwise would undermine the purpose of those reports.

A third commenter stated that the Department, or the State, should ensure smooth transitions for participants where slots available from previous grantees decrease as new national grantees provide services for the program. Another commenter supported the statement that participants cannot choose to remain in the program indefinitely and recommended that this concept be reiterated in § 641.570 or some other appropriate section.

With respect to the first concern, language has been added to this section stating: "Grantees must submit, in writing, any proposed changes in distribution that occur after submissions of the equitable distribution report to the Federal Project Officer for approval. All grantees are strongly encouraged to coordinate any proposed changes in position distribution with the other grantees servicing in the State, including the State project director, prior to submitting the proposed changes to their Federal Project Officer for approval."

With respect to the second concern, the Department has sponsored training sessions for new national grantees and consultations with grantees that are relinquishing slots in specific locations, to ensure smooth transitions for program participants. The Department will continue to provide technical assistance to grantees to ensure the smoothest transitions possible.

With respect to the third concern, the Department believes that § 641.570 sufficiently addresses the concept of time limitations for participants and we will not address it in this section. In addition, the Preamble to the Proposed Rule stated that although there is no time limit on participation in the SCSEP, most participants will receive services for no more than 24 to 36 months, and that a grantee may be authorized to set a maximum duration if it specifies how it will move participants into unsubsidized employment or other assistance before the time limit expires. We reiterate that position here.

Subpart D—Grant Application, Eligibility, and Award Requirements

What Entities Are Eligible To Apply to the Department for Funds To Administer SCSEP Community Service Projects? (§ 641.400)

Section 641.400 introduced a new eligibility requirement for national grantees that an entity must have the capacity to administer a multi-State program. The Department interprets this requirement to mean that the organization must have the capacity to operate in more than one State even if it only operates within one State. Eligible entities that may serve as national grantees are limited to nonprofit organizations, Federal public agencies, and Tribal organizations. States and political subdivisions are not eligible to apply. However, in addition to receiving their SCSEP funding through the formula process States are eligible to compete for funds forfeited by a poor performing national grantee in a State. (*See* subpart G.)

Several commenters expressed concern that allowing States to receive the funding of a poor performing national grantee within a State would disrupt the established 78/22 percent balance of funds between national grantees and States. Other commenters suggested that to alleviate this potential imbalance the Department should require the successful State grantee to redirect the funds to national grantees. Several commenters requested clarification as to whether a poor performing entity losing its funds would be allowed to compete for the funds it is losing. Another commenter supported the changes to the definitions. One commenter supported the requirement that an entity must have the capacity to administer a multi-state program even if it only operates within one State, but suggested adding the requirement of demonstrated effectiveness in serving the employment and training needs of SCSEP eligible adults.

Because the authorization for a State to compete for national grant funding when a national grantee has failed its performance standards in a State is statutory, the Department can neither forbid a State from competing nor require the state to subgrant with a national grantee. The Department believes that allowing a State to compete for and receive a poor performing national grantee's funding does not change the character of the source of the funding. The funding allocations will continue to be made based on the 78/22 percent split of Federal funds to the national grantees and the State grantees respectively. Thus, the State grantee that receives national grantee funding will continue to receive its formula allocation and will also receive a share of the national funding that is competed.

Regarding the suggestion to augment the requirement of eligible entities to administer multi-State programs with the additional requirement of "demonstrated effectiveness," the Department believes that this additional requirement is already addressed by the eligibility requirements under section 514 of the OAA. Further, § 641.420, discusses factors considered in full and open grantee competitions and specifically mentions "past performance in any prior Federal grants or contract for the past three years." The Department will list other factors that it deems appropriate in the Solicitation for Grant Application or similar instrument.

Although the regulation is clear that a poor performing national grantee in a State would not be permitted to compete for the funds it is losing, the Department believes that should be the extent of the penalty and that the national grantee in a State may still be allowed to compete for other available SCSEP funds. There are two reasons for this determination. First, poor performers within a State are not necessarily poor performers nationwide. Therefore, precluding such a poor performer from competing for other national grant Federal funds may be a disservice to the SCSEP. Second, poor performing national grantees in a State may be able to cure their shortcomings in time for any subsequent competitions.

With regard to State grantees, the agency that performed poorly would be excluded from the competition. As noted in the Preamble to the Proposed Rule, the State remains responsible for receiving the grant and for selecting an agent or subgrantee to operate the grant in accordance with its own procedures.

A commenter requested several language clarifications, including a clarification of the Preamble discussion of "positions that did not receive a proposal." The commenter noted that the reference in the same Preamble paragraph to "national in scope" is a difficult concept. Finally, regarding the use of the phrase "subject of the competition," in § 641.400(b), the commenter observed that there is no previous mention of this concept and suggested that the regulation explain the context of this phrase as being a national competition for replacing the

original grantee, in whole or in part and replace the phrase "If the State's funds are competed" with something else.

The use of the phrase "positions that did not receive a proposal" in the Preamble to the Proposed Rule was intended to acknowledge the possibility that situations could arise in which applicants for national grants did not apply for all the existing positions that are available. Because the statute enjoins the Department to minimize disruption, the Department would have to negotiate with successful grantees to "take" those slots. Similarly, the phrase "national in scope" simply recognizes that a number of current national grantees are organizations that provide services to older individuals nationwide. The Department has revised the second sentence of § 641.400(b) to make clear that the poor performing grantee whose funds are competed is not eligible to compete for those funds.

How Does an Eligible Entity Apply? (§ 641.410)

Section 641.410 provided that the Department will provide application guidelines and instructions which all applicants must follow. Additionally, before submitting an application to the Department, national grant applicants also must submit their applications to the Governors of the States in which they intend to operate (except for those grantees serving older American Indians). The Preamble to the Proposed Rule encouraged grant applicants intending to serve older American Indians to consult with the Secretary of Labor in establishing service areas under § 641.320. States that submit an SCSEP grant application as part of its WIA Unified Plan must also address all of the application requirements published by the Department.

The Department received few comments on this section. One commenter disagreed that a national grantee should be required to submit its entire application to the Governor(s) of the State(s) in which the national grantee will operate when each Governor will only be able to comment on a limited portion of the entire application that relates to the slots in his/her State. The commenter asserted that the definition of "application" should be restricted for purposes of a Governor's review and suggested that the Department provide any additional information to a Governor upon request. Another commenter indicated that the application should be limited to the SF–424 and slot allocation listing with a brief executive summary in order to limit the cost and time involved in providing these applications. Another commenter requested that the regulations mention that grantees serving older Indians must consult with the Secretary to establish service areas. Finally, one commenter suggested adding a statutory or regulatory reference to the specific WIA Unified Plan provision that applies to State applicants.

This section is consistent with the requirements of section 503(a)(5) of the OAA Amendments and accordingly requires grant applications be submitted to the Governor of each State in which a national grantee intends to operate. The Department is not convinced that there is any great benefit to be gained from submitting partial applications in various States, which may involve more work than simply copying the application several times.

Regarding the suggestion to mention grantees serving American Indians consulting with the Secretary to establish service areas, the Department believes that the requirement that Indian-serving grantees submit their application to the Department adequately resolves the issue.

The Department agrees that a reference to the specific WIA Unified Plan provision would be useful. Therefore we have added a reference to WIA section 501. Grantees should note, however, that the Department has other guidance on the WIA Unified Plan that is not referenced here.

What Factors Will the Department Consider in Selecting Grantees? (§ 641.420)

Section 641.420 stated that the factors for selecting grantees are: (1) The criteria listed in the OAA at section 514(c)(1)–(7); (2) the responsibility tests addressed in OAA at section 514(d); (3) the rating criteria in any Solicitation for Grant Application or other instrument; and (4) an applicant's past performance in any prior Federal grants or contracts for the past 3 years.

Several commenters agreed with the Department's use of past performance as a consideration in a full and open competition. Two commenters indicated that past performance should be a heavily weighted factor.

The Department agrees that past performance is necessary to determine a potential grantee's ability to administer an SCSEP grant. The Department does not, however, believe that past performance should be given so much weight that it gives incumbent grantees an unfair competitive advantage.

One commenter suggested that past performance language in § 641.420 be amended to comport with or refer to § 641.400 which speaks to competitions for Federal SCSEP funds "when a national grantee in a State fails to meet its performance measures in the second and third year of failure." Another commenter suggested a technical change to move the first word "criteria" from after the word "eligibility" to after the word "review."

The Department does not believe that a reference to § 641.400 is necessary for two reasons. First, under OAA section 514(e)(3), a poor performing national grantee in a State may, in the second year of failure, have its funding transferred to another organization. Second, the Department does not believe that further reference is necessary. The Department agrees with the technical suggestion and modifies the section accordingly.

What Are the Eligibility Criteria That Each Applicant Must Meet? (§ 641.430)

In § 641.430, the Department described what each applicant must demonstrate in order to be eligible to receive SCSEP funds. The requirements generally mirror the requirements established in the OAA Amendments at section 514(c). They are the ability to administer a program that: (1) Serves the greatest number of eligible individuals with an emphasis on those with the greatest economic need; (2) provides employment in communities in which eligible individuals reside or in nearby communities that contribute to the welfare of the community; (3) moves eligible individuals into unsubsidized employment; (4) moves individuals with multiple barriers to employment into unsubsidized employment; (5) coordinates with other organizations at the State and local levels; (6) effectively plans for the fiscal management of the Federal funds received; and (7) any additional criteria the Secretary deems appropriate to minimize disruption for current participants. Section 641.430(g) added a separate requirement that each applicant must demonstrate an ability to "minimize program disruption for current participants if there is a change in project sponsor and/or location" as well as its plan for minimizing disruptions.

The Department received few comments on this section. Regarding the criteria that grant applicants coordinate "with other organizations at the State and local levels," one commenter questioned how a grantee can effectively coordinate with a One-Stop if the grantee was not geographically near a One-Stop. Other commenters suggested that the Proposed Rule provides no indication that a grantee operating a program that is part of a One-Stop

should comply with the requirements in 29 CFR part 37.

This regulation reflects the requirements of OAA section 512. The Department requires grantees located great distances from any One-Stop or One-Stop Delivery System to, at least, establish some sort of relationship or routine communication with the nearest One-Stop. That relation will usually be detailed in the MOU. Such activity may include the creation of a satellite One-Stop office in the grantee's office or linking of the grantee's office and the One-Stop through appropriate technology. Despite distances, such coordination can foster positive results on behalf of older workers.

The Department agrees that as partners in the One-Stop system, OAA grantees must adhere to the WIA regulations implementing the nondiscrimination and equal opportunity provisions of the Workforce Investment Act. The Final Rule specifically requires adherence to these requirements in § 641.827(b).

What Are the Responsibility Conditions That an Applicant Must Meet? (§ 641.440)

Section 641.440 addressed the 14 responsibility tests, such as exercising fiscal responsibility, that are found in section 514(d) of the OAA Amendments. SCSEP grant applicants must meet these tests in order to avoid being disqualified for Federal funds.

The Department received two comments on this section. The first comment suggested that the section was drafted poorly and appeared to require each applicant to engage in the listed wrongdoings to meet the responsibility conditions. Specifically, the comment referred to § 641.440(m) as making "no sense." The second comment requested that the lead sentence be changed to read "Each applicant must be able to meet the applicable responsibility tests by not having had any of the following apply to its operations." The second commenter also suggested, that in § 641.440(a) the "whether" clause be replaced with "whether incurred by the applicant or one of its subgrantees or subcontractors."

The Department acknowledges that the section does not read well and therefore accepts the recommendations to clarify the wording, namely the redrafting of the opening sentence. The opening sentence to the regulation is revised to read, "Each applicant must meet each of the listed responsibility 'tests' by not having committed any of the acts of misfeasance or malfeasance described in § 641.440(a)–(n) of this section." The Department has also revised § 641.440(a) as suggested. Otherwise, this section is consistent with the OAA Amendments and tracks the statutory language.

Are There Responsibility Conditions That Alone Will Disqualify an Applicant? (§ 641.450)

Section 641.450 provided that an applicant may be disqualified based solely on either of the first two responsibility conditions listed in § 641.440. Those conditions are: (1) The Department's inability to recover a debt from the applicant or an applicant's failure to comply with a debt repayment plan; and (2) significant fraud or criminal activity. The regulation explained that disqualification based on the other responsibility conditions listed in § 641.440 require persistent failure for two or more consecutive years.

The Department received several comments on this section. Four commenters expressed approval and commendation for the implementation of these responsibility tests and the increased accountability they will bring to the SCSEP program. These commenters also suggested, however, that failure to meet the fraud and criminal activity responsibility test should not be absolute (automatic disqualification) when an applicant has developed appropriate safeguards against fraud or criminal activity and "promptly reports an occurrence that does not indicate a significant weakness in internal controls." Other commenters suggested that the section is unclear; that it can be read to say that an applicant may be disqualified if it fails to have an unrecoverable debt or engage in fraud or criminal activity.

This section is clear and consistent with the requirements of section 514(d)(3) of the OAA. The purpose of this section is not to encourage grantees to report their own fiduciary or other responsibility failures, but to assure that grantees will be vigilant in keeping them from happening in the first place. The Department intends to take a much stricter approach than it has in the past in enforcing this provision. Therefore, the section has not been amended except to clarify that the Department will determine the existence of significant fraud or criminal activity and that typically such activities will include willful or grossly negligent disregard for the use, handling, or other fiduciary duties of Federal funding where a grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will typically include coordinated patterns or behaviors that pervade a grantee's administration or are focused at the higher levels of a grantee's management and authority. To be consistent with the OAA section 514(d)(4)(B), this determination will be made on a case-by-case basis regardless of what party identifies the alleged fraud or criminal activity.

How Will the Department Examine the Responsibility of Eligible Entities? (§ 641.460)

In § 641.460, the Department described the general process for examining eligible entities' responsibility and listed some of the materials it will take into consideration.

The Department received one comment on this section. The commenter agreed with the assessment of applicants' responsibility and the use of various related records. The commenter also suggested, however, that the Department should specify what is intended by its possible use of any other relevant information and indicate whether that information may be reviewed by the applicant and whether "due process" would allow the applicant to "challenge the information" and if so, "by what rule."

In examining an eligible entity's responsibility, the Department's use of "any other relevant information" will vary on a case-by-case basis. Specifically, the OAA Amendments, at section 514(d)(2), allow the Department to consider any other information relevant to responsibility, including the applicant's history with managing other grant funds. In order to retain its discretion, the Department will not exactly define what these materials may be or how the Department may use them. To the extent these materials are of a confidential nature or proprietary to some other entity, such materials may not be available to the entity to which they pertain. In any event, an entity will be able to appropriately challenge the Department's actions through the grievance procedures in subpart I if the use of the information leads to any adverse action.

Under What Circumstances May the Department Reject an Application? (§ 641.465)

What Happens if an Applicant's Application Is Rejected? (§ 641.470)

The Department reserved § 641.470 to provide a rule and asked for comments on the remedies that should be available to a nonselected applicant that succeeds on appeal.

The Department received very few comments on this section. The

commenters suggested that if a grant applicant successfully appealed a Department decision to deny SCSEP funds, the applicant should be notified promptly, in writing, with an explanation of the basis of the decision. Further, the commenters suggested that the Department offer information as to what action the entity may take to correct deficiencies and improve its position for future competitions. Another commenter suggested that when an incumbent grantee loses its funding that it should be given notice of the deficiencies in its application and an opportunity to cure.

The Department agrees that any entity whose application is rejected should be provided appropriate and timely notice as well as an explanation of the Department's basis for the rejection. An explanation for the Department's rejection is consistent with current procedures, known as debriefings, which have been the Department's practice for many years. Incumbent grantees, however, will not be given an opportunity to cure in an open competition because that would defeat the purpose of the competitive process. An opportunity to cure would create an inequity in favor of incumbents, which may already have had opportunities to correct deficiencies through technical assistance provided by the Department. Consequently, in accordance with the OAA Amendments at section 514(d)(3) and 514(d)(5), entities whose applications are rejected will not be selected as grantees but will be offered an opportunity for a debriefing which will include an explanation of the Department's decision and suggestions as to how to improve the applicant's position for future competitions.

Under an SCSEP competition, grant applicants are not competing for a grant with which they will serve Older Americans nationwide or in defined areas. Instead, their proposals are specific and seek to provide services to Older Americans only in certain areas of the country that the applicant has chosen to serve and in some circumstances applicants seek to serve certain populations of Older Americans, such as Asian and Pacific Islanders or Indians. In order for SCSEP grant applicants to provide services where they are most able to provide quality services or to serve their target populations, their grant awards are tailored to reflect their specific proposals.

Because this system of awarding grants with disparate service areas tailored to the grantee's organization and abilities results in a patchwork of projects scattered widely across the country, the resulting competition is not for a single defined service area as it is in some other Department of Labor programs. An applicant usually competes against different applicants in different areas. The result of a protest or appeal that results in an Administrative Law Judge's (ALJ) decision to award funds to the appellant is that a number of different grantees in different areas might be displaced. Depending on the timing of the appeal decision, this may have a disruptive effect on current participants and more importantly on current grantees, which could lose so many slots that they cease to be able to operate a viable program. Both because of the nature of the population that the SCSEP serves and because of the services it provides, changing grantees must be handled carefully to minimize disruption to participants. The SCSEP competition is thus unlike the WIA Indian and Native American or Migrant and Seasonal Farmworker (MSFW) programs in which grantees compete for defined service areas and in which the replacement of one grantee with another is less likely to be disruptive because of the nature of the services offered. Because of these differences and the complexities involved, the Department has decided to provide a remedy that reflects the differences in the operations of SCSEP grants. If the Grant Officer decides not to make an award, in whole or in part, because of feasibility, the successful appellant may recover its bid preparation costs, either entirely, if there is no award or proportionately, if the decision not to award only involves a portion of the contested slots.

Section 641.470(c) provides that when an ALJ decides that an appellant should have been selected, in whole or in part, the matter must be remanded to the Grant Officer to decide, within 10 days, whether to award the contested slots to the successful appellant and the timing of the transition, if the Grant Officer decides to make an award. In making this decision, the Grant Officer must take into account the factors of disruption to participants, disruption to grantees, particularly whether the award will leave another grantee with so few slots that it becomes non-viable, and must balance these against the Department's intent to select the best available grantees. The Department has determined that a minimum of approximately 800 slots is necessary for viability; that is, the 800-slot level is necessary to have funding sufficient to properly perform the administrative functions of the grant. Thus, if the effect to an ALJ's decision would be to reduce a continuing grantee's award below the 800-slot level, the Grant Officer may refuse to award those slots to the successful appellant. This situation can occur because of the patchwork nature of the grants, discussed above, so that an appeal may only involve a portion of the slots awarded to a number of different grantees. The Grant Officer must also take into consideration the timing of the decision and assure that any transition minimizes disruption. The Grant Officer's decision will be immediately reviewable by the ALJ. In the event of an award after a successful appeal, the successful appellant is entitled only to the unspent funds remaining in the grant after operational and closeout costs of the prior grantee.

The Department has also added a new paragraph (d), similar to 20 CFR 667.825(c), that puts grantees on notice that the possibility of a successful appeal and a new award is a condition of the grant and that in case of a new award, the Grant Officer will issue transition and closeout instructions.

May the Governor Make Recommendations to the Department on Grant Applications? (§ 641.480)

Section 641.480 provided that each Governor must have a reasonable opportunity to provide comments on the anticipated effect of each grant applicant's proposal on the distribution of positions within the State and provide recommendations regarding the distribution of positions. A Governor's comments should be consistent with the State Plan. Further, the Governor may comment on all the proposals in noncompetitive conditions and may choose whether to comment on certain aspects of all the proposals in competitive conditions before the Department's rating process or afterward only on those proposals that have completed the Department's rating process.

The Department received a few comments on this section. The commenters suggested that the Department should create a clearly defined process for Governors to review and make recommendations on grant applications. Other comments echoed this suggestion by requesting a definition of the term "reasonable opportunity" and wanted it made clear that the Governor's review of an application or proposal is limited to commenting on the proposal's distribution of positions within the State.

The OAA Amendments, at section 503(a)(5), afford Governors who will have SCSEP national grants operating in their States a reasonable opportunity to submit recommendations to the

Secretary. This section is consistent with the statutory requirement and appropriately limits the scope of the Governor's recommendations. The Department sees no need to create a formalized process in this Final Rule for the Governor to develop and submit recommendations. The process will be limited by the Department's timeline in reviewing applications and awarding grants in any given Program Year. The Department may, however, provide additional details in an administrative issuance at the time of any Solicitation for Grant Applications (SGA).

When May SCSEP Grants Be Awarded Competitively? (§ 641.490)

Section 641.490 provided that the Department must hold a competition, as required by OAA section 514, when a grantee fails to meet its performance measures, eligibility requirements, or responsibility tests. Other full and open competitions may occur before the beginning of a new grant period or if additional grantees are funded. The details of the competition will be provided in the Solicitation for Grant Applications announcing the competition.

The Department received many comments on this section. Several commenters disagreed with this section and asserted that, according to the OAA Amendments, the only times an incumbent grantee can lose its SCSEP funding is when it fails to meet the OAA Amendments' responsibility test or fails to meet specified performance goals after implementation of a corrective action plan and technical assistance from the Department. Another commenter indicated that the second portion of this section sounded too much like a policy statement rather than a regulation and suggested that it be eliminated.

The OAA Amendments prescribe a competition when a grantee fails to meet performance measures, but does not limit competitions to that case. The Department is also reserving its right to provide for a competition generally before the beginning of the grant period, and it is not prohibited under the statute from doing so. The Department appreciates the commenter that noted that this section sounded like a policy statement and suggested its elimination, but the Department believes that it is appropriate to discuss the extent of the Department's discretion to provide for competition. The Department favors full and open competition because it provides the Department with an opportunity to ensure that the best applicants are awarded grants and the program is administered to its full potential. It also allows new and different entities to become part of the grantee community and results in better services to the participants.

Another commenter recommended replacing the word "organization" with the word "grantee" in the Preamble and replacing the term "full and open competition" with the term "competitive selection of (national) grantees."

The Department disagrees that the term "full and open competition" should be replaced with the term "competitive selection of (national) grantees." The Department retains this language because it is standard language to describe the competitive process. It is too late to amend the Preamble to the NPRM.

A commenter noted that "[a]lthough the Proposed Rule makes several references to a three-year grant, no information is provided in the Proposed Rule as to how, and under what circumstances, a three-year grant would be awarded" and requested more information in this regard.

The Department does not believe that it is appropriate to have a regulation on when it will award grants for 3 year periods since the decision on the length of the grant is discretionary. Section 514(a) of the OAA provides that the Department may award grants not to exceed three years once regulations have been promulgated and performance measures are established. The Department reserves the right to determine whether it will award grants in excess of one Program Year and will make grantees aware of its decision at the appropriate time.

Subpart E—Services to Participants

Who Is Eligible To Participate in the SCSEP? (§ 641.500)

In § 641.500, the Department stipulated, in accordance with the 2000 Amendments (OAA sec. 516(2)), that anyone who is at least 55 years old and who is a member of a family with an income that is not more than 125 percent of the family income levels defined in the Federal poverty guidelines is eligible to participate in the SCSEP. The Department indicated that a person with a disability may be treated as a "family of one" for income eligibility determination purposes.

There were several comments on this section. Several comments requested clarification of participant residence requirements for eligibility—*i.e.*, are participants still required to live in the State where they are enrolled since "border" residents might be more easily served in a State adjacent to their resident State.

The regulation is based on the statutory eligibility criteria, which do not mention residence. However, the commenters have raised an issue about residence, which needs to be resolved. Because the formula for the distribution of funds among the States is based, in part, on the number of potentially eligible individuals in the State, the basic presumption must be that eligible individuals must be served in their State of residence. In the interests of customer service and in order to more closely align with the WIA system, however, the Department has revised the regulation to authorize States to enter into agreements between themselves to permit cross-border enrollment. Such agreements should cover both State grantee and national grantee slots and must be submitted to the Department.

One commenter noted that the distinction between "enrolled" and "eligible for," although clear enough in regard to any specific individual, is not consistently clear in terms of the services that can be offered by SCSEP staff.

The differences in the services available to those enrolled and those eligible is discussed elsewhere in the regulations and in this Preamble, in particular in §§ 641.535 and 641.550.

Another commenter recommended that all applicants be considered a "family of one" for eligibility purposes, as provided for disabled persons, since "many older persons experience a variety of disabilities as a result of the aging process."

The general rule in determining individual eligibility is to consider family income. The exception for considering a disabled individual a "family of one" is one that is used in many government programs to recognize the barriers that disabled individuals face in the labor market. The Department does not believe it has the authority to extend that exception to all older workers.

Another commenter noted that the 125 percent of family income levels eligibility requirement was "excessively restrictive."

The 125 percent limitation is provided in section 516(2) of the OAA. The Department does not have the authority to increase it.

When Is Eligibility Determined? (§ 641.505)

In § 641.505, the Department indicated that once individuals become SCSEP participants, the grantee/subgrantee is responsible for verifying their continued income eligibility at

least once every 12 months. The Department also noted that grantees may also verify an individual's eligibility as circumstances require.

There were a number of comments on this section. Most recommended that eligibility be re-verified once in a grant year rather than at the anniversary date of each participant. They indicated that this would permit all participants to be notified simultaneously, would lead to other streamlined procedures, and is supported by findings that only a miniscule number of participants are determined ineligible upon recertification. One commenter noted that this procedure is an enormous amount of extra work for a minimal number of changes.

The Department agrees with the commenters that recertifying eligibility once a grant year should be an option for those grantees that wish to use it. The Department believes that the language of the current regulation can be read to permit that option. In fact, the intent of this provision is to permit grantees to choose either to re-verify income on or near a participant's anniversary date or to re-verify all participants at one time during the grant period. Therefore, there will be no change to the regulation.

While there may be some validity in the comment that annual income verification is a lot of work for little result, it is important that the SCSEP serve the people for whom the program was designed: Low-income seniors with barriers to employment. Failing to re-verify income could mean that the program serves ineligibles for potentially long periods of time. The Department believes that the work involved in annual recertification of income is a necessary price to pay for keeping the program focused on providing services to eligible seniors.

What Types of Income Are Included and Excluded for Participant Eligibility Determinations? (§ 641.507)

The Department reserved § 641.507 and sought comments on the types of income that grantees must consider when determining a participant's eligibility. Older Worker (OW) Bulletin 95–5 lists the current inclusions and exclusions for determining a participant's income. The Department specifically sought comments on whether certain categories should be consolidated or eliminated, or if certain rules should be revised or eliminated,—*i.e.*, elimination of the exclusion of the first $500 of a participant's income for recertification purposes, limits on the amount of assets a participant may have to be eligible for the program, and limits on the amount of one-time unearned income that may be excluded.

The Department received many comments about the $500 exclusion. Some commenters said that they rarely used the $500 exclusion and that they did not oppose its elimination. However, the Department received many comments protesting the possibility that the exclusion of the first $500 of a participant's income for initial eligibility or recertification purposes might be eliminated. Many indicated that eliminating the $500 for current and re-enrolled participants would be counterproductive, if not punitive. They argued that the exclusion serves as an incentive for participants to exit the program for unsubsidized employment because it allows them to return if the employment is unsuccessful. Thus, they suggested that without the exclusion, fewer participants would leave the program, which would be contrary to the new emphasis on unsubsidized employment. A number of commenters suggested that if the exclusion is eliminated, that it only apply to new participants, and that current participants be "grandfathered" in. Another commenter suggested more than a 30-day notice period for termination under these circumstances. Several commenters argued that the $500 exclusion permitted grantees to serve individuals who had serious multiple barriers to employment They said that grantees needed the flexibility to meet the SCSEP's goal of serving those most in need. One commenter said that the $500 exclusion was needed because the area in which its program operated was a high cost area.

The law clearly states, at section 516(2), that the income threshold for SCSEP eligibility is not more than 125 percent of the poverty guidelines established by OMB. The Department must enforce the law as written. Nothing in the statute gives the Department the authority to waive the clear statutory income eligibility limit, no matter how arguably worthy the purpose of the waiver. This applies to current participants as well as new applicants.

The Department received many comments relating to the other inclusions and exclusions for determining eligibility. A number of commenters opposed the inclusion of one-time unearned income from the income eligibility criteria, indicating that it would penalize those who had taken lump sum annuities, had received modest inheritances, or had sold their lifelong residences. A number of commenters opposed including savings and assets. Many noted that older workers should not be penalized for having "nest egg" income resulting from a lifetime of savings to cover burial or catastrophic situations. One commenter suggested that the Department should clarify what it considers assets, noting that depending upon the definition, a large number of people the program is supposed to serve could be excluded. There were also comments on the impact of government entitlement programs on income eligibility. A number of comments recommended that a work group of SCSEP practitioners be established to discuss issues related to income inclusions and exclusions.

The Department did not receive any comments proposing the use of established criteria for income eligibility. As specified in OAA section 516(2), eligible individuals are those who have an income not more that 125 percent of the poverty guidelines established by the Office of Management and Budget. The Department has decided to use the U.S. Census Bureau's Current Population Survey (CPS) as the standard for determining income eligibility for the SCSEP. The Department will issue administrative guidance detailing the definitions for the categories of income sources included in the CPS standard, and specifying which of these sources will be included and excluded for purposes of determining SCSEP eligibility.

The Department received a number of comments on the time period to be used to calculate income. All urged the Department to calculate income eligibility by counting applicant income for the most recent three-month period instead of six months. The basis for this recommendation was that this time period "recognizes the severe impact of recent economic conditions and allows the program to intervene before individuals become completely destitute."

The Department will consider these comments as it develops the income guidance.

What Happens if a Grantee/Subgrantee Determines That a Participant Is No Longer Eligible for the SCSEP Due to an Increase in Family Income? (§ 641.510)

In § 641.510, the Department stipulated that upon determination of ineligibility, the participant must be given written notice within 30 days, and terminated within 30 days of receipt of the notice. The regulation further stated that such individuals must be referred to the One-Stop or other appropriate partner program and that they may file a grievance under the grantee's grievance procedure.

Some commenters related the requirement that grantees refer ineligibles to the One-Stop system to the coordination requirements in § 641.210 and suggested that more Department of Labor guidance to the WIA system on how to work with SCSEP grantees is needed to enable the systems to work together. One commenter suggested that the language be clarified to specify that the participant will not be terminated until 30 days after receiving the written notice consistent with § 641.580. Another commenter asked that the Department add "to the extent possible" to the language for those areas that cannot be served by the One-Stop system. One commenter praised the Department for clarifying the former regulations on this issue.

Although the Department appreciates grantees' desire to provide good outcomes to all seniors with whom they come in contact, the funding and eligibility limitations on the SCSEP simply do not permit grantees to provide significant services to ineligible individuals. Thus, under this section, referral to the One-Stop system under which core services, including job referrals for those who are job ready, are available to all who seek them discharges the grantee's responsibility to the ineligible former participant. If grantees have other partnerships, for example, with Area Agencies on Aging, they may provide additional referrals as well.

The Department agrees that §§ 641.510 and 641.580 should provide the same rule. We have revised § 641.510 to read the same as § 641.580(b) and (c)—*i.e.*, "30 days after the participant receives the notice." To be sure that the regulation is entirely clear, we have added an exception requiring the immediate termination for those found ineligible for providing false information to § 641.510.

The Department acknowledges that referrals to the One-Stop system are more difficult if it is not located in their area, and encourages grantees to work as partners by establishing satellite services in areas without current One-Stop access and to establish other partnerships with organizations that may be able to provide services in the area to referred individuals.

How Must Grantees/Subgrantees Recruit and Select Eligible Individuals for Participation in the SCSEP? (§ 641.515)

In § 641.515, the Department required that grantees, to the extent feasible, seek to enroll individuals who are eligible minorities, limited English speakers, Indians, or who have greatest economic needs at least in proportion to the incidence in the population, taking into account their rates of poverty and unemployment. For the purposes of these regulations, these individuals are considered "preference" applicants, consistent with the requirements of section 502(b)(1)(M) of the OAA. The Department views the "preferences" as a way of assuring that certain groups which often face severe barriers to employment are served in proportion to their incidence in the population, taking into account their rates of poverty and unemployment. The requirement to serve preference individuals is not absolute. As made clear in § 641.530, grantees have discretion in selecting non-preference participants. The regulation further provided that grantees must notify the State Workforce Agency of all SCSEP community service opportunities, and must use the One-Stop Delivery System in the recruitment and selection of eligible individuals.

The Department received a number of comments on this section. Many commenters recommended that it is not appropriate to require grantees to notify the State Workforce Agency of all SCSEP community service opportunities because participants are selected based on priority and community service assignments are then developed to meet their needs, not the other way around. One commenter suggested that this requirement is more stringent than section 502(b)(1)(H) of the statute. Two commenters suggested clarification of the final sentence in § 641.515(a) by ending the sentence after the word "unemployment." The remaining comments objected to the mandatory use of the One-Stop system for recruitment, especially in rural areas, and suggested that the term "must" be softened to "should."

The Department believes the intent of the requirement is to list all community service assignments with the State Workforce Agency and all appropriate local offices and to assist with recruitment efforts in locations that have difficulty finding eligible participants. The Department has revised this section to more closely track the statute's requirements, specifically the requirements of section 502(b)(1)(H) of the OAA and more generally with the statute's emphasis on coordination with the One-Stop system. Grantees must bear in mind that the 2000 Amendments require much closer coordination with the WIA system than was previously the case. The nature of this coordination is, of course, subject to negotiation in MOUs. Beyond these requirements, grantees have a great deal of flexibility to determine how to recruit and select individuals and are encouraged to be as creative as possible, especially in rural areas. The Department has revised the final sentence in § 641.515(a) as recommended. We have retained the word "must" in paragraph (b) because it is consistent with the coordination requirements of the Act.

Are There Any Priorities That Grantees/Subgrantees Must Use in Selecting Eligible Individuals for Participation in the SCSEP? (§ 641.520)

In § 641.520, the Department delineated the order of priorities that grantees must use in selecting eligible individuals consistent with the requirements of OAA section 516(2) and the Jobs for Veterans Act, Public Law 107–288 (2002).

The Department received several comments on this section. All were concerned about the interplay between these priorities and the preferences delineated at §§ 641.515 and 641.525. Some commenters recommended the elimination of priorities and preferences, stating that they were an administrative burden, that they discriminated against their primarily female (non-veteran) population, and that priority should be given to those having the greatest need, regardless of how they fit into particular categories. One commenter suggested that there may be situations in which non-veterans and/or 55-year olds who are not eligible for Federal benefits are needier than veterans and/or those who are 60 or older. Another commenter asked that the distinctions between priorities and preferences be more clearly defined. Other commenters asked for further guidance and clarification to help design application and information collection methodologies that might conflict with ADA requirements. The remaining commenters stated that the priority and preference requirements were contrary to the new unsubsidized employment performance measures.

These priorities are statutory requirements. Grantees must abide by them. Grantees must apply the preferences delineated in §§ 641.515 and 641.525, to the extent feasible, when selecting individuals within or outside the priority groups. The Department is providing grantees/subgrantees with the flexibility to exercise their judgment when they determine that a non-preference eligible individual should receive services over a preference eligible individual. Grantees concerned about the effect of the priorities and preferences on performance measures also should be aware that "the number of persons served, with particular consideration

given to those in the preference categories" is also a mandatory performance measure. As will be discussed in more detail in subpart G, the Department intends to design the performance measures to take operational realities into account. In designing the performance measure, the Department will take into account the statutory instructions that preference groups be served "at least in proportion to their numbers in the State" and that in deciding how to serve these preference groups grantees "take into consideration their rates of poverty and unemployment."

Some commenters asked for more detailed guidance on the operation of the priorities and preferences. The Department believes that the operation of the priorities is fairly clear in the regulation, but will consider issuing administrative guidance on the operation of the preferences if needed.

Some guidance can be supplied in response to some specific comments. One commenter asked whether a person with a high priority gets served first even if the individual has no access to transportation, has little "job interests" or desire to comply with program requirements.

There is no absolute answer to this question. A grantee is not required to provide service to a person who cannot take advantage of the available service or who is not interested in receiving the service or who will not abide by the program's rules. On the other hand, the SCSEP, through the assessment and IEP process, focuses on helping individuals with barriers to employment to overcome those barriers. Transportation is a supportive service that grantees may provide to assist participants who live in remote places to participate in the program. In the process of developing a participant's IEP, a grantee should work with the participant to develop possible assignments to meet the participant's interests and to refine those interests. Similarly, the IEP process should clearly explain to a participant what the rules are and work with the participant to help him or her adhere to the rules.

Another commenter said that it served all individuals who sought service and that it has no waiting lists.

If the grantee is making reasonable outreach efforts to recruit those individuals who are in the eligible population and it provides services to all individuals who are eligible for the program, there is no need to apply the priorities and preferences.

Are There Any Other Groups of Individuals Who Should Be Given Special Consideration When Selecting SCSEP Participants? (§ 641.525)

In this section, the Department delineated categories of persons to whom special consideration must be given, to the extent feasible, in selecting eligible participants.

The Department received several comments on this section. Most asked for clarification of the term "poor employment prospects." One comment noted that the first sentence of § 641.525 should be corrected to eliminate the word "to" immediately before "special consideration."

The Department provides a definition of "poor employment prospects" in § 641.140. The definition is derived from the prior regulation. The Department will issue administrative guidance on how to calculate the number of persons served with poor employment prospects for performance standards purposes. The Department has made the editorial correction in § 641.525. We also added a reference back to § 641.515 for "preference" individuals.

Must the Grantee/Subgrantee Always Select Priority or Preference Individuals? (§ 641.530)

This section provided that grantees must adhere to the priorities in § 641.520 and must apply the preferences in § 641.525 to the extent feasible but may in certain circumstances select a non-preference individual over a preference individual. The regulation also provides that the Department may ask for evidence that the grantee is adhering to the priorities and preferences when examining participant characteristics. There was one comment on this section that asserted that "preferences to be applied within priority groups should not be qualified to the extent feasible," and that "available community service employment opportunities" should play no part in the application of preferences.

It is the Department's intent to provide grantees with the flexibility to exercise their judgment when they determine that a non-preference individual receives services over a preference individual, factoring in the characteristics of the individual and the availability of appropriate community service opportunities. The Department believes that the language of the regulation properly communicates the existence of and extent of the discretion available to grantees and has not changed the regulation as suggested. The phrase "to the extent feasible" comes from the statute. It is generally true that grantees should seek to create community service opportunities to meet the needs of eligible individuals. However, from a recruitment perspective, grantees may also seek to match the needs and abilities of eligible individuals to those community service opportunities that are available.

What Services Must Grantees/Subgrantees Provide to Participants? (§ 641.535)

In proposed § 641.535, the Department outlined the various services that grantees and subgrantees must provide to participants. The Department received a large number of comments on this section, which focused on the following three issues: Paragraph (a)(2), which proposed quarterly assessments by providers, and paragraph (a)(3), which proposed corresponding quarterly updates of participants' IEPs; paragraph (a)(14), which required follow-up with participants who have transitioned into unsubsidized employment to make sure they receive any needed follow-up services; and paragraph (c), which prohibited using SCSEP funds on stand-alone job clubs or job search activities.

In their comments on the paragraphs (a)(2) and (a)(3), the commenters were virtually unanimous in opposing quarterly assessments and updating of IEPs, though one commenter noted that it is an excellent objective. Various commenters stated that quarterly reviews will serve no practical purpose; they will not increase the quality of participant services; they will be more costly; and they will require more resources in staff and transportation time, especially where participants are scattered across wide geographical areas. One commenter stated that the logical time for assessments and updating of IEPs is at the beginning of the participant's enrollment and just before the job search begins in earnest. Several commenters stated that paragraph (a)(13), which requires assessment of the participant's progress in meeting the goals of the IEP as necessary, provides adequate regulatory guidance, eliminating the need for paragraphs (a)(2) and (a)(3).

A number of commenters stated that annual reviews at a minimum are adequate, and several suggested that the Department encourage periodic reviews as necessary when participant needs change, stating that this would provide needed flexibility to the process. As one commenter noted, "Short term goals might require reassessment within a month, while longer term goals might

not be fulfilled for several months." Several other commenters suggested a six-month reevaluation, if closer spacing between evaluations is desired, and one commenter noted that developmental steps for many participants are often not completed in three months.

Several comments spoke to the differences between participants who only wish to stay in their community service assignments and those for whom unsubsidized employment is a goal. One commenter suggested that assessments and IEPs should be updated more frequently for participants whose goal is unsubsidized employment. Another said that specific language is needed with respect to whether community service is an acceptable IEP employment goal; if so, the commenter believed that there is no need for IEPs.

A commenter inquired about the purpose of quarterly assessments, and another stated the opinion that updating IEPs quarterly is based on standardizing the regulations with WIA. A commenter stated that quarterly updates are not in the best interests of the people served, and another expressed the view that time spent on quarterly assessments could be better spent on job development, recruitment and placement efforts. Another commenter stated that a requirement for quarterly assessments "increases pressure to simplify and shorten assessments in order to reduce the time and expense needed to administer them resulting in a reduction in overall quality and effectiveness" and "increases pressure to eliminate assessment tools and services currently used, but too costly if done for each participant quarterly."

The Department agrees with the commenters that an absolute requirement for a reassessment every quarter may be too costly and of little benefit. The Department remains concerned that the participant's IEP be a living document that is changed as the participant's needs and circumstances change and as the goals of the IEP are reached. We have, therefore, revised paragraphs (a)(2) and (a)(3) to make clear that grantees are expected to treat the assessment/IEP process as a living process and must conduct assessments and update the IEP as necessary but no less frequently than twice in a 12 month period. We have revised paragraph (a)(13) to more closely track OAA section 502(b)(1)(M)(iii). In addition, we strongly encourage the good practice of updating assessments as necessary, as a standard time for conducting an assessment may not meet the needs of certain individuals. More frequent assessments also foster better relationships with participants.

In § 641.535(a)(14), the Department proposed that grantees must follow up with participants placed into unsubsidized employment during the first six months of placement to ensure that they receive any necessary services.

Two commenters stated their appreciation at being able to spend program funds to foster job retention, while another noted that there are not sufficient funds in the program to do so. The latter commenter also expressed concern that some participants might consider the six-month time period an entitlement, whether the participant needed services or not. Finally, a commenter asked whether SCSEP funds could be expended to ensure that a participant is still employed at the six-month mark and that any identified services are being provided.

The Department recognizes that, given the funding limitations in the SCSEP, grantees will not be able to provide all needed supportive services, whether for current participants or for follow-up services, from grant funds. The Department does not view these services as a requirement or an entitlement. Rather, they are an important adjunct to obtaining successful results for participants. Grantees must be creative in using their connections to the One-Stop and to other programs to arrange for needed support or follow-up services. The issue of expending SCSEP funds to ensure that a participant is still employed at the six-month mark and that any identified services are being provided is addressed below in § 641.555.

In § 641.535(c), the Department proposed that "Grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services." A number of commenters opposed this change, while two supported it.

Several commenters noted that it is difficult for seniors to look for work, due to such factors as depression, lack of self-confidence, and lack of motivation. On a practical note, a commenter asserted that it is hard to identify job-ready individuals before they are enrolled because they will not yet have been assessed. Two commenters stated that they do not favor requiring participants to take community service assignments just so they can obtain job club/job search services.

Two commenters stated that job clubs and soft skills training should be considered training since they include classroom instruction, lectures, and seminars. They argued that such soft skills training, which is tailored to seniors, is not provided by the One-Stops. Other commenters stated that often One-Stops depend on SCSEP to provide soft skills training to seniors, and that which entity provides such training in a given locale can be the subject of negotiations and the resulting MOU. Several commenters noted that the effects of not providing stand-alone job search/job referral assistance would be magnified in rural areas, where One-Stop services are often at great distances. One commenter recommended expansion of counseling and job readiness training.

With respect to interactions with potential employers, one commenter noted that networking and word-of-mouth are the sources of many referrals. This provision will "negatively impact our ability to help older workers obtain jobs and employers from obtaining suitable help." Another commenter stated that "[w]ith the emphasis on placing older workers into unsubsidized jobs, losing this valuable service would be not only detrimental to the participants, it would be counter to the goals" of the SCSEP program. Another commenter noted that job search and job club activities provide the flexibility needed to bridge gaps between workers and employers.

One commenter stated that this provision should be removed or the unsubsidized placement goals for SCSEP should be lowered to reflect this change, while another recommended deletion of this provision because its inclusion makes the work of the grantees more challenging with respect to meeting performance measures and makes it impossible to meet unsubsidized placement goals, thus risking sanctions and loss of funds. Another commenter recommended that "DOL allow SCSEP, in some limited way, to provide job search and referral assistance and be able to count it." Another commenter stated that it would impair her agency's role as advocate of all older workers if it can't help all older workers get unsubsidized jobs and take credit for successes.

Of those who agreed with the proposal, one suggested "that the Department provide some latitude regarding this restriction," especially where One-Stops are geographically inaccessible. Another commenter recommended that the Department include in § 641.560 language similar to that in § 641.535(c).

The intent of this rule is to assure that grantees concentrate their efforts and limited funds on providing community service work assignments to those older workers who are most in need and who are enrolled in the program. The Department does not consider job search

and job referral activities to be training per se. Job search, job club, and job referral activities are available from a variety of sources in the One-Stop system. The Department sees no need for SCSEP grantees to duplicate those services.

A number of SCSEP providers are offering job search and job referral services to seniors based on agreements with One-Stops. As noted in the Preamble to the NPRM, SCSEP providers who are working within the One-Stop framework can continue providing the agreed-upon services, both to SCSEP participants and to those who are not enrolled in the SCSEP. Those SCSEP providers that wish to address services to rural populations in particular may wish to address this issue in their MOUs with the One-Stops. If SCSEP grantees take on these activities, particularly if they do so for older workers generally, they should make appropriate financial arrangements in the MOUs. They should be compensated for their services by reducing their contributions to the One-Stops.

Finally, grantees are not prohibited from conducting job club and job referral activities for enrolled participants. We have added a sentence to § 641.535(c) to make this clear. However, individuals who are not enrolled (*i.e.*, are not assigned to community service positions) cannot be counted as unsubsidized placements. This is because unsubsidized placements are based on authorized positions, which require legitimately enrolled individuals. This policy is a long-standing element of program operations.

With respect to the recommendation that the Department add language similar to that in § 641.535(c) to § 641.560, we believe that the language in § 641.535 is sufficient.

What Types of Training May Grantees/Subgrantees Provide to SCSEP Participants? (§ 641.540)

In proposed § 641.540, the Department outlined the kinds of training that may be provided to SCSEP participants. Commenters raised five main issues. The first issue was whether community service in and of itself is to be considered training.

Historically, grantees have framed community service in terms of training to encourage participants to look beyond community service assignments toward unsubsidized employment. That is a valid approach when feasible and is strongly encouraged. The training aspects of a community service assignment should be reflected in a participant's IEP. The kinds of training envisioned in this section, however, are those that occur outside of the community service assignment. For clarity, a second sentence has been added to paragraph (a): "This section does not apply to training provided as part of a community service assignment."

Several commenters raised a second issue. They recommended modifying the language of § 641.540(a) to say that training "should, when feasible" rather than "must" be provided, given limited resources and the difficulty of providing training in a rural location.

The Department believes that these commenters misunderstand the intent of the Proposed Rule. The rule requires that when grantees provide training, the training be "realistic and consistent with the participants' IEP," not that grantees provide training in all cases. The rule is intended to reinforce the program's assessment and IEP requirements. We have added language in paragraph (a) to make clear that the rule applies when grantees are providing training to a participant.

Commenters suggested that training also be permitted as part of private employment, and not just community service, to allow for greater flexibility and better service to participants.

The Department is developing guidance on innovative ways to expand the permissible on-the-job training and work experience activities listed in the rule at § 641.540(c).

Commenters raised an issue about whether wages may be paid while participants are in training.

The answer to this question is yes. We have added the statement "Participants may be paid wages while in training" to paragraph (f).

Several commenters asked if participants are limited with respect to the number of hours they may engage in training.

There are no limitations on the number of hours in which participants may engage in training other than those that may be imposed by needs reflected in the IEP.

Finally, one commenter asked whether training provided by other sources than grantees or subgrantees could be considered required training, or whether that term must be reserved for training provided through the SCSEP.

Training provided by a One-Stop Center or any other source would be considered required training and § 641.540(e) encourages grantees to seek training from the One-Stop and other locally available resources. In addition, paragraph (h) allows for "self development training available through other sources during hours when not assigned to community service activities."

We also have substituted the word "pay" for "reimburse" in § 641.540(g) to make it clear that grantees are not expected to make participants initially pay the costs of travel or room and board themselves.

What Supportive Services May Grantees/Subgrantees Provide to Participants? (§ 641.545)

Proposed § 641.545 listed various supportive services that may be provided to participants. Commenters noted that funds for supportive services are quite limited and another noted that at least some of the specified services are quite expensive. One commenter also inquired to what extent a project is required to provide these services, and to what extent this decision should be made at the project level. Other commenters questioned how funds can be spent to support employees placed in unsubsidized employment and, more specifically, how auditors would view such expenditures.

To meet the needs of the seniors the SCSEP serves, grantees must make every effort to provide them the supportive services they need to be able to participate in their community service assignments. The Department recognizes that SCSEP grantees will not be able to provide all needed or desirable supportive services with grant funds. This regulation addresses this concern in two ways. First, it states that such supportive services may be provided. Secondly, paragraph (b) states that, where possible, grantees should use other resources to provide these services first. The Department agrees that the decision about what kind of supportive services to provide and how to provide them in a decision to be made on a case-by-case basis by the grantee or subgrantee. But the Department expects grantees and subgrantees to make every reasonable effort to provide participants with the supportive services provided for in their IEPs. To the extent that it is possible for a grantee to provide supportive services through other programs or resources, concerns about expenses and audits would not arise, as the costs would be borne by other organizations and thus no auditable SCSEP funds would be involved. As to funds spent by grantees for follow-up services, the statute permits such expenditures in section 502(c)(6)(A)(iv) as allowable services which should resolve any questions that auditors may raise. Grantees may provide follow-up for up to 6 months

after an unsubsidized placement, which allows grantees to ensure retention in the program as required in subpart G of this part.

What Responsibility Do Grantees/Subgrantees Have To Place Participants in Unsubsidized Employment? (§ 641.550)

In § 641.550, the Department proposed that grantees "make every reasonable effort to prepare participants who desire unsubsidized employment for such employment."

Several commenters addressed this section. Two commenters stated that some participants will want to remain in community service assignments indefinitely, and one noted that participants may have barriers that will make unsubsidized employment difficult if not impossible to obtain. A commenter recommended that "[i]f participants can elect community service as their goal, they should not be factored into the placement goal population."

Two commenters stated that the goal for all participants should be unsubsidized employment. One commenter noted the omission in the Proposed Rule of § 641.314 of the prior regulations, which states that "grantees shall employ reasonable means to place each enrollee into unsubsidized employment," and recommended that this language be inserted in the Proposed Rule.

As to the question of whether unsubsidized employment should always be a goal, it is the Department's view that the statute provides for the dual goals of community service and unsubsidized employment. While we acknowledge that some participants may desire to remain in community service placements indefinitely, the Department believes it to be the best practice to inform participants when they enter the program that the community service position is a not a job, but rather a training opportunity to obtain skills towards placement in an unsubsidized job. Should grantees wish to make unsubsidized employment a goal for each participant or move participants out of the program after a specified period of time, they must obtain the Department's approval as required in § 641.570.

As to whether participants whose goal is community service and participants whose goal is unsubsidized employment should be tracked separately for purposes of performance evaluation and time limitations in the program, the Department believes that it would be very difficult to maintain two tracking and reporting systems. Participants may well move from one group to the other, complicating record-keeping considerably.

A commenter asked whether participants without a goal of unsubsidized employment could be exempted from the time limit in § 641.570.

Since § 641.570 does not establish a time limit, but merely authorizes grantees to do so with the Department's approval, the Department sees no need to exempt participants from it.

A commenter observed that employer education and job development are crucial to placements in unsubsidized employment, and urged that the regulation further emphasize the need for collaboration with the One-Stop Center. Another commenter suggested that the proposed regulations "[p]romote the increase of coordination with employers and private businesses in the area to increase the ratio of applicants to jobs."

The Department agrees that employer education and job development are crucial to placements in unsubsidized employment. We believe that the regulation adequately addresses this issue and have made no changes in the Final Rule.

The Department also is engaged in outreach activities to employers to make them aware of our program and the benefits of utilizing older workers.

What Responsibility Do Grantees Have to Participants Who Have Been Placed in Unsubsidized Employment? (§ 641.555)

Proposed § 641.555 required grantees to contact participants within the first six months of unsubsidized placement to ascertain if they need supportive services, and at the six-month mark to determine whether the participant is still employed.

One commenter commended the six-month follow up requirement. Two commenters stated that they consider this requirement an unfunded administrative burden, and another asked how program money (for supportive services) can be spent on individuals who have left the SCSEP program.

Two other commenters stated that this section is redundant and should be removed on the basis of their comments on §§ 641.140 and 641.525, which address the propriety of information collection and administrative burdens imposed by such requirements.

Two commenters noted the difficulty of obtaining information from employers. One commenter observed that "[i]f the grantees are going to be allowed to use wage records to verify continued employment, the reporting agencies should be mandated to provide this information to the grantees."

With regard to the concern about administrative burden, the Department believes that the burden—which in most instances will consist of making one or two telephone calls—to be minimal. Neither of the comments discussing redundancy addresses the information that is the subject of this section. With respect to obtaining information from employers, the Department notes that no data collection beyond verification of unsubsidized employment is contemplated. We will provide additional guidance on how to determine retention in unsubsidized employment in the reporting instructions for the performance measures.

The Department also recognized that grantees may have other follow-up requirements deriving from the performance measures, such as the earnings increase measure, or other reporting requirements. Therefore, the Department has added the following sentence at § 641.555(c): "Grantees may have other follow-up requirements under subparts G and H."

Supportive services, which are described in § 641.545, may be provided to individuals who have left the program. Section 502(c)(6)(A)(iv) of the OAA allows grantees to provide supportive services for follow-up activities. Also, the Department believes that the introduction of a 6-month retention performance measure provides the authority for grantees to spend grant funds to assist participants who have been placed in unsubsidized employment to retain that employment and to determine whether they meet the retention measure. Grantees may pay for these services through use of program funding under the "other participant costs" category. Decisions to pay for such services should be made locally and on a case-by-case basis, depending on the needs of the participant. Since funds in this category will be limited, grantees should be judicious in their spending for this purpose and clear in their criteria for making such expenditures.

May Grantees Place Participants Directly Into Unsubsidized Employment? (§ 641.560)

In § 641.560, the Department proposed that participants who are ready for placement in unsubsidized employment be referred to One-Stop Centers for appropriate services. This provision furthers the regulations' overall emphasis on the SCSEP's mission to serve those who are most

difficult to place and to coordinate with the One-Stop System. Commenters raised a variety of issues that centered on the relative merits of One-Stops and SCSEP grantees with respect to older workers; customer service considerations with respect to both participants and employers; and performance measures.

With respect to the One-Stops, some commenters see them as variable in quality, and as not always considering service to seniors a priority, which results in the older workers having difficulty accessing the necessary services. A commenter noted that referring rural candidates to distant One-Stops would represent a hardship for the participants.

A commenter noted that in some cases the One-Stops refer seniors to the SCSEP program for services, as the SCSEP providers will have the "time, patience, and knowledge" to provide the necessary services, and if the One-Stops are to fill this role, they will need education about the special characteristics and needs of seniors. Commenters suggested that referrals to One-Stops be made in situations where the SCSEP is unable to meet the needs of the participants.

Other commenters expressed the view that placement by the SCSEP in an unsubsidized slot would be quicker and represent better customer service for both the participant and the business than referral to a One-Stop, and that seeing such placements occur within the SCSEP program can also be a morale-booster for other participants. They noted that SCSEP providers often work hand-in-hand with potential employers to develop unsubsidized placements benefiting both parties as well as the participants in a complementary process that will be lost if this section is implemented. One commenter pointed out that referring participants to private sector jobs and counting the referrals as placements "makes good business sense, is cost effective, and gets results. This is good use of taxpayer dollars."

Some commenters were concerned with the effect of the rule on performance results. They stated that the grantee should be able to take credit for those referrals as placements, especially given the emphasis on serving those most difficult to place. They cautioned that the emphasis on serving the hardest to serve would put grantees at a disadvantage in meeting performance standards, since the remaining participants would have the lowest skills and the greatest need for training.

One commenter suggested that dual enrollment might be used in some cases, allowing both the One-Stop and the SCSEP to take credit for the placement, and another suggested that credit be given under "other services provided." The commenter also stated that "this regulation could result in an increased workload for title V providers in that it seems to require a much more intensive intake process than normal just to determine initial eligibility and make appropriate referrals. Also, this regulation does not allow title V providers to work with participant (sic) who need training, but not community placements."

The 2000 Amendments changed the SCSEP in a number of ways. One of the most important changes was the requirement for coordination between the SCSEP and the WIA and the One-Stop system. This requirement appears in several places in the OAA, in sections 502(b)(1)(O), 502(b)(4), 502(c)(4), 503(b)(2), 505(c)(1), 510, 512, and 515(c)(5). Section 641.560 acknowledges the coordination requirement. It also reemphasizes, as do several of the other provisions of this rule, the SCSEP's focus on serving those most in need. It is important to recognize that the SCSEP is not a general-purpose employment program for seniors. Rather, it is a program to place seniors who have serious barriers to employment in community service assignments which, combined with training and supportive services, may lead to unsubsidized employment.

For these reasons, the Department believes that § 641.560 places a proper emphasis on coordination and service to the intended beneficiaries of the SCSEP. It is important to note, however, that the regulation is not phrased in mandatory terms. It is intended to serve as a reminder to grantees and subgrantees of the need to coordinate with the One-Stop system and to assign each its proper role. The regulation does not forbid SCSEP grantees from providing placement services for participants. Because of the limited funding available for placement services, the regulation encourages grantees to use the services already available from the One-Stop to provide these services. The Department recommends that the assignment of placement responsibilities be set out in the MOU with the Local Board. As provided in § 641.220, however, grantees may not spend SCSEP grant funds to provide services, including placement services, to ineligible individuals.

A number of commenters were concerned about the effect of § 641.560 on performance measures. As discussed previously and in subpart G, the Department intends to design the performance measures to take into account any changes in grantee operations that the new statutory requirements may engender. Whether by providing dual credit for referrals, by defining the cohort of participants against whom the placement is measured, or by some other means, the Department intends to design the performance measures to reflect, as closely as possible, actual grantee experience and performance. However, the practice of counting the placement of ineligibles or individuals who have not been enrolled in SCSEP as placements will not be continued in the performance measures.

What Policies Govern the Provision of Wages and Fringe Benefits to Participants? (§ 641.565)

In § 641.565, the Department described the policies governing the payment of wages and the provision of fringe benefits in this section of the regulation.

The Department received several comments on this section. A number related to situations in which the State's minimum wage exceeds the Federal minimum wage. Some commenters commended the Department for acknowledging in the Preamble to the NPRM that grantees cannot fill the authorized level of positions allotted to them when their State minimum wage exceeds the Federal minimum wage and for stating that it would adjust performance measures to take that factor into account. Commenters suggested that the allocation of positions among the States be based on the State minimum wage in such instances or that additional funding be provided to States with higher minimum wages.

As stated in the Preamble to the NPRM, it is the Department's intent to take a higher State minimum wage into account when setting performance measures. The formula for allocating funds among the States is set in section 506 of the OAA and is based on the "cost per authorized position," which is defined by reference to the Federal minimum wage. Because of that definition, the Department cannot adjust the allotment of funds or positions among the States because of differing minimum wages. What it can do is take the higher minimum wage into account when setting the levels for performance measures. The Department appreciates commenters' support of the regulation on the uses of SCSEP funds for unemployment insurance or pension contributions.

A commenter commended the Department's position on restrictions on using grant funds to pay the cost of unemployment insurance for participants or to contribute to retirement funds; another commenter asked for a complete prohibition against such uses of funds. The Department concurs with the comments relating to the use of grant funds to contribute to retirement funds, and has changed the rule to indicate that grant funds may not be used for this purpose under any circumstances. Given that the SCSEP is more focused on unsubsidized employment rather than long-term participation in community service, providing retirement benefits is inconsistent with the new goals of the program. In addition, the Department believes that the cost benefit ratio no longer favors this kind of expenditure with limited funds.

The Department does not have the authority to override State unemployment compensation laws and so cannot prohibit the use of grant funds for unemployment compensation in States that require coverage.

There were comments on § 641.565(b)(1)(ii)(A), relating to physical examinations for participants and compliance with the Health Insurance Portability and Accountability Act (HIPAA) requirements, and asking the Department to recognize that it was appropriate to ask a participant returning from worker's compensation to obtain a "fitness to work" release from his or her personal physician.

SCSEP grantees would not be constrained by the requirements of HIPAA. The physical examination provision presents no issue concerning voluntary disclosures to grantees by participants. The results of the physical examination are to be reported to the participant and are not required to be disclosed to the grantee. Also, grantees are not HIPAA-covered entities.

The Department has no authority to require participants returning from workers' compensation to obtain a "fitness to work" release. That is a matter to be resolved by grantees' and host agencies' policies, taking into account applicable antidiscrimination laws.

Is There a Time Limit for Participation in the Program? (§ 641.570)

Section 641.570 provided that, although there is no time limit on participation in SCSEP, grantees may establish one with the Department's approval. If the grantee chooses to establish a time limit, it must provide for a system to transition the participant into unsubsidized employment or other assistance before the end of the specified period. In the Preamble to proposed § 641.570, the Department stated that the regulation provides that there is no time limit for participation in the SCSEP program, but it anticipates that most participants will spend no longer than two to three years in the program.

The Department received a variety of comments, with several organizations opposing the Department having any expectations about time frames. One commenter thought that time limits are unreasonable because assistance other than unsubsidized employment is not likely to be forthcoming. Another thought that the two-to-three-year expectation should be removed because some individuals will never be able to move on to unsubsidized employment and it is not fair to treat differently those who can from those who cannot. Still another commenter was wary of stating expectations at all for fear they would be considered entitlements.

One commenter felt that an SCSEP provider would lose the respect of the participants if it imposed "arbitrary" time frames and recommended that "[i]f time limits are truly beneficial, they should be mandatory. However, the time limit should be five to seven years rather than two or three years." Another advocated a time limit for those under 70 years old, but not for those older, since the older group faces discrimination barriers that the younger group does not.

Another commenter noted that some individuals are quite content with their subsidized placements and that a rotation system and time frame would be useful for those who are capable of moving into unsubsidized employment, with waivers available for those who need more time or who cannot make the transition. Another commenter suggested exemptions for participants who are assigned to work with/for the grantee itself.

Finally, one commenter noted that this provision does not address how much time must elapse before a former participant of one program may be "picked up" by another SCSEP in the area.

The regulation is clear that there is no requirement for grantees to establish time limits on enrollment. Whether to establish time limits, and the duration of and conditions under which the time limits will be administered, is a matter for the grantee to determine. The Department must, however, approve any time limit policy. The "expectation" stated in the Preamble to the NPRM is just a guideline. The Department believes that the language of this section provides sufficient flexibility for grantees to adopt or not adopt time limitations that fit their circumstances.

The regulation neither prohibits nor imposes any time limit for an SCSEP provider from picking up a former participant of another SCSEP provider in the same area.

May a Grantee Establish a Limit on the Amount of Time Its Participants May Spend at Each Host Agency? (§ 641.575)

In § 641.575, the Department proposed that a grantee may set limits on how long participants may remain at a host agency, as long as the Department approves and the limits are noted in participants' IEPs.

All but one commenter opposed this provision. The commenter that favored this provision stated that grantees must set a fair policy and participants should be made fully aware of the parameters before they begin participation.

One commenter stated that "[i]t would be better to establish separate tracks for participants choosing community service and for those choosing employment. Slots should be reserved (perhaps on a 50/50 basis) for each track and new enrollments would be based on the applicant's goal." This commenter also predicted that terminations of enrollment based on time frames would lead unemployment insurance costs to rise, and suggested funding that extends beyond the Program Year for this purpose.

Section 641.575 is simply an authorization for grantees to adopt a rotation policy; it is not a requirement. Several commenters who opposed this provision seem to have interpreted it more generally than intended, *i.e.*, as relating to participation in the SCSEP program as a whole, rather than to the amount of time spent at a particular host agency. Many grantees find that setting time limits at host agencies is advantageous because participants thus do not become comfortable in their community service assignments and do not view their community service assignments as an entitlement. Also, rotation to various host agencies may help an individual acquire new and/or marketable skills that will also lead to an unsubsidized placement. It also serves to prevent maintenance of effort violations with host agencies. As with the previous section, however, this provision represents an option, not a mandate. The Department does not believe that any changes to this section are needed. Grantees should take unemployment insurance costs into account in deciding whether to adopt a rotation policy.

Under What Circumstances May a Grantee Terminate a Participant? (§ 641.580)

This section delineated rules for terminating participants: (1) The bases for termination; (2) the procedures for informing the participant of the reasons for termination; (3) the requirement to be consistent with the Department's administrative guidelines, including appeal rights, and (4) the prohibition against termination solely on the basis of age.

We received several comments on this section. Several commenters recommended that additional examples be cited. Another suggested that the Department identify benchmarks (*i.e.*, specific numbers) to define the term "reasonable" as applied to refusal of job offers. One commenter suggested that in the circumstances defined under § 641.580(a), the grantee or subgrantee must immediately terminate the participant.

Additional examples of circumstances that warrant termination will be provided in administrative guidance. The Department chooses to defer to the discretion of the grantee to determine what constitutes a "reasonable" number for refusals of job offers. The Department has modified § 641.510 to provide that grantees or subgrantees must immediately terminate participants who provided false information for eligibility purposes and has added the word "immediately" to § 641.580(a) as well.

Are Participants Employees of the Federal Government? (§ 641.585)

Proposed § 641.585 provided that SCSEP participants are not Federal employees, but that where a grantee or host agency is a Federal agency, § 641.590 applies. One commenter opposed this provision on the basis that the definition of employee status should derive from Federal law for the sake of uniformity.

The OAA, at section 504(a), clearly states that SCSEP participants are not to be considered Federal employees.

Are Participants Employees of the Grantee, the Local Project and/or the Host Agency? (§ 641.590)

Proposed § 641.590 provided that the grantee must consult with an attorney to determine whether its workers are employees of the grantee, the local project, or the host agency.

Commenters had a variety of objections to this provision. One commenter opposed classifying participants as employees of the grantee, since grantees cannot provide the level of supervision normally envisioned in an employer-employee relationship, and another opposed classifying participants as employees of either the grantee or the host agency. One commenter noted that participants are employees in some respects (*e.g.*, payroll matters) but not in other respects (*e.g.*, employment discrimination). Another commenter argued that, if participants are classified as employees, State employment laws may be brought to bear, and this perspective is not appropriate for SCSEP participants.

Two commenters stated that hiring attorneys is too costly and suggested that the Department obtain a blanket determination from the Internal Revenue Service (IRS) regarding whether SCSEP participants are employees. A commenter suggested that the Department make "an affirmative statement that enrollee participants are not employees of SCSEP grantees," and another commenter noted that in the past, appropriations language has addressed this ongoing issue.

The statute is silent on participants' status as employees, with the exception of stating that participants are not Federal employees. The Department's primary concern is to assure that participants are protected in cases of injury and potential tort liability for activities that occur within the scope of the participant's duties in a community service assignment. Generally, participants will be covered by the workers' compensation provision in section 504(b) of the OAA. Should participants become involved in work-related incidents that injure others, however, there is no similar provision for liability coverage. To the extent that a participant is considered an employee, either of the grantee or of the host agency, the participant will have that same liability coverage as other employees. It may be that the best solution is for grantees to adopt policies to assure that participants receive this kind of liability coverage, from whatever source, regardless of whether the participants are considered employees for other purposes.

As at least one commenter pointed out there are some indicia that participants are employees of the grantees and others that they are not. We believe this is a matter of State law and perhaps a matter best resolved in reauthorization. In the meantime, with respect to the question of liability in case of employee negligence while in a community service assignment, we do not have a single Federal answer. For this reason is it not possible for the Department to issue a blanket statement, as requested. Grantees will have to either adopt a policy to provide liability protection or determine the status of participants as employees. We have revised the Final Rule to delete the requirement to "consult with an attorney."

Other Issues

The Department received several other comments on issues covered in subpart E and which were not discussed in the Proposed Rule. These comments concerned the average number of hours of work per week to be offered to participants and the maximum number of hours per grant year per participant.

The Department did not regulate the average number of hours per week to be offered to participants because there is a statutory definition at OAA section 515(2)(a) that defines part-time employment within a workweek as at least 20 hours. In addition, the Department thought that this was an area in which some flexibility could be provided to grantees, given that there will be a community service performance measure and because grantees will need to balance this measure with the unsubsidized placement performance measures, as discussed in Subpart G. That being said, grantees should ensure that participants work on a part-time basis and should monitor the hours so that they do not become full-time employees.

As to the issue of the maximum number of hours per year that a participant can work in a community service assignment, the Department chose to allow a reasonable level of flexibility. The prior 1300-hour requirement is still a benchmark and good practice that the Department strongly encourages grantees to follow.

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

What Is the Purpose of the Private Sector Training Projects Authorized Under Section 502(e) of the OAA? (§ 641.600)

The section 502(e) program is required by the OAA, which authorizes the Department to reserve up to 1.5 percent of the total appropriation to place individuals into private sector job opportunities. In § 641.600, the Department proposed to provide more funding for the section 502(e) program and to select the grantees through a full and open competition for 502(e) funds. Before the enactment of the 2000 Amendments, SCSEP grantees had been allowed to routinely set aside a portion of their own funds to underwrite most 502(e) activities. There was a limited

competition among the grantees only for a small section 502(e) set-aside.

Many commenters protested that the elimination of the set-aside practice would impede their ability to meet placement performance measures. Many commenters objected to limiting 502(e) funds to the winners of a competition, some questioned the Department's authority to do so, and others questioned whether small grantees could fairly compete against national organizations. A number of commenters suggested a pro-rated equitable distribution of funds, providing for a recapture of refused funds that could be reallocated or competed. Several commenters said State budget cutbacks limited the ability of host agencies to provide unsubsidized placements to "compensate" for the new 502(e) requirements. One commenter expressed concern for participants in current 502(e) projects who have not completed their training.

The practice of allowing 502(e) projects to be funded out of the general SCSEP grants is not permitted by the 2000 Amendments. Section 502(e) sets up a specific set aside program with different rules from "primary" SCSEP grants.

To provide for maximum flexibility in the award of 502(e) funds in subsequent Program Years, however, the Department agrees to eliminate the phrase "through an open competition" in § 641.600 of the Final Rule. This will enable the Department to explore other award mechanisms in any given Program Year. However, full and open competition is consistent with the intent of the OAA and Department policy, and ensures the selection of the best providers, thus contributing to the betterment of the SCSEP overall. It provides an opportunity for private business concerns to compete, as specified in the OAA. The Department also believes that competing this program strengthens the unsubsidized placement goals of the program as a whole.

Commenters expressed concern that awarding section 502(e) grants through competition will prevent their use of funds set aside under their grants to promote private sector placements. The Department believes that this concern can be addressed through innovative use of funds in their existing grants. Nothing in the statute forbids the use of funds in the "other participant costs" cost category or in the "wages and fringe benefits" cost category for appropriate training expenditures. However, grantees using SCSEP funds for such activities are not exempted from normal SCSEP requirements—*e.g.*, non-Federal share—as are actual 502(e) recipients. The Department will issue administrative guidance that expands on innovative ways to expand on permissible on-the-job training and work experience activities listed in the rule at § 641.540(c).

How Are Section 502(e) Activities Administered? (§ 641.610)

In this section, the Department described who may apply for section 502(e) projects, what private sector activities should be emphasized, and the need to coordinate 502(e) activities with WIA title I and SCSEP projects operating in the area whenever possible. In the past, private businesses were not permitted to apply for 502(e) projects.

There were several comments on paragraph (a) of this section, most of which were concerned about allowing private businesses to compete. The commenters were concerned that private businesses would be too narrowly focused in their implementation of the section 502(e) program—would only train for specific jobs they needed and would not meet the needs of many older workers for training in other kinds of jobs which might use their previous skills. Some commenters argued that existing grantees could do a better job of providing private sector placements because of their ability to focus on both the employer and the participant's needs. The commenters were also concerned that the regulations did not make clear that the priority requirements of the OAA applied to section 502(e) projects and that providing section 502(e) grants to private businesses would undermine the community service aims of the SCSEP.

One commenter suggested adding a paragraph (d): "Private sector grantees must coordinate section 502(e) training activities with SCSEP grantees operating in the service delivery area, with particular regard to participant recruitment and co-enrollment, and must adhere to the Governor's State Senior Employment Services Coordination Plan and equitable distribution."

The Department believes that the inclusion of "private business concerns" as entities with which the Department is authorized to enter into agreements is in accord with Congressional direction to include private businesses in the section 502(e) program. This is particularly clear when the language of section 502(e) is contrasted with the language of section 502(b)(1) which does not mention private businesses as potential grantees for primary SCSEP grants. Although the Department has not in the past included private businesses as grantees in the section 502(e) program, the Department thinks that their inclusion is more consistent with the statute, with Departmental polices favoring competition, and with the 2000 Amendments' increased emphasis on placements in unsubsidized employment.

The Department does not intend, nor does it believe, that enabling private business concerns to apply for 502(e) funds will necessarily disadvantage current grantees. If, as suggested by the comments, current grantees have good programs for training and placing older workers for placement in private sector jobs, there is no reason why their proposals to perform those services should not be successful in a 502(e) competition. The Department intends that the same standards for using innovative work modes and for emphasizing second career training will apply to all applicants.

The Department agrees that section 502(e) grantees should coordinate with the grantees in the areas in which they operate and that they are subject to the same requirements as other grantees. We think, however, that the regulations, especially §§ 641.610(c) and 641.660, already so provide.

How May an Organization Apply for Section 502(e) Funding? (§ 641.620)

We did not receive any comments on this section. Nevertheless, in light of our decision, discussed above, to retain flexibility in the method by which section 502(e) funds will be awarded, we have revised the rule to delete the reference to a Solicitation for Grant Applications and to remove the phrase "or other similar instrument" at the end of the section. The section now provides that organizations may apply for section 502(e) grants by following instructions that the Department will publish in the **Federal Register** or in another appropriate medium.

What Private Sector Training Activities Are Allowable Under Section 502(e)? (§ 641.630)

This section listed the activities that are authorized for private sector training under section 502(e). In particular, paragraph (a)(7) indicated that job clubs or job search assistance are only allowable in combination with other listed services or in conjunction with the local One-Stop Delivery System.

Many commenters believed that grantees should have the flexibility to provide job clubs or job search assistance as stand-alone activities. Some suggested this restriction would

have a negative effect on achievement of unsubsidized placements.

One of the key priorities of the SCSEP is to serve the hardest-to-serve of the eligible population. Consistent with that focus and given the limited funds that are available, eligible individuals who are essentially job-ready should be referred to the One-Stop Delivery System. Section 502(e) funds, which are limited to no more than 1.5 percent of the appropriation, can then be targeted to prepare participants most in need for unsubsidized employment. Section 502(e) specifically focuses on providing "second career training" leading to placement in private sector jobs. The Department does not view stand-alone job clubs or job search activities, which are essentially aimed at individuals who are already job ready, as fitting within the type of training Congress envisioned for section 502(e) projects. Where job clubs or job search assistance are used to assist someone who has received or is receiving second career training to successfully find a job, they are allowable section 502(e) activities. The Department addresses this issue in more detail in § 641.535(c).

The Department acknowledges that focusing on the hardest-to-serve presents challenges. We address the negotiation and establishment of performance measures in Subpart G and later administrative issuances.

How Do Private Sector Training Activities Aauthorized Under Section 502(e) Differ From Other SCSEP Activities? (§ 641.640)

Section 641.640 listed the differences between activities under section 502(e) grants and other SCSEP activities. These differences include that section 502(e) projects are not required to have a community service component, that they focus solely on second career training leading to private sector employment, that non-Federal share is not required, and that private businesses are eligible for 502(e) grants.

The Department received several comments on this section. One commenter urged the Department to preserve the historical balance between unsubsidized employment and community service.

The purpose of the SCSEP is to provide both community service and unsubsidized employment opportunities. The Department views the section 502(e) program as being primarily related to the unsubsidized employment focus of the program. However, 502(e) participants must also be co-enrolled in a community service SCSEP project.

Another recommended that the 10 percent non-Federal share requirement apply to 502(e) activities as it does to regular SCSEP grants.

The Department is authorized to pay all of the costs of section 502(e) activities. The Department believes that Congress' authorization to pay the entire costs of section 502(e) grants and its expectation that section 502(e) grants will involve some activities unique to the SCSEP suggests an intent that the Department not impose a non-Federal share requirement. Thus, the Department will not require a non-Federal share from any section 502(e) grantee; but such recipients may choose to provide non-Federal share funds and are encouraged to do so. We have revised the regulation to include the option to provide a non-Federal share.

One commenter recommended that if the Department contracts directly with private businesses for section 502(e) projects, that it let the SCSEP grantees in the area know who the successful 502(e) applicant is so that they can refer eligible individuals for 502(e) services. This commenter further recommended that if a referral by an SCSEP grantee to a private business 502(e) grantee results in an unsubsidized placement, then that placement should also be counted for the SCSEP grantee.

The Department agrees to identify all section 502(e) awardees and will post the names and locations of all such awardees on the SCSEP website. The Department also agrees that a referral from an SCSEP grantee to a different 502(e) grantee that results in an unsubsidized placement will also be credited to the SCSEP grantee. We have added language in § 641.680 to indicate that placement credit for a referred participant may also be credited to the referring SCSEP grantee. However, if the SCSEP grantee is also a 502(e) grantee, the unsubsidized placement of the participant may only be counted once.

Does the Requirement That Not Less Than 75 Percent of the Funds Used To Pay Participant Wages and Fringe Benefits Apply to Section 502(e) Activities? (§ 641.650)

Section 641.650 provided that the requirement that not less than 75 percent of SCSEP grant funds be expended for wages and fringe benefits, either to the 502(e) grant if the grantee receives only a 502(e) grant or to the entire grant if the 502(e) grantee is also an SCSEP grantee.

The Department received several comments on this section. Commenters thought that the application of the 75 percent requirement to section 502(e) grants, as stand-alone grants was impractical. One commenter said that that it would make coordination between a 502(e) grantee and an SCSEP grantee more difficult since both programs would want to spend wage funding to meet the 75 percent requirement. Another commenter asked that the requirement for enrollee wages should be reduced to at least 65 percent to free up more funds for more intensive training that will help ensure a successful transition into unsubsidized employment. That commenter suggested that more 502(e) funds be awarded in the competitive process to those that already have SCSEP grants to mitigate the burden of the 75 percent requirement.

The Department interprets section 502(c)(6)(B) of the Act, which requires that "[n]ot less than 75 percent of the funds made available through a grant under this title shall be used to pay wages and fringe benefits," to mean that when the 75 percent requirement applies to all grants made with title V funds, including section 502(e) grants. The Department will continue to permit SCSEP grantees receiving 502(e) funds to apply the 75 percent requirement to the combined total of its funds. While we recognize that the requirement may cause operational problems, there is no authority in the OAA to waive the 75 percent requirement for entities that only receive a 502(e) grant.

One commenter asked for more flexibility in 502(e) grants, suggesting that limiting placements to private business makes it too difficult for grantees to use the funds to best serve older workers.

Section 502(e) placements cannot be with public agencies or non-profits. Section 502(e) specifies that placements must be made with private business concerns. In addition to for-profit organizations, we interpret private business concerns to also include any for-profit component of a non-profit organization.

Who Is Eligible to Participate in Section 502(e) Private Sector Training Activities? (§ 641.660)

When Is Eligibility Determined? (§ 641.665)

May an Eligible Individual Be Enrolled Simultaneously in Section 502(e) Private Sector Training Activities Operated by One Grantee and a Community Service SCSEP Project Operated by a Different SCSEP Grantee? (§ 641.670)

This Proposed Rule provided that an eligible individual may be simultaneously enrolled in a section 502(e) and a community service SCSEP

project operated by two different SCSEP grantees. (All section 502(e) participants must also be co-enrolled in a community service SCSEP project, whether the projects are operated by a single grantee or by two different grantees.) Under these circumstances, the Department expects grantees to work together to ensure that they are providing complementary and not duplicative services.

The Department received two comments on this section, both of which commended it for this clarification. The regulation is unchanged.

How Should Grantees Report on Participants Who Are Co-Enrolled? (§ 641.680)

We have revised this section to reflect our earlier-stated agreement that credit for the placement of a referred SCSEP participant may be shared by both the section 502(e) grantee and the referring SCSEP grantee. However, if the SCSEP grantee is also the section 502(e) grantee, the placement of the participant may only be counted once.

How Is the Performance of Section 502(e) Grantees Measured? (§ 641.690)

Subpart G—Performance Accountability

What Performance Measures Apply to SCSEP Grantees? (§ 641.700)

Section 641.700 described the four SCSEP performance accountability indicators listed in section 513 of the OAA: Number of persons served; community services provided; placement into and retention in unsubsidized employment; and satisfaction of participants, employers, and host agencies. In addition, this section adds the new earnings increase common performance measure.

Several commenters had suggestions and questions about the structure, cost and burden, clarity, and removal of the performance measures.

Structure of Performance Indicators. Commenters addressed the structure of the proposed performance definitions. Although many commenters agreed that performance indicators are essential to ensure SCSEP grantee accountability, many commenters also believed that the indicators as defined will promote "creaming," by enrolling individuals who will be easier to serve and produce positive program outcomes. One commenter believed that changing the definition for unsubsidized placement and retention would increase the emphasis on these performance measures, effectively deterring the original intent of the program to serve those with the poorest employment prospects. Other commenters suggested that the definitions take into consideration the older population that the SCSEP is serving by including incentives for grantees to provide services to those participants most difficult to place. One commenter suggested that because the structure of the performance measures is an effort to closely align the SCSEP with the WIA system, the alignment of SCSEP and WIA definitions, and more specifically the definition for unsubsidized placement, would be a more accurate comparison of program performance.

One commenter urged that the rules not be implemented, unless approved by OMB for paperwork reduction requirements. Another commenter questioned the validity of the definitions carrying equal weight without taking into consideration the retention rates, wage increases, and unemployment rates in rural areas. Finally, one commenter believed applying common performance measures to the SCSEP will not appropriately measure the performance because of the dual purposes of the program, which are job training and employment, and community service.

Cost and Burden of Performance Indicators. Commenters addressed the issue of the cost and burden of implementing the performance measures. Some commenters believed the new responsibility that accompanies the change in performance measure definitions will increase the administrative cost for all SCSEP sponsors and employers. Another commenter was concerned about the impact of reporting and data collection requirements on staff time. One commenter suggested the Department provide forms or a software program and training. Three commenters suggested an increase in other enrollee costs and administrative funding. Commenters asked if grantees will be provided with alternative means of securing information in cases of non-cooperation. Finally, one commenter questioned the burden of asking an employer to fill out a satisfaction survey, especially when the employer has never heard of the agency or organization from which the survey came.

Clarification of Indicators. Commenters believed that the performance measure definitions, or portions of the definitions, needed clarification. Some commenters asked for further clarification of "total number of participants served" under "the number of individuals served" performance indicator. Another commenter asked for clarification of both the difference in the State's minimum wage as a factor in determining the number of persons served, and whether income on an initial application is compared to income at the point of unsubsidized job placement when determining earnings increase. Two commenters asked for an explanation of the difference between the proposed placement measure, participants placed to the total number of participants, and the current placement measure, participants placed to the authorized slots. Finally, with regard to "customer satisfaction of participants," one commenter asked when customer satisfaction surveys are to be completed and at what frequency should they be conducted.

Removal of Indicators. A few commenters believed that some performance measures, or portions of the measures, should be removed from the Final Rule. Most of these commenters urged the Department to reject the proposed definition comparing both the number of participants placed into and number of participants retained in unsubsidized employment to the total number of participants. Commenters asserted that the proposed placement and retention measure limits the options available to achieve goals that are inconsistent with the program goal of placing more participants, and that the end result will hurt the older workers, especially those with health limitations or who live in remote areas. Three commenters believed the six-month retention factor for unsubsidized employment is far too stringent for the population that the SCSEP serves. Some commenters believed the earnings increase indicator is not an accurate measure, because many individuals retire from full-time employment and seek part-time employment, which would cause the earnings increase to be negative. One commenter believed the employment entrance and retention measures are duplicative. Further, the commenter believed community service does not seem to apply to 502(e) grants, which are a required project activity for the regular SCSEP projects.

The measures listed in § 641.700(a) are statutory and cannot be changed. While the Department has some discretion about the adoption of the earnings increase measure in § 641.700(b), the Department has made a policy decision in consultation with OMB to implement the common measures to the extent possible in all Department-funded workforce development programs. As explained in the Preamble to the NPRM, the definitions for two of the common measures cannot be adopted because of

different definitions in OAA section 513(c)(2).

The Department recognizes that administering a performance measurement system will increase administrative costs for grantees. Since the statute limits the amount of administrative funds available to grantees, the Department cannot accede to requests to provide additional administrative funding beyond those limitations. The Department will, however, recognize that the increased costs occasioned by the performance measurement are a legitimate reason for requesting an increase in administrative funds to the 15 percent limit permitted by OAA section 502(c)(3)(B)(1). The Department will also make every effort to reduce the costs of administering the performance measurement system through the provision of technical assistance and training and through the development, in consultation with grantees and other stakeholders, of data collection and reporting methods that will reduce the costs of the performance measurement system to the extent possible. The Department will, of course, follow the requirements of the Paperwork Reduction Act before requiring the use of forms or other data collection methods.

The Department also recognizes that the implementation of a performance measurement system has the potential to change the way grantees operate. There may be, as some commenters suggested, a tendency toward "creaming" occasioned by the placement and retention and participants served measures. On the other hand, the community service and greatest economic and social need measures emphasize the community service and service to those most in need goals of the SCSEP and will have some offsetting effect on any tendency to cream. Other provisions of these regulations, like the limitation on stand alone job clubs and job referral services, will also have the effect of reducing creaming. The Department intends to work with the SCSEP community to shape the performance measures in ways which will recognize and reward attainment of all of the SCSEP goals and will recognize the operational changes that the 2000 Amendments will require, and will issue more detailed administrative guidance.

How Are These Performance Indicators Defined? (§ 641.710)

OAA section 513(b) lists four performance indicators with multiple subparts for several of the indicators. The Proposed Rule clarified the indicators by severing many of the indicators. This section provides definitions for determining each of the measures along with the additional indicator of earnings increase.

The Department received a significant number of comments on these definitions. Many of the comments requested more details on the definitions and, in some cases, requested that the Department issue Older Worker Bulletins with more detailed information. Other commenters raised concerns that the performance measures recognize the differences in the population served by the SCSEP and the geographic isolation of some participants, particularly in rural areas.

The Department's intent in structuring the performance measurement regulations was to provide only basic definitions in the regulations. The details of the system's implementation will be developed in consultation with the SCSEP community and provided in an Older Worker Bulletin and/or **Federal Register** Notice. As stated elsewhere in this Preamble, the Department intends to work with the SCSEP community to make sure that the performance measures system accurately measures the actual operations of the program and that the system is administered in a way that recognizes and encourages the goals of the SCSEP.

Commenters raised specific issues on the definitions themselves. We address these comments below.

Number of Persons Served (§ 641.710(b)(1)). Several commenters agreed with the proposed definition and thanked the Department for its critical adjustment to the definition, which accounts for differences in the wage rates paid to participants as required by State law. The Department appreciates those comments.

Community Services Provided (§ 641.710(b)(3)). Some commenters raised concerns about whether the definition of community service includes particular kinds of activities, including administrative work and job development for the grantee or subgrantees and whether such activities would be counted in determining this measure.

The definition of community service at § 641.140 and at OAA section 516(1) is intended to be illustrative. The Department will resolve these issues as we consultatively develop the details of the performance measurement system.

Placement into Unsubsidized Employment (§ 641.710(b)(4)). A number of commenters disagreed with the proposed regulation's use of total number of participants as the denominator in the definition of the placement into unsubsidized employment measure. They pointed out that this definition differs from the current practice of measuring placements against the number of authorized positions (slots). Several commenters argued that the new definition would substantially reduce placement rates, bringing many grantees below the statutorily required 20 percent placement rate and substantially below the Department's 35 percent Government Performance and Results Act of 1993 (GPRA) goal. Commenters suggested either retaining the current definition or aligning the definition with WIA and measuring against total exiters.

The Department agrees and will collect data consistent with the current practice for calculating unsubsidized placements. Therefore, the language of § 641.710(b)(4) has been modified to replace "the total number of participants" with "the total number of authorized positions."

Retention in Unsubsidized Employment (§ 641.710(b)(5)). All comments received on this provision asserted that the measure of retention that makes sense is the number of participants still in unsubsidized employment divided by the number of participants placed in unsubsidized employment. Some commenters questioned how the rate of retention will be measured for participants placed in the second six months of the grant.

The Department agrees with the comments about the definition. The retention denominator has been changed to "those who are employed in the first quarter after exit"—i.e., the number placed.

Although grants are only for one year, the one-year grants may be extended for up to three years once this Final Rule is published. Thus, the program will continue, as will many grantees and subgrantees. The process of measuring retention rates will be ongoing and all placements will count toward the measure.

Earnings Increase (§ 641.610(b)(9)). The Department proposed to add the additional performance measure of earnings increase which measures the percentage change in earnings from pre-registration to post-program, and between the first and third quarters after exiting the program. Several comments addressed this proposed performance measure. Some commenters believed the earnings increase measure worked against the older population the SCSEP is meant to serve. Because the SCSEP is supposed to work with the hardest-to-serve and most-difficult-to-place, the commenters asserted that the earnings

increase measure is not feasible. One commenter believed the vast majority of participants who are attracted to community service remain satisfied with minimum wage and are highly unlikely to post significant earnings increases. Another commenter asserted that part-time workers frequently do not receive a salary increase until after 12 months of employment. Two commenters believed that many older workers need to work part-time because of health, transportation, and social service needs, and it would be difficult to measure benefits. One commenter believed gathering wage and benefit increase information could be a violation of privacy. Finally, one commenter suggested expanding the definition of earnings increase to include such non-wage factors as increases in fringe benefits and reduction in transportation costs.

OAA section 513(b)(5) authorizes the Secretary to add performance indicators. The Department has chosen to add earnings increase, one of the Common Measures, as an additional performance indicator. The Department will retain this measure consistent with its decision to implement the Common Measures across all employment and training programs. The Department recognizes that the commenters have raised legitimate concerns and will work with the SCSEP community to address them during the performance measures implementation process.

What Are the Common Performance Measures? (§ 641.715)

How Do the Common Performance Measures Affect Grantees and the OAA Performance Measures? (§ 641.720)

The SCSEP is part of the Department's common performance measures initiative. This initiative has identified performance indicators that will be applied across Federal job training programs and has a common set of definitions and data sets. Those common performance measures are "entered employment," "retention in employment," and "earnings increase." Some commenters thought the proposed measures were not feasible because of the dual purpose of SCSEP, job training and employment, and community service. The commenters also asserted that the unique population served by the SCSEP cannot be measured appropriately by the application of common performance standards, particularly by the earnings increase measure.

Several commenters highlighted a Government Accounting Office report that found older workers had different needs than other populations served by employment, and had different goals for career advancement. A few commenters believed the definitions for the performance measures, such as earnings increase, were too restrictive and hard to implement because they measure only one possible positive outcome from employment and, therefore, are not feasible. Several commenters recommended that the common performance measures be calculated in a more simplified manner and suggested using the definitions for placement into unsubsidized employment or retention in subsidized employment, as outlined in § 641.710. Some suggested that performance measurements be adjusted based on factors enumerated in the Proposed Rule, such as unemployment, poverty or welfare rates, and proportion of participants served. Finally, some commenters asked for guidance on methods to track and collect the data for common performance measures.

As discussed above, the Department is committed to adopting the Administration's new common performance measures initiative for employment and job training programs. In the case of the SCSEP, two of the measures, entered employment and retention in employment, are already required by the OAA, although the measures are defined slightly differently. The Department is committed to adopting the common performance measures' definitions for these two measures when the SCSEP is reauthorized. The common performance measures serve two useful purposes. They reduce the burden of data collection on workforce development program grantees and they permit a degree of comparison among various workforce development programs. The Department recognizes, however, that there are differences in the population served by the SCSEP, as there are in other workforce development programs, and will take these into account in administering the performance measurement system.

How Will the Department Set and Adjust Performance Levels? (§ 641.730)

The Department proposed to set levels of performance using a method similar to the WIA method of negotiating performance levels. The negotiations will occur before the beginning of each Program Year. The placement into unsubsidized employment measure has a statutory floor of 20 percent, and may be negotiated with the grantees to establish a higher level. In negotiating levels with grantees, the Department proposed to set baseline goals. Adjustments to these negotiated levels of performance may be made only if they are based on the factors described in section 513(a)(2)(B) of the OAA. Grantees may propose adjustments to those levels at the beginning of, and during, the Program Year.

Some commenters were concerned about how the performance levels would be set in negotiations. Some commenters suggested that the performance levels should not be set based on past performance because of the changes in the program. Some commenters thought that performance levels for all grantees should be set at the same level so as not to punish good performers. Many of the commenters were particularly concerned about the placement measure, and, in particular, the possibility that the Department might set the rate at more than 20 percent. These comments variously argued that the proposed prohibition on stand alone job clubs and job referral activities and the proposed change in the baseline for measuring the placement rate to total positions and in the allocation of section 502(e) funds would make it more difficult to attain even the 20 percent placement rate. Other commenters argued that the program's focus on the hardest to serve and the characteristics of the population served make it very difficult to place participants. Some commenters said that there were disincentives to accepting unsubsidized employment, including loss of other benefits, specifically citing HUD housing benefits.

One commenter believed the Department should look at the difference in participants' age and experience when comparing the performance measures of WIA to the SCSEP. The commenter believed that a higher placement goal, as proposed, would restrict the ability of the program to serve the population in rural areas and smaller communities, where sufficient employment opportunities do not exist. Some commenters believed that the SCSEP program mandate to target individuals who are elderly, low-income, and hardest to serve, makes setting performance levels difficult or impossible. In addition, barriers to employment and economic conditions should be taken into consideration. Finally, some commenters believed that an additional condition for performance level adjustment should be allowed for those States with a minimum wage higher than the Federal minimum wage, because the higher minimum wage in some States will limit the number of positions available and the placement targets may need to be adjusted.

The Department agrees that performance baselines will have to take into account the changes in the program wrought by the 2000 Amendments and these regulations, as well as the different challenges faced by different grantees in serving particular areas and populations. For that reason, the Department will ask grantees to collect data in Program Year, PY 2004, to serve as the basis for setting the initial performance levels in PY 2005. The Department also realizes that the performance measures are new and will consider this in negotiating performance levels in the early years of implementing the system.

While the Department appreciates the commenters' concerns about the difficulty of placing some SCSEP participants, the SCSEP community must realize that Congress, in the 2000 Amendments, required a new emphasis on placement into unsubsidized employment while retaining the program goals of serving the most in need and of providing community service. This new emphasis may require some adjustments in the way grantees and subgrantees operate. In any event, the 20 percent placement rate is required by the statute and the Department cannot change it. The Department continues to believe that many grantees will be able to do much better than that rate and thus will retain the option to set placement rates above 20 percent. In addition, exceeding the 20 percent goal is important because there is an additional goal of 35 percent overall placement for the entire program based on the Department's GPRA goal.

The Department believes it is entirely appropriate to negotiate different performance levels with different grantees. Because of varied circumstances, many discussed by the commenters, it is unrealistic to expect the same performance level of all grantees. The Department will take such differences into account in negotiating performance levels. In addition, one purpose of the performance measurement system is to promote continuous improvement. Setting identical performance levels regardless of their actual performance undercuts that purpose. Fair and appropriately tailored performance levels will enable good performers to meet and exceed their performance measures and be recognized and rewarded appropriately.

The three adjustment factors listed in § 641.730(d) are the only ones allowed by section 513(a)(2)(B) of the Act. Thus, the Department cannot add an additional factor as suggested. As discussed earlier, the Department will account for higher State minimum wages in the implementation and negotiation of the performance measures.

Finally, as discussed previously, the Department will monitor actual performance under the new measures in order to set realistic expected performance levels.

How Will the Department Determine Whether a Grantee Fails, Meets, or Exceeds Negotiated Levels of Performance? (§ 641.740)

Section 641.740 stated the rules for negotiating the performance status of each grantee. The Department proposed to evaluate each performance indicator to determine the level of success that a grantee has achieved and aggregate the measures to determine if, on the whole, the grantee met its performance objectives. The aggregate is calculated by combining the percentage results achieved on each of the individual measures to obtain an average score. A grantee fails to meet its performance measures when it is unable to meet 80 percent of the negotiated level of performance for the aggregate of all of the measures. Performance in the range of 80 to 100 percent constitutes meeting the level for the performance measures. Performance in excess of 100 percent constitutes exceeding the level for the performance measures.

In addition, each national grantee in a State must meet the measures negotiated for the State in which the national grantee serves. The Department will impose the sanctions outlined in section 514 of the OAA when a grantee fails to meet overall negotiated levels of performance or the levels of performance for its projects in a State.

When a grantee fails one or more measures, but does meet its performance measures in the aggregate, the Department will provide technical assistance on the particular failed measures but will not impose other sanctions. The Department will provide further guidance through administrative issuances.

Some commenters urged that these provisions not be included in regulations, but instead be transmitted through Older Worker Bulletins. Because this is the first year in which the Department is implementing performance standards, "DOL may need the flexibility to make adjustments in order to drive desired results."

One commenter was of the opinion that it is not equitable or valid to apply an 80 percent pass/fail standard when the performance levels are negotiable. In addition, the commenter believed that "these performance measures are unnecessarily complicated" and will make it difficult for grantees "to monitor their programs and make adjustments throughout the year." This commenter doubted that the Department will be able to provide sufficient technical assistance: "with the decreased flexibility to use 502(e) and the increased focus on hard-to-hire individuals, it is highly likely that there will be a large number of grantees that fail individual measures. DOL does not have the capacity to provide this level of technical assistance or they will have to spend additional funds contracting for technical assistance."

As discussed above, the Department will use the Older Worker Bulletin system and/or a **Federal Register** Notice to further explain the measures and requirements and to delineate the Department's approach.

The Department believes that it is equitable to apply the same standards for passing or failing performance measures to all grantees. The fact that the levels of performance are negotiable simply assures that each grantee's circumstances will be taken into account in setting performance levels and promotes continuous improvement. Performance levels may be adjusted if the factors listed in section 513(a)(2)(B) exist. The Department believes that this system is fair to all grantees and that it is equitable to apply the same pass/fail standards to each grantee. The Department disagrees that significant numbers of grantees will fail their performance measures and intends to provide all technical assistance that grantees may need.

What Sanctions Will the Department Impose if a Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.750)

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance Under the Total SCSEP Grant? (§ 641.760)

The Department received no comments on this section. For clarity, however, we have added: "The poor performing grantee that had its funds competed is not eligible to compete for the same funds."

What Sanctions Will the Department Impose if a National Grantee Fails To Meet Negotiated Levels of Performance in any State it Serves? (§ 641.770)

Section 641.770 listed the sanctions that will be imposed if a national grantee fails to meet its negotiated performance level in a State. The test of failure is different in this case than it is for national grants generally. A national

grantee is considered to have failed its performance measures in a State if its levels of performance are 20 percent or more below its national performance measures and it has failed to meet the performance levels set for the State. The failure to meet performance measures for State projects may be justified using factors such as size of the project and the factors listed in OAA section 513(a)(2)(B).

Three comments were virtually identical: "[b]ased on our experience, size of project is not a valid consideration in measuring success. Some of our most successful projects have been our smallest, while some of our poorest performers have been extremely large. Mitigating factors should include only those factors identified by Congress in section 513 of the OAA, as cited above."

Because program size is mentioned in the OAA, at section 514(e)(3)(A), the Department cannot remove the reference to program size from the regulation.

When Will the Department Assess the Performance of a National Grantee in a State? (§ 641.780)

Section 641.780 detailed the circumstances under which the Department will assess the performance of a national grantee in any State. Commenters recommended adding the phrase "or his/her designee" after "State" in § 641.780(b)(2).

The Department accepts this addition.

What Sanctions Will the Department Impose If the State Grantee Fails To Meet Negotiated Levels of Performance? (§ 641.790)

Section 641.790 details the sanctions that will be imposed if a State grantee fails to meet negotiated levels of performance. One commenter said it does not seem fair that programs may be financially sanctioned as a result of not meeting the outplacement ratios. If a program can document its efforts to achieve outplacement goals, those efforts should be rewarded. A second commenter pointed out that grantee performance is evaluated within 120 days of the end of the program year, but one of the measures, retention in the job for 6 months, would not be established that early for any end-of-the-year placements.

Regarding giving credit for efforts to achieve outplacement goals, the Department believes that time spent documenting such efforts would not be the best use of grantee resources. Grantees may seek adjustments of their placement goals based on the criteria enumerated in section 513(a)(2)(B) of the OAA.

The question of how to address the incompatibility of the retention measure and 120-day reporting deadline will be discussed in a forthcoming **Federal Register** Notice or in forthcoming administrative guidance.

Will There be Incentives for Exceeding Performance Measures? (§ 641.795)

Section 641.795 indicated that the Department is authorized by section 515(c)(1) of the OAA to use recaptured funds to provide incentive grants. The Department will issue administrative guidance detailing how incentive grants will be awarded.

Three commenters complimented the Department for providing incentives for exceeding performance measures, saying these are "long overdue." One commenter, however, urged the Department to reverse the proposal to recover all grantee carryover funds. High performing grantees should be allowed to retain these funds, the commenter said, as an added incentive.

A representative of a contractor specializing in customer satisfaction studies called for using customer satisfaction as an incentive rather than a sanctionable measure. The commenter suggested that high customer satisfaction scores be used as an additional consideration for grantees that perform well on other measures. This would give grantees a reason to take customer service seriously but would not penalize them for substandard performance.

As to the issue of recapturing funds, section 515(c) of the OAA gives the Department the authority to recapture unexpended funds from SCSEP recipients at the end of the Program Year and reobligate those funds within the two succeeding Program Years to be used for incentive grants, technical assistance, or grants or contracts for any other SCSEP program. Unless those funds are recaptured and reobligated, they will lapse. The Department will issue administrative guidance to provide SCSEP recipients with additional details on how recapture will be implemented. The Department will retain its discretionary authority to determine the best use of the funds. To the extent that high performing grantees have excess funds, they may be able to recoup those funds through incentive awards.

Regarding the use of customer satisfaction as an incentive, the 2000 Amendments, section 513(b)(4), lists customer satisfaction as a required indicator. It cannot, therefore, be used merely as an incentive. However, the Department will not use customer satisfaction as a sanctionable measure until baseline rates can be established.

Subpart H—Administrative Requirements

What Uniform Administrative Requirements Apply to the Use of SCSEP Funds? (§ 641.800)

Section 641.800 listed the various uniform administrative requirements and allowable cost principles that apply to the various kinds of SCSEP grantees and subgrantees. One commenter suggested that the references to allowable cost requirements in paragraphs (b) and (c) should be removed because they are covered in 641.847, and because administrative requirements shouldn't be confused with allowable cost requirements. The commenter also suggested that the language "OMB Circular A–102" should be inserted before "common rule."

The references to allowable cost requirements in paragraphs (b) and (c) of § 641.806 have been removed. The rest of the paragraph language, relating to uniform administrative requirements, has been retained. The reference to "OMB Circular A–102" has been added to paragraph (b).

What Is Program Income? (§ 641.803)

How Is SCSEP Program Income To Be Used? (§ 641.806)

Section 641.806 provided for the use of program income for program purposes in various situations. Several commenters agreed that programs should be able to continue using program income if their grants are renewed; if not, then the program income should be remitted to the Department for "reprogramming." Under 29 CFR parts 95 and 97 and this regulation, continuing and terminated grantees may continue to use program income for SCSEP-related purposes without any time limitation. The grantee is not required to remit to the Department income that is earned after the termination of the SCSEP grant relationship between the grantee and the Department. If a grantee has unexpended program income on hand at the time its grant terminates, paragraph (c) requires that the program income be remitted to the Department.

A commenter suggested that § 641.806(b), which deals with income earned after the grant period, either should be removed because it is inconsistent with the generally applicable program income requirements or clarified as to continuing grant relationships. The program income requirements for governmental grantees (29 CFR 97.25(h))

provide that grantees are not accountable for income earned after the end of the grant period unless program regulations or grant agreements provide otherwise. The related regulation for non-profit and other non-governmental organizations (29 CFR 95.24(b)) is substantially similar but does not contain an exception for grant agreements and regulations that provide otherwise. The commenter also suggested that if the provision is retained, the regulation should explain when liability ends, or what "continue" means as used in the regulation.

The Department does not agree that § 641.806(b) should be removed. Most SCSEP grantees have a continuing grant relationship with the Department and earn substantial amounts of program income. Although grant terminations will punctuate these relationships at least once every three years, many of the relationships are likely to continue for much longer periods under new SCSEP grants, and program income will continue to be earned. Consequently, the Department has applied to the Office of Management and Budget (OMB) for an exception to 29 CFR 95.24(b), in accordance with 29 CFR 95.4, and has obtained OMB's approval of the exception and of § 641.806(b).

What Non-Federal Share (Matching) Requirements Apply to the Use of SCSEP Funds? (§ 641.809)

In § 641.809, the Department set out the rules for the situations in which non-Federal share funds are and are not required and what kinds of funding qualifies as match. One commenter said that it would be useful for DOL to add a requirement that funds be accounted for in the same way Federal funds are audited.

The commenter was referring to the fact that the uniform administrative requirements require all non-Federal contributions to project costs, including cash and third party in-kind contributions, to be allowable under the applicable allowable cost requirements. We agree that it would be useful to clearly state this principle in this regulation by: substituting the word "determine" for "calculate" in paragraph (c) of § 641.809; by redesignating paragraphs (e) and (f) as paragraphs (f) and (g); and by making the second sentence of paragraph (d) into a new paragraph (e). As changed, paragraphs (c) and (d) more clearly indicate that the determination of the non-Federal share of costs is subject to all the non-Federal share requirements in the uniform administrative regulations, not just those pertaining to calculation of the non-Federal share of costs. The Department believes it is inappropriate and unnecessary to re-state the non-Federal share requirements that are referred to in 29 CFR 95.23 and 29 CFR 97.24. The generally applicable administrative requirements referred to paragraphs (c) and (d) are not related to the prohibition now separately set out in new paragraph (e).

What Is the Period of Availability of SCSEP Funds? (§ 641.812)

May the Period of Availability Be Extended? (§ 641.815)

Section 641.815 outlined the circumstances under which grantees may request and the Department may approve an extension of the period of fund availability. One commenter suggested allowing for the use of a carryover of prior grant year funds, if any money is left since States may be losing funding under section 502(e) of the Act.

The Act permits the Secretary to extend the period for the obligation and expenditure of SCSEP funds where "necessary to ensure the effective use of such funds." The Secretary may also recapture unexpended funds and take one of the three reobligation actions indicated in § 641.818. It is the Department's policy to encourage recipients to fully obligate and expend all available funds within the Program Year in which they are awarded. Thus, the Department will not amend the regulation to permit carryover.

What Happens to Funds That Are Unexpended at the End of the Program Year? (§ 641.818)

Section 641.815 indicated several options the Department has for redistributing funds that are unexpended at the end of a program year. Several commenters, while supporting the recapture and redistribution features of this provision, recommended that the Department should continue to allow recipients to request short-term extensions at the end of the year so that they can "make most effective use of the funds." One commenter suggested that carried over funds should retain their original cost category identification in the carryover period.

The extension issue is fully discussed in the Department's response to comments on § 641.815. With regard to the suggestion that cost category identification be retained, we believe the comment is directed to spending plans, i.e., budgets, not cost categories, since SCSEP funds have no cost category identification until they are expended. The Department considers imposing expenditure limitations based on original budget estimates in addition to the cost limitations imposed by the Act to be an unnecessary added burden to affected grantees. Funds that are expended in an extension period are subject to the same cost limitations that apply to the original grant.

What Audit Requirements Apply to the Use of SCSEP Funds? (§ 641.821)

Section 641.821 listed the generally applicable Single Audit Act requirements that SCSEP grantees must follow and established audit requirements for commercial organizations. One commenter suggested changing the references in § 641.821(c)(2) from OMB Circular A–133 to 29 CFR part 99.

The Department does not agree with this suggestion. It is appropriate to refer to the OMB Circular here since the issue addressed in this paragraph is the selection of the threshold for single audit coverage, an organization-wide issue. However, OMB Circular A–133 was recently revised to raise the threshold from $300,000 to $500,000 (68 FR 38401, June 27, 2003). Accordingly, the reference to the threshold in the regulation is being raised to $500,000.

What Lobbying Requirements Apply to the Use of SCSEP Funds? (§ 641.824)

What General Nondiscrimination Requirements Apply to the Use of SCSEP Funds? (§ 641.827)

The NPRM contained two sections dealing with nondiscrimination. Section 641.827 dealt with general requirements applicable to all grant programs; § 641.830 dealt with requirements specific to the SCSEP program. In reviewing the comments on the two sections, particularly a question asking what non-discrimination protections apply specifically to participants in the SCSEP program, the Department has decided that the material covered could be more clearly presented by combining proposed §§ 641.827 and 641.830 into a single section containing requirements based on the OAA Amendments and on regulatory sources.

Paragraph 641.827(a) of the combined section remains unchanged. This paragraph notifies grantees that, as recipients of Federal financial assistance, they are subject to 29 CFR part 31, which prohibits discrimination based on race, color, or national origin under title VI of the Civil Rights Act of 1964, and 29 CFR part 32, which prohibits discrimination based on handicap, under section 504 of the Rehabilitation Act of 1973.

Paragraph 641.827(b) covered the nondiscrimination requirements

applicable to SCSEP programs and activities provided through the One-Stop system authorized by the Workforce Investment Act. One commenter asked what was intended by the phrase "operates programs and activities through One-Stop" in § 641.827(b)(1). In this connection, the commenter asked whether the Department intended this provision to cover an SCSEP participant assigned to a One-Stop or only those cases where an SCSEP grantee physically co-located its operations in a One-Stop.

The Department has extensively revised § 641.827(b). It notifies grantees of the circumstances under which they may be subject to 29 CFR part 37, which implements the nondiscrimination provisions of section 188 of WIA. Paragraph (1) States that the WIA nondiscrimination regulations apply to One-Stop partners that operate "programs and activities that are part of the One-Stop Delivery System." This paragraph contains the same requirements as 29 CFR 37.2(a)(2) regarding which entities are subject to the WIA nondiscrimination regulations. Coverage under this provision is not limited to grantees that co-locate their operations in a One-Stop Center. Paragraph (2) is simply intended to make grantees aware that there may be additional circumstances under which they are subject to 29 CFR part 37. Readers should refer to the definition of "recipient" in 29 CFR 37.4 for a complete listing of the types of entities covered by paragraph (2).

New § 641.827(c) implements section 503(b)(3) of the Act, which relates to providing participants with informational materials on their rights under the Age Discrimination in Employment Act of 1975.

New § 641.827(d) contains the DOL address for questions and complaints concerning nondiscrimination violations, which is the same material that appeared in § 641.830(b) of the Proposed Rule.

New § 641.827(e) is a revision of the material that appeared in § 641.830(a) of the NPRM. The paragraph omits the list of examples of Federal laws that may be applicable to such persons that appeared in paragraph 641.830(a) of the NPRM. The list of examples was omitted merely to simplify the paragraph; this change is not intended to alter the meaning of the paragraph.

One commenter suggested that the Department should emphasize that title VII of the Civil Rights Act, which applies to employees, does not cover SCSEP participants because participants are not employees. The Department does not take a position on the question of whether participants may or must be considered employees. The reason is that the only reference to employee status in title V is in section 504 of the OAA, which says that participants employed in any project funded under title V shall not be considered Federal employees. Accordingly, the issue of whether participants are considered employees for any other purposes must be decided by entities other than the Department.

Another commenter was concerned that the wording of proposed § 641.830(a) could be misinterpreted to cover only SCSEP participants whereas the nondiscrimination protections should also apply to applicants for participation, employees, and applicants for employment. Based on that suggestion, we have added language to clarify that the nondiscrimination protections of Federal, State, or local laws may apply to applicants for participation in SCSEP programs, or to other individuals, as well as to participants.

What Nondiscrimination Requirements Apply Specifically to Participants in SCSEP Programs? (§ 641.830) [Removed]

What Policies Govern Political Patronage? (§ 641.833)

Section 641.833 contained a prohibition on selecting or not selecting SCSEP participants or on funding or not funding subrecipients or host agencies based on political affiliation or belief. One commenter stated that 29 CFR part 37 governs issues regarding "political affiliation or belief," and asks that this section be amended to indicate that 29 CFR part 37 prohibits discrimination on these bases in SCSEP programs and activities that are part of the One-Stop system.

The Department agrees that this provision should explicitly prohibit the use of "political affiliation or belief" as the basis of personnel actions involving SCSEP participants in One-Stop system programs and activities. Accordingly, we are adding a cross reference to the WIA nondiscrimination requirements.

What Policies Govern Political Activities? (§ 641.836)

Section 641.836 describes various requirements and prohibitions on political activities involving grantees and participants, including those established under the "Hatch Act." Several commenters agreed that the Hatch Act restrictions should be posted in grantee administrative offices, but questioned whether it is reasonable or practical to require the posting of the restrictions in "every workplace in which SCSEP activities are conducted." In order to avoid the "burdensome and onerous" task, they recommend that grantees be required to inform participants of Hatch Act restrictions through written information provided upon enrollment.

The notice posting requirement is statutory. It is required by section 502(b)(1)(P) of the OAA. Not only must the required notice explaining allowable and unallowable political activities be posted in every workplace in which SCSEP activities are conducted, but an explanation of the law must be made available to each category of persons associated with the project. Therefore, the regulation has not changed as suggested.

Commenters also suggested that the Department provide the language that it wishes grantees to communicate to their participants so that everyone will communicate a consistent message.

The Department concurs and will provide this information by administrative issuance and has revised the regulation accordingly.

What Policies Govern Union Organizing Activities? (§ 641.839)

What Policies Govern Nepotism? (§ 641.841)

What Maintenance of Effort Requirements Apply to the Use of SCSEP Funds? (§ 641.844)

What Uniform Allowable Cost Requirements Apply to the Use of SCSEP Funds? (§ 641.847)

Are There Other Specific Allowable and Unallowable Cost Requirements for the SCSEP? (§ 641.850)

Section 641.850 listed several provisions governing allowable and unallowable costs that are unique to the SCSEP program or unique to grant programs administered by the Department. One commenter suggested that § 641.850(e), which discusses "accessibility and reasonable accommodation," be amended to permit SCSEP funds/financial assistance to be used to meet obligations under "Section 188 of the Workforce Investment Act of 1998, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; any other applicable Federal disability nondiscrimination laws; and the regulations implementing these laws, to provide physical and programmatic accessibility and reasonable accommodation/modifications for, and effective communication with, individuals with disabilities."

The Department agrees and § 641.850 has been amended to permit SCSEP resources to be used to provide

"physical and programmatic accessibility and reasonable accommodation/modifications for, and effective communication with, individuals with disabilities."

A second commenter suggested amending § 641.850(e) to provide that "Recipients and subrecipients may use SCSEP funds to meet their *own obligations* (emphasis provided) under section 504." The change would emphasize that "scarce" SCSEP funds "are not intended to meet the obligations of community agencies or others subject to the relevant provisions of law."

The Department does not agree that it should limit the use of SCSEP funds for meeting reasonable accommodation obligations under Federal disability nondiscrimination law to recipients' and subrecipients' "own" obligations. While there is no requirement to use SCSEP funds to modify host agencies' facilities, SCSEP funds may be used for this purpose. Regardless of where participants are placed, Federal disability nondiscrimination law requires their host agency to provide reasonable accommodations/modifications for qualified participants with disabilities.

One commenter stated "[a]ccept in kind at One Stops." Another commenter questioned whether SCSEP funds could be used for One-Stop activities.

The Department's position on both comments is stated in a paper entitled Resource Sharing for Workforce Investment Act One-Stop Centers; Methodologies for Paying or Funding Each Partner Program's Fair Share of Allocable One-Stop Costs, published as a notice in the **Federal Register** (66 FR 29637, May 31, 2001) and available on ETA's Web site at *http://www.doleta.gov/usworkforce/documents/fr/fr-5-31-2001-a.pdf*. As the notice indicates, One-Stop partners, including the SCSEP, must use a portion of their funds to support the One-Stop system. One-Stop costs, like all other SCSEP costs, must be determined in accordance with the applicable cost principles, which provide that each partner must pay its fair share of allowable and allocable One-Stop costs. The Department does not mandate how this is to be accomplished. Instead, the One-Stop partners must mutually agree on each partner's share of One-Stop costs and on what resources shall be provided by each of the partners to defray its fair share of One-Stop costs. Such an agreement may include acceptance of in-kind services in satisfaction of the SCSEP fair share of One-Stop costs. More information on allocating One-Stop costs can be found in Part 1 of the One Stop Comprehensive Financial Management Technical Assistance Guide, also available on ETA's Web site at: *http://wdsc.doleta.gov/sga/pdf/FinalTAG_August_02.pdf*. The Department has decided to emphasize and clarify its position on the use of SCSEP funds for the support of One-Stop activities (*see* 20 CFR 662.230) by inserting a new paragraph (d) in § 641.850 covering One-Stop costs and redesignating paragraphs (d)–(f) respectively (e)–(g). As discussed in more detail in the Preamble discussion of subpart B, grantees may seek to negotiate agreements in which they become service providers for older workers in the One-Stop, which may lead to a significant reduction of their required contribution.

How Are Costs Classified? (§ 641.853)

Section 641.853 provided that costs are classified as program or administrative costs and provided rules for the classification of participant wage and fringe benefit costs as program costs. Four commenters stated that this section does not "make sense" and that clarification is needed or the section should be deleted because enrollee costs are always charged to Enrollee Wages and Fringe Benefits (EWFB).

The Department agrees with the commenters that this provision needs to be clarified, especially in presenting the idea that participant wages and fringe benefits costs are always treated as program costs, regardless of what function is performed by participants in their community service assignments. The Department has revised paragraph (b) accordingly.

One commenter requested relief from cost category restrictions due to the increased administrative effort required to comply with the Older Americans Act Amendments of 2000.

The Department agrees with the commenter that the OAA Amendments do require increased administrative effort. However, the Department cannot provide relief from the cost category restrictions since they are established by section 502(c)(3), (c)(4), and (c)(6) of the Act. The only relief available is the Department's authority, under section 502(c)(3)(b), to increase the administrative cost limitation from 13.5 percent to 15 percent. As stated in the Preamble discussion of § 641.700, the Department will take the possible increased costs of administering some of the new requirements of the 2000 Amendments into account in reviewing requests for increases in the administrative cost limitation. Further, relief from the cost category limitations probably is unnecessary since the definitions of Administrative Cost and Program Cost under the 2000 Amendments will result in substantial amounts of costs that may previously have been charged to the Administrative Cost cost category being charged to the Program Cost cost category. For example, costs of assessments, IEP preparation, and related data collection costs are chargeable to the Program Cost cost category.

What Functions and Activities Constitute Costs of Administration? (§ 641.856)

What Other Special Rules Govern the Classification of Costs as Administrative Costs or Program Costs? (§ 641.859)

Sections 641.856 and 641.859 provided the rules for classifying costs as either administrative or program costs. One commenter suggested that the Department insert a new paragraph (c) in § 641.859 which would state: "All other costs under awards to subrecipients are program costs except for awards to first tier subrecipients that have comprehensive responsibilities for SCSEP program operations in the geographic area covered by their award." The objective of the proposed change was to reflect Congressional intent to make SCSEP administrative cost standards consistent with the WIA administrative cost provision at 20 CFR 667.220(a).

Paragraph (c) of § 641.859 was inadvertently omitted from the NPRM. This paragraph applies the following two criteria to costs classified as Administrative Cost: (1) The costs must be incurred for one of the functions listed in § 641.856(b); and (2) the cost must be incurred by a direct recipient of SCSEP funds, a first-tier subrecipient (awardee of funds from a direct recipient that has broad responsibilities for administering SCSEP programs), a recipient of an award from a direct recipient or a covered first tier subrecipient, or a vendor which performs administrative functions for recipients or first tier subrecipients and must be solely for the performance of administrative functions. This change in § 641.859 makes the treatment of SCSEP administrative costs consistent with the treatment of administrative costs under the WIA. Thus, it furthers the integration of SCSEP activities with WIA One-Stop system activities, as provided in the 2000 Amendments.

The Department's intent in applying the WIA cost structure to SCSEP is twofold. First, the Department wants to use the same type of cost structure for SCSEP as is used for WIA. Both programs offer many of the same types

of activity, and many organizations involved in the SCSEP program also are involved in the WIA program. These organizations benefit from the use of the same cost structure for both programs due to simplified accounting and financial reporting. Second, while every organization incurs what it considers administrative costs, the Department is interested in measuring only the administrative cost incurred by direct recipients and subrecipients that have broad responsibilities for successful program outcomes and that provide a broad range of services to participants. In the WIA context, States, local workforce areas, and One-Stop operators incur such costs. In the SCSEP context, direct grantees and first-tier subrecipients incur such costs. First-tier subrecipients are subrecipients that conduct three specified SCSEP program activities for all participants: eligibility determination; participant assessment; and development of and placement of participants into community service opportunities. The Department has determined that subrecipients that perform all of these functions have approximately the same breadth of responsibilities as WIA local grant recipients and One-Stop operators. It is therefore appropriate to use the same special rules for SCSEP administrative costs as for WIA administrative costs.

In order to effectuate the suggested change, §§ 641.856 and 641.859 have been modified. A new paragraph (c) defining first-tier subrecipient has been added to § 641.856 and the description of administrative costs in paragraph (a) has been modified to limit its coverage of subrecipients to first-tier subrecipients. Paragraph (b) of § 641.859 has been modified to fully describe administrative costs in terms of what types of entities can incur them and paragraph (e) has been incorporated in the revised paragraph (b).

Must SCSEP Recipients Provide Funding for the Administrative Costs of Subrecipients? (§ 641.861)

What Functions and Activities Constitute Program Costs? (§ 641.864)

Section 641.864 listed some of the activities that are counted as program costs. We have added language to § 641.864(d) to reflect the prohibition on stand alone job search assistance and job referral activities in § 641.535(c).

What Are the Limitations on the Amount of SCSEP Administrative Costs? (§ 641.867)

Under What Circumstances May the Administrative Cost Limitation Be Increased? (§ 641.870)

What Minimum Expenditure Levels Are Required for Participant Wages and Fringe Benefits? (§ 641.873)

Section 641.873 set forth the rule that 75 percent of grant expenditures must be made for participant wages and fringe benefits and explained how that rule would be applied. Three commenters took issue with the requirement that 75 percent of SCSEP funds be expended on participant wages and fringe benefits. They pointed out that this requirement makes it more difficult to achieve the Act's objectives relating to other allowable activities such as training for unsubsidized employment.

The Act, at section 502(c)(6)(B), requires that 75 percent of funds be expended on participant wages and fringe benefits. Since the Department has no discretion to alter this requirement, recipients must design their SCSEP-funded programs and activities to maximize coordination with the One-Stop system and other programs that can train and place SCSEP participants in unsubsidized jobs.

When Will Compliance With Cost Limitations and Minimum Expenditure Levels Be Determined? (§ 641.876)

What Are the Fiscal and Performance Reporting Requirements for Recipients? (§ 641.879)

This section established the reporting requirements for the program and indicated areas in which the Department may administratively issue supplemental reporting instructions. Several commenters stated that the proposed 45 days to submit a final Quarterly Progress Report (QPR) does not give sufficient time to submit accurate year-end reports, and suggested that a minimum of 60 to 120 days is needed to account for final placement, retention, and wage information. One commenter pointed out that § 641.879 of the proposed regulation and the Preamble discussing that section are inconsistent; the regulation requires that final financial and non-financial reports are due within 45 days while the Preamble states that they are due within 90 days.

The Department concurs with the commenters and the regulation has been changed to require submission of the QPR and quarterly financial status reports 30 days after the end of each quarter and final financial and non-financial reports 90 days after the end of the grant period.

One commenter noted that the language in paragraph (a) indicating that data that cannot be validated or verified may be treated as not reported only applies to the QPR non-financial report and suggested that it should refer to both performance and financial reports. One commenter suggested replacing the term "demographics" to "demographic characteristics" in § 641.879(f).

The Department agrees with the other comments and has incorporated them into the Final Rule.

What Are the SCSEP Recipient's Responsibilities Relating to Awards to Subrecipients? (§ 641.881)

What Are the Grant Closeout Procedures? (§ 641.884)

Subpart I—Grievance Procedures and Appeals Process

What Appeal Process Is Available to an Applicant That Does Not Receive a Grant? (§ 641.900)

In § 641.900, the Department reserved its opportunity to provide a rule on an administrative appeal process for grantees that do not receive a grant and asked for advice and guidance on this issue. The Proposed Rule requested comments on whether there should be an administrative appeal process and how it should be structured given the complexities of fashioning a remedy. Additionally, the Department requested suggestions on how to operate such an appeals process. For example, could such a SCSEP appeals process be modeled after the appeals process in the WIA Indian and Native American program? Finally, the Department sought feedback on whether it should create an appeals process for one-year grant applicants and 502(e) projects and if so whether and how such a process should differ from a process established for multi-year project appeals.

In this section, the Department establishes a formal appeals process for SCSEP grant applicants that feel they have been inappropriately denied a grant. This section should be read in conjunction with § 641.470, "What happens if an applicant's application is rejected?"

The Department received several comments on this section. Some comments suggested procedures for protesting the content or form of a Solicitation for Grant Applications (SGA) and appeals therein as well as procedures for protesting the rejection of a grant application and appeals

therein. None, however, addressed a separate appeals process for one-year grant applicants and section 502(e) projects.

The comments suggested that to protest the content of an SGA, a formal protest be submitted to the Department's Grant Officer by an interested party or potential grant applicant in a timely manner. The Grant Officer would be required to make a determination within ten days, in writing, stating factual findings and conclusions. If the protesting party found the determination adverse, it may appeal the determination to the Department's Office of Administrative Law Judge (ALJ). The ALJ would try to render a decision before the application submission deadline in order to provide time to implement a remedy. Remedies would include amendment to the SGA, reissuance of the SGA and/or extension of the deadline for submission of applications.

The comments also recommended the right to protest the award decision. To do so, the protesting party would, again, file a protest with the Grant Officer. Adverse decisions would be appealable to the ALJ and ultimately to the Department's Administrative Review Board.

The commenters suggested that the initial protest to the Grant Officer would need to be filed within ten days of the grant decision. In doing so, the protesting party may request, and receive within five days, a debriefing about the justification of the grant denial. The protest must also include a factual basis for the complaint and the specific issues contested. Furthermore, the protesting party would be given two working days following the debriefing to amend the protest document. The Grant Officer would then have thirty days to provide a determination of the protest. The final determination would contain findings of fact, conclusions or law, and in the event of an adverse decision for the protesting party, the Grant Officer would also inform the party of the opportunity to appeal the Grant Officer's determination to the ALJ. In the event the Grant Officer or the ALJ found in favor of the protesting party, the Grant Officer would have the authority to provide the following remedies: Retroactive award, reallocation or distribution of authorized positions, resolicitation or recompetition of the grant funds, or any other appropriate remedy.

The Department has decided not to institute a protest and appeal procedure for challenges to the SGA. The Department believes that the process could become too complicated and take too long to be worthwhile. The absence of a formal appeals process does not preclude applicants from raising questions about the contents of an SGA nor preclude the Grant Officer from making changes in response to such questions.

The Department believes that grant applicants dissatisfied with an award decision should have the opportunity to protest/appeal the award decision. The process, which places a strong emphasis on timeliness of appeals and decisions, will be as follows:

(a) An applicant for financial assistance under title V of the OAA that is dissatisfied because the Department has issued a determination not to award financial assistance, in whole or in part, to such applicant, may request that the Grant Officer provide the reasons for not awarding financial assistance to that applicant (a debriefing). The request must be made within 10 days of the date of notification indicating that the grant would not be awarded. The Grant Officer must provide the protesting applicant with a debriefing and a written decision stating the reasons for the decision not to award the grant within 20 days of receipt of the protest. Applicants may appeal to the U.S. Department of Labor, Office of Administrative Law Judges, within 21 days of the date of the Grant Officer's notice providing reasons for not awarding financial assistance. The appeal may be for a part or the whole of a denial of funding. This appeal will not in any way interfere with the Department's decisions to fund other organizations to provide services during the appeal period.

(b) Failure to either request a debriefing within the 10 day requirement or to file an appeal within 21 days as provided in paragraph (a) of this section constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this section must state specifically those issues in the Grant Officer's notification upon which review is requested. Those provisions of the Grant Officer's notification not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, published at 61 FR 19978 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

(f) The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(1) The appeal is not considered as a complaint; and

(2) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(g) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record.

(h) The remedies available are provided in § 641.470.

(i) This section only applies to multi-year grant awards.

The Department does not believe that there is a generally effective way to provide an appeal for a single-year award because of the time it takes to perfect and try a case, and the time it takes to effectuate a remedy. However, such appellants protest basic review of the Department's decision in Federal District Court.

What Grievance Procedures Must Grantees Make Available to Applicants, Employees, and Participants? (§ 641.910)

In § 641.910, the Department required State and national grantees to establish grievance procedures for handling employee, participant, and applicant complaints. These procedures must be described in the grant agreement. Paragraph (c) allowed complaints that a grantee had not complied with applicable Federal laws to be filed with the Department if these grievances are not resolved within 60 days under the grantee's procedures. Paragraph (d) provided special procedures for complaints of discrimination under title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and where applicable, the WIA.

The Department received several comments on this section. Two comments suggested that the section, in general, be reorganized and that the appeal process for participants should actually be moved to § 641.580, which addresses the termination of participants. The commenter then asserted that the "grantee appeal process" could remain listed in § 641.910. The commenter also suggested that the term "employees" be deleted from the section.

One comment suggested concern about language in § 641.910(d), which states, "[Q]uestions about or complaints alleging discrimination may be directed or mailed to CRC." The commenter asserted that this language may be misinterpreted as signifying that all discrimination complaints must be filed with CRC, when in fact, under the WIA nondiscrimination regulations, complainants have the option of filing at the recipient level. The comment also requested that the language be amended to state that questions about "the requirements for complaint-processing procedures" may be directed to CRC and that the Preamble discussion of this paragraph be amended to make this point clear.

We agree and have revised the Final Rule to reflect these suggestions.

Two commenters questioned the omission of a reference to 29 CFR part 31 and one of the comments requested that employment antidiscrimination laws not be applied to SCSEP participants' relations to grantees because the participants are not employees of the grantees.

Grantees must have grievance procedures in place for resolving complaints arising between the grantee and its employees, subgrantees, applicants, or participants in the SCSEP program. There may be separate grievance processes for applicants and participants and for employees or subgrantees. A grievance procedure should cover applicants who wish to dispute a determination of non-eligibility for the SCSEP program and participants who wish to grieve other complaints with the grantee. There should also be clear easily understood steps for the applicant/participant to take in attempting to resolve an issue.

The Department will not investigate a grantee's final determination regarding a grievance except to determine whether the grantee's grievance procedures were followed. When the grievance has alleged a violation of Federal law (other than Federal nondiscrimination law), and has not been resolved within 60 days under the grantee's grievance procedures, the grievant may file the grievance with the Department as described in paragraph (c).

Complaints alleging discrimination under title VI or section 504 must be filed at the Federal level with the Department's Civil Rights Center (CRC) at the address listed in § 641.910(d). If the grantee is subject to the WIA nondiscrimination regulations, discrimination complaints under section 188 of WIA may be filed either with the grantee or directly with CRC. The grantee may attempt to resolve discrimination complaints by using the same procedures it uses to process grievances, if those procedures meet the requirements in 29 CFR 37.70 and 37.80. In such cases, if the complaint is not resolved to the complainant's satisfaction at the grantee level, the complainant may refile the complaint with CRC. Questions about grantee-level complaint-processing procedures may also be addressed to CRC.

The nondiscrimination provisions of 29 CFR parts 31, 32 and 37 apply to the relationship of grantees and participants whether or not the participants are considered employees of the grantees. As recipients of Federal financial assistance, grantees assume the obligation not to discriminate against participants.

What Actions of the Department May a Grantee Appeal and What Procedures Apply to Those Appeals? (§ 641.920)

In § 641.920, the Department prescribed rules for appealing certain grant decisions and the rules of procedure and timing of decisions for the Office of the Administrative Law Judge hearings. This section should be read in conjunction with the rule established in § 641.900—"What appeal process is available to an applicant that does not receive a grant?"

The Department received a few comments on this section. Some comments overlapped with the comments on § 641.900 in that they focus on the protest and appeal of Solicitation of Grant Application terms and grant decisions, specifically the denial of grant applications. Others proposed a procedure for protesting and appealing decisions about the grant and suggested procedures for such appeals. The comments suggested the following procedure:

Within 21 days of receipt of the final determination, an applicant may appeal a Grant Officer's decision by requesting a hearing before the OALJ. Such a hearing shall be requested in writing and transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, United States Department of Labor, with a copy to the Grant Officer.

(i) Failure to request a hearing within 21 days of receipt of the final determination constitutes the waiver of a right to a hearing.

(ii) A request for a hearing under this section must state specifically those issues in the final determination upon which review is requested. Those provisions of the final determination not specified for review are considered resolved and not subject to further review.

(iii) The rules of practice and procedure promulgated by the OALJ govern the conduct of hearings under this section.

(iv) In ordering relief, the ALJ may provide remedies and other redress with the full authority of the Secretary under the Act.

(v) The ALJ should render a written decision within 60 days following the closing of the record. The ALJ's decision constitutes a final agency action unless a petition for review by the ARB is properly made within 21 days thereof, specifically identifying the procedure, fact, law or policy to which exception is taken.

The ALJ's decision will not constitute a final agency action if the ARB, within 15 days of the filing of a petition for review, notifies the interested parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 60 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action under the Administrative Procedure Act (APA).

The ALJ's decision with regard to grant decision protests shall be reviewable at the discretion of the Secretary who may issue a final order on the contested matter.

Regarding other legal remedies, a party to a proceeding which resulted in a final agency action either by ARB decision or Secretary's final order may either pursue an appeal to the United States Court of Appeals having jurisdiction over the applicant by filing a review petition with in 30 days thereof; or in the alternative, a party to a proceeding resulting in final agency action may seek de novo review of the ARB decision or Secretary's final order in an appropriate district court. Nothing contained in this section prejudices the separate exercise of other legal rights in pursuit of other available remedies and sanctions.

The commenters' suggestions generally parallel the proposed regulation, with some difference in time limits. We have retained the proposed regulation as written but have added the imposition of sanctions as a ground for appeal and have accepted the commenters' suggestion to specify the ALJ's authority to order relief. We did not adopt the commenters' suggestion to create a protest procedure. The kinds of decisions that are appealable under this section are those in which written final determinations are routinely made, obviating the need for an additional procedural layer. We did not adopt the commenters' suggestion that the OALJ's rules of practice and procedure be adopted without exceptions. We have found that the two exceptions listed in the Proposed Rule in § 641.920(c)(3) have worked well in other Department programs, making the hearing process less formal. We did not adopt the suggestion that appears to create a second level of discretionary review by the Secretary. The Secretary has delegated her review authority to the ARB, making that suggestion redundant. We did not adopt the suggestion on appeal rights because it misstates the rights available. Since, unlike WIA, the OAA does not provide for review in the Court of Appeals, the only available avenue for review would be in the District Courts under the APA. The standard of review under the APA is whether the agency action was arbitrary, capricious or otherwise not in accordance with law. It is not a de novo review.

Is There an Alternative Dispute Resolution Process That May Be Used in Place of an ALJ Hearing? (§ 641.930)

In § 641.930, the Department provided for an alternative dispute resolution system in lieu of requesting a hearing with an ALJ. Any decision rendered through this process would be considered a final determination.

The Department received several comments on this section. The commenters made three suggestions for changes to the rule.

First, the commenters suggested that a written decision should be issued within 30 days, not 60. Second, the commenters suggested that any waiver to an administrative hearing should be revoked or become void if a settlement has not been reached or a decision has not been issued within 30 days. Finally, the commenters suggested that any final decision reached through this informal process be treated as a decision from an ALJ and that it be appealed accordingly.

Considering the amount of time it necessarily takes to prepare and present arguments and for the mediator to evaluate evidence and arguments, the Department believes that 60 days for the issuance of a decision in an alternative dispute resolution case is a reasonable time limit. Since we have decided to retain the 60-day time limit for resolution, the time for automatic revocation of the election to use alternative dispute resolution also needs to remain at 60 days. The Proposed Rule already provided that the decision in the alternative dispute resolution procedure would be treated as a final decision of the ALJ, and would constitute final agency action. The Department believes that not having a decision in the alternate dispute resolution procedures be appealable is consistent with the intent of alternate dispute resolution to create quick and inexpensive ways to resolve disputes and is more consistent with the deference that is given to arbitral and other alternate dispute resolution decisions.

A commenter requested that the reference to "641.920" in paragraph (a) be amended to "641.920(a)."

We agree with the commenter that the regulation should make clear that the complaints involving discrimination are not subject to this alternate dispute resolution process. We have revised the regulation to change the reference to § 641.920 to § 641.920(a), (c), and (d).

Section 641.630(b) has been revised to provide an option for the parties to agree, in writing, to extend the alternative dispute resolution period.

IV. Administrative Information

A. Paperwork Reduction Act

Under the Paperwork Reduction Act, information collection requirements, which must be imposed as a result of this regulation have been submitted to the Office of Management and Budget. Public reporting burden for the collection of information is estimated to average 55 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The required reports described at § 641.879 are as follows: the Quarterly and Final Progress Report, the Quarterly and Final Financial Status Report, the Quarterly Report of Federal Cash Transaction, the Annual Equitable Distribution Report; a 502(e) Activity Report; reports related to the Common Performance Measure; and reports related to demographic characteristics.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (1205–0040), Washington, DC 20503: Attention: Desk Officer for Employment and Training Administration.

B. Executive Order 13132 (Federalism)

The Employment and Training Administration (ETA) has reviewed this rule in accordance with Executive Order 13132 on Federalism, and has determined that it does not have "Federalism implications." A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. The rule establishes the administrative requirements for the Senior Community Service Employment Program, a grant program to assist older workers. The rule includes the process for applying for and receiving federal grants. If a State chooses to participate in the program, it receives grant funds from ETA for the cost of the program. The rule involves no preemption of State law nor does it limit State policymaking discretion.

After the enactment of the 2000 Amendments to the OAA, the Department consulted with public interest groups and intergovernmental groups on the development of regulations necessary to implement the amendments to the OAA. Included in the consultation process were the Intergovernmental Organizations; interested individuals; and representatives of the grantee community, including State representatives and representatives from the U.S. Forest Service; National Senior Citizens Education and Research Center;

National Council on the Aging; AARP Foundation; Green Thumb, Inc.; National Urban League, Inc.; National Center and Caucus for the Black Aged, Inc.; Asociacion Nacional Por Personas Mayores; National Asian Pacific Center on Aging; and National Indian Council on Aging.

C. Regulatory Flexibility and Regulatory Impact Analysis, SBREFA; Family Well-Being

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. "Small entities" are defined as small businesses (those with fewer than 500 employees, except where otherwise provided) and small non-profit organizations (those with fewer than 500 employees, except where otherwise provided) and small governmental entities (those in areas with fewer than 50,000 residents). This rule will affect primarily the 50 States, the District of Columbia, and certain Territories; however, it affects those national organizations and host agencies that have fewer than 500 employees. As described in this Preamble, ETA has taken a variety of measures to consult with grant recipients of this program. The Department has assessed the potential impact of the Proposed Rule in order to identify any areas of concern. Based on that assessment, the Department certifies that these rules, as promulgated, will not have a significant impact on a substantial number of small entities.

In addition, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(s). While these rules govern the distribution and administration of funds appropriated by Congress, the rules themselves do not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises. Accordingly, under the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. Chapter 8), the Department has determined that these are not "major rules," as defined in 5 U.S.C. 804(2).

The Department certifies that the rule has been assessed in accordance with Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. The purpose of SCSEP is to provide community service activities and employment opportunities to individuals age 55 and over who are low income and have poor employment prospects. This program is designed at the State and local level to fulfill this purpose with the effect of enhancing family well-being through increased skills and earnings and to promote self-sufficiency for older individuals.

D. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that these rules are consistent with these priorities and principles. This rulemaking implements statutory authority based on broad consultation and coordination. It reflects the Department's response to suggestions received in writing and through work groups.

To a considerable degree, these rules reflect the suggestions received. They also reflect the intent of the Act to improve the SCSEP by integrating SCSEP into the One-Stop Delivery System and improving the performance of the grantee community. The Department has determined that the rule will not have an adverse effect in a material way on the nation's economy.

However, this rule is a significant regulatory action under section (3)(f)(1) of Executive Order 12866 because it includes many provisions that are new to SCSEP and, therefore, the rule has been reviewed by OMB in accordance with that Order.

E. Executive Order 13211 (Energy Effects)

Executive Order 13211 requires all agencies to provide a Statement of Energy Effects for regulatory actions that effect energy supply, energy distribution, or energy use. The Department has analyzed this rule and determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, this rule does not require a Statement of Energy Effects under Executive Order 13211.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) 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.

The Department has determined that the Final Rule will not require the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, the Department has not prepared a budgetary impact statement specifically addressing the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely affected small government.

G. Executive Order 12988 (Civil Justice Reform)

The Department drafted and reviewed this rule according to Executive Order 12988, and determined that it will not unduly burden the Federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13175 (Tribal Summary Impact Statement)

Executive Order 13175 requires consultation and coordination with Indian Tribal Governments and also requires a Tribal summary impact statement in the Preamble of regulation, which describes the extent of the agency's prior consultation with Tribal officials, a summary of nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met. The Department has reviewed this regulation for Tribal impact and has determined that no provision preempts Tribal law or the ability of Tribes to self-govern.

Signed at Washington, DC, this 25th day of March, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

■ For the reasons stated in the Preamble, 20 CFR part 641 is revised to read as follows:

PART 641—PROVISIONS GOVERNING THE SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Subpart A—Purpose and Definitions

Sec.

Subpart B—Coordination with the Workforce Investment Act

Subpart C—The State Senior Employment Services Coordination Plan

Subpart D—Grant Application, Eligibility, and Award Requirements

Subpart E—Services to Participants

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

Subpart G—Performance Accountability

Authority: 42 U.S.C. 3056 *et seq.*

Subpart A—Purpose and Definitions

§ 641.100 What does this part cover?

Part 641 contains the Department of Labor's regulations for the Senior Community Service Employment Program (SCSEP), authorized under the title V of the Older Americans Act, 42 U.S.C. 3056 *et seq.*, as amended by the Older Americans Act Amendments of 2000 (OAA), Public Law 106–501. This part, and other pertinent regulations expressly incorporated by reference, set forth the regulations applicable to the SCSEP.

(a) Subpart A of this part contains introductory provisions and definitions that apply to this part.

(b) Subpart B of this part describes the required relationship between the OAA and the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 2801 *et seq.* These provisions discuss the coordinated efforts to provide services through the integration of the SCSEP within the One-Stop Delivery System.

(c) Subpart C of this part sets forth the requirements for the State Senior Employment Services Coordination Plan (State Plan), such as required coordination efforts, public comments, and equitable distribution.

(d) Subpart D of this part establishes grant planning and application requirements, including grantee eligibility, and responsibility review.

(e) Subpart E of this part details SCSEP participant services.

(f) Subpart F of this part provides the rules for projects designed to assure second career training and the placement of eligible individuals into unsubsidized jobs in the private sector.

(g) Subpart G of this part outlines the performance accountability requirements. This subpart establishes requirements for performance measures, defines such measures, and establishes corrective actions, including the imposition of sanctions for failure to meet performance measures.

(h) Subpart H of this part sets forth the administrative requirements for SCSEP grants.

(i) Subpart I of this part describes the grievance and appeals processes and requirements.

§ 641.110 What is the SCSEP?

The Senior Community Service Employment Program or the SCSEP is a program administered by the Department of Labor that serves low-income persons who are 55 years of age and older and who have poor employment prospects by placing them in part-time community service positions and by assisting them to transition to unsubsidized employment.

§ 641.120 What are the purposes of the SCSEP?

The purposes of the SCSEP are to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years of age or older and who have poor employment prospects; to foster individual economic self-sufficiency; and to increase the number of older persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors.

§ 641.130 What is the scope of this part?

The regulations in this part address the requirements that apply to the SCSEP. More detailed policies and procedures are contained in administrative guidelines issued by the Department. Throughout this part, phrases such as, "according to instructions (procedures) issued by the Department" or "additional guidance will be provided through administrative issuance" refer to the SCSEP Bulletins, technical assistance guides, and other SCSEP directives.

§ 641.140 What definitions apply to this part?

The following definitions apply to this part:

Authorized position level means the number of SCSEP enrollment opportunities that can be supported for a 12-month period based on the average national unit cost. The authorized position level is derived by dividing the total amount of funds appropriated for a Program Year by the national average unit cost per participant for that Program Year as determined by the Department. The national average unit cost includes all costs of administration, other participant costs, and participant wage and fringe benefit costs as defined in section 506(g) of the OAA. A grantee's total award is divided by the national unit cost to determine the authorized position level for each grant agreement.

Co-enrollment applies to any individual who meets the qualifications for SCSEP participation as well as the qualifications for any other relevant program as defined in the Individual Employment Plan.

Community service includes, but is not limited to, social, health, welfare, and educational services (including literacy tutoring); legal assistance, and other counseling services, including tax counseling and assistance and financial counseling; library, recreational, and other similar services; conservation, maintenance, or restoration of natural resources; community betterment or beautification; anti-pollution and environmental quality efforts; weatherization activities; and economic development. (OAA sec. 516(1)).

Core Services means those services described in section 134(d)(2) of WIA.

Department or DOL means the United States Department of Labor, including its agencies and organizational units.

Disability is defined at section 101(8) of the OAA as follows: a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (A) Self-care, (B) receptive and expressive language, (C) learning, (D) mobility, (E) self-direction, (F) capacity for independent living, (G) economic self-sufficiency, (H) cognitive functioning, and (I) emotional adjustment.

Equitable distribution report means a report based on the latest available Census data, which lists the optimum number of participant positions in each designated area in the State, and the number of authorized participant positions each grantee serves in that area, taking the needs of underserved counties into account. This report provides a basis for improving the distribution of SCSEP positions.

Grant period means the time period between the effective date of the grant award and the ending date of the award, which includes any modifications extending the period of performance, whether by the Department's exercise of options contained in the grant agreement or otherwise. Also referred to as "project period" or "award period."

Grantee means an entity receiving financial assistance directly from the Department to carry out SCSEP activities. The grantee is the legal entity that receives the award and is legally responsible for carrying out the SCSEP, even if only a particular component of the entity is designated in the grant award document. Grantees include States, Tribal organizations, territories, public and private nonprofit organizations, agencies of a State government or a political subdivision of a State, or a combination of such political subdivisions that receive SCSEP grants from the Department. (OAA sec. 502). In the case of the section 502(e) projects, grantee may be used to include private business concerns. As used here, "grantees" include "grantees" as defined in 29 CFR 97.3 and "recipients" as defined in 29 CFR 95.2(g).

Greatest economic need means the need resulting from an income level at or below the poverty guidelines established by the Department of Health and Human Services and approved by the Office of Management and Budget. (OAA sec. 101(27)).

Greatest social need means the need caused by non-economic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status that restricts the ability of an individual to perform normal daily tasks, or threatens the capacity of the individual to live independently. (OAA sec. 101(28)).

Host agency means a public agency or a private nonprofit organization exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986, other than a political party, which provides a work site and supervision for one or more participants. (See also OAA sec. 502(b)(1)(C)). A host agency may be a religious organization as long as the projects do not involve the construction, operation, or maintenance of any facility used or to be used as a place for religious instruction or worship.

Indian means a person who is a member of an Indian Tribe. (OAA sec. 101(5)).

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which:

(1) Is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA sec. 101(6)).

Individual employment plan or IEP means a plan for a participant that includes an employment goal, achievement of objectives, and appropriate sequence of services for the participant based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the participant. (OAA sec. 502(b)(1)(N)).

Intensive services means those services authorized by section 134(d)(3) of the Workforce Investment Act.

Jobs for Veterans Act means the program established in section 2 of Public Law 107–288 (2002) (38 U.S.C. 4215), that provides a priority for veterans and the spouse of a veteran who died in a service-connected disability, the spouse of a member of the Armed Forces on active duty who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements to receive services in any Department of Labor-funded workforce development program.

Local Workforce Investment Area or local area means an area established by the Governor of a State under section 116 of the Workforce Investment Act.

Local Board means a Local Workforce Investment Board established under section 117 of the Workforce Investment Act.

National grantee means Federal public agencies and organizations, private nonprofit agencies and organizations, or Tribal organizations that operate under title V of the OAA that are capable of administering multi-State projects under a national grant from the Department. (*See* OAA sec. 506(g)(5)).

OAA means the Older Americans Act as amended by the Older Americans Act Amendments of 2000 (Pub. L. 106–501; 42 U.S.C. 3056 *et seq.*).

One-Stop Center means the One-Stop Center system in a WIA Local Area which must include a comprehensive One-Stop Center through which One-Stop partners provide applicable core services and which provides access to other programs and services carried out by the One-Stop partners. (See WIA sec. 134(c)(2)).

One-Stop Delivery System means a system under which employment and training programs, services, and activities are available through a network of eligible One-Stop partners, which assures that information about and access to core services is available regardless of where the individuals initially enter the statewide workforce investment system. (WIA sec. 134(c)(2)).

One-Stop partner means an entity described in section 121(b)(1) of the

Workforce Investment Act; *i.e.*, required partners, and an entity described in section 121(b)(2) of the Workforce Investment Act, *i.e.*, additional partners.

Other participant (enrollee) cost means the cost of participant training, including the payment of reasonable costs to instructors, classroom rental, training supplies, materials, equipment, and tuition, and which may be provided on the job or in conjunction with a community service assignment, in a classroom setting, or under other appropriate arrangements; job placement assistance, including job development and job search assistance; participant supportive services to assist a participant to successfully participate in a project, including the payment of reasonable costs of transportation, health care and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services; and outreach, recruitment and selection, intake orientation, and assessments. (OAA sec. 502(c)(6)(A)).

Participant means an individual who is eligible for the SCSEP, has been enrolled and is receiving services as prescribed under subpart E of this part.

Placement into public or private unsubsidized employment means full- or part-time paid employment in the public or private sector by a participant for 30 days within a 90-day period without the use of funds under title V or any other Federal or State employment subsidy program, or the equivalent of such employment as measured by the earnings of a participant through the use of wage records or other appropriate methods. (OAA sec. 513(c)(2)(A)).

Poor employment prospects means the likelihood that an individual will not obtain employment without the assistance of the SCSEP or any other workforce development program. Persons with poor employment prospects include, but are not limited to, those without a substantial employment history, basic skills, and/or English-language proficiency; displaced homemakers, school dropouts, persons with disabilities, including disabled veterans, homeless individuals, and individuals residing in socially and economically isolated rural or urban areas where employment opportunities are limited.

Program year means the one-year period beginning July 1 and ending on June 30. (OAA sec. 515(b)).

Project means an undertaking by a grantee or subgrantee according to a grant agreement that provides community service, training, and employment opportunities to eligible individuals in a particular location within a State.

Recipient means grantee. As used here, "recipients" include "recipients" as defined in 29 CFR 95.2(g) and "grantees" as defined in 29 CFR 97.3.

Residence means an individual's declared dwelling place or address as demonstrated by appropriate documentation.

Retention in public or private unsubsidized employment means full- or part-time paid employment in the public or private sector by a participant for 6 months after the starting date of placement into unsubsidized employment without the use of funds under title V or any other Federal or State employment subsidy program. (OAA sec. 513(c)(2)(B)).

SCSEP means the Senior Community Service Employment Program authorized under title V of the OAA.

Service area means the geographic area served by a local SCSEP project.

State Workforce Agency means the State agency that administers the State Wagner-Peyser program.

State Board means a State Workforce Investment Board established under section 111 of the Workforce Investment Act.

State grantee means the entity designated by the Governor to enter into a grant with the Department to administer a State or territory SCSEP project under the OAA. Except as applied to funding distributions under section 506 of the OAA, this definition applies to the 50 States, Puerto Rico, the District of Columbia and the following territories: Guam, American Samoa, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

State Plan means the State Senior Employment Services Coordination Plan required under section 503(a) of the OAA.

Subgrantee means the legal entity to which a subaward of financial assistance, which may include a subcontract, is made by the grantee (or by a higher tier subgrantee or recipient), and that is accountable to the grantee for the use of the funds provided. As used here, "subgrantee" includes "subgrantees" as defined in 29 CFR 97.3 and "subrecipients" as defined in 29 CFR 95.2(kk).

Subrecipient means a subgrantee.

Title V of the OAA means 42 U.S.C. 3056 *et seq.* or title V of Public Law 106–501.

Training services means those services authorized by section 134(d)(4) of the Workforce Investment Act.

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA sec. 101(7)).

Workforce Investment Act or WIA means the Workforce Investment Act of 1998 (Public Law 105–220—Aug. 7, 1998; 112 Stat. 936); 29 U.S.C. 2801 *et seq.*

Workforce Investment Act regulations or WIA regulations means regulations at 20 CFR part 652 and parts 660–671.

Subpart B—Coordination with the Workforce Investment Act

§ 641.200 What is the relationship between the SCSEP and the Workforce Investment Act?

The SCSEP is a required partner under the Workforce Investment Act. As such, it is a part of the One-Stop Delivery System. SCSEP grantees are required to follow all applicable rules under WIA and its regulations. (WIA section 121(b)(1)(B)(vi) (29 U.S.C. 2841(b)(1)(B)(vi)) and the 29 CFR part 662 subpart B (§§ 662.200 through 662.280))

§ 641.210 What services, in addition to the applicable core services, must SCSEP grantees provide through the One-Stop Delivery System?

In addition to providing core services, SCSEP grantees must make arrangements through the One-Stop Delivery System to provide eligible and ineligible individuals with access to other activities and programs carried out by other One-Stop partners.

§ 641.220 Does title I of WIA require the SCSEP to use OAA funds for individuals who are not eligible for SCSEP services or for services that are not authorized under the OAA?

No, SCSEP requirements continue to apply. Title V resources may only be used to provide title V services to title V-eligible individuals. The Workforce Investment Act creates a seamless service delivery system for individuals seeking workforce development services by linking the One-Stop partners in the One-Stop Delivery System. Although the overall effect is to provide universal access to core services, SCSEP resources may only be used to provide services that are authorized and provided under the SCSEP to eligible individuals. Title V funds can be used to pay wages to SCSEP participants receiving intensive and training services under title I of WIA provided that the SCSEP participants are functioning in a community service assignment. All other individuals who are in need of the

services provided under the SCSEP, but who do not meet the eligibility criteria to enroll in the SCSEP, should be referred to or enrolled in WIA or other appropriate partner programs. (WIA sec. 121(b)(1)). These arrangements should be negotiated in the MOU.

§ 641.230 Must the individual assessment conducted by the SCSEP grantee and the assessment performed by the One-Stop Delivery System be accepted for use by either entity to determine the individual's need for services in the SCSEP and adult programs under title IB of WIA?

Yes, section 502(b)(4) of the OAA provides that an assessment or IEP completed by the SCSEP satisfies any condition for an assessment, service strategy, or IEP completed at the One-Stop and vice-versa. These reciprocal arrangements and the contents of the SCSEP IEP and WIA IEP should be negotiated in the MOU. (OAA sec. 502(b)(4)).

§ 641.240 Are SCSEP participants eligible for intensive and training services under title I of WIA?

(a) Yes, although SCSEP participants are not automatically eligible for intensive and training services under title I of WIA, Local Boards may deem SCSEP participants, either individually or as a group, as satisfying the requirements for receiving adult intensive and training services under title I of WIA.

(b) SCSEP participants who have been assessed through an SCSEP IEP have received an intensive service according to 20 CFR 663.240(a) of the WIA regulations. SCSEP participants who seek unsubsidized employment as part of their SCSEP IEP, may require training to meet their objectives. The SCSEP grantee/subgrantee, the host agency, the WIA program, or another One-Stop partner may provide training as appropriate and as negotiated in the MOU.

(c) The SCSEP provides opportunities for eligible individuals to engage in part-time community service activities for which they are compensated. These assignments are analogous to work experience activities or intensive service under 20 CFR 663.200 of the WIA regulations.

(d) SCSEP participants may be paid wages while receiving intensive or training services provided that the participant is functioning in a community service assignment.

Subpart C—The State Senior Employment Services Coordination Plan

§ 641.300 What is the State Plan?

The State Senior Employment Services Coordination Plan (the State Plan) is a plan, submitted by the Governor in each State, as an independent document or as part of the WIA Unified Plan, that describes the planning and implementation process for SCSEP services in the State, taking into account the relative distribution of eligible individuals and employment opportunities within the State. The State Plan is intended to foster coordination among the various SCSEP grantees operating within the State and to facilitate the efforts of stakeholders, including State and Local Boards under WIA, to work collaboratively through a participatory process to accomplish the SCSEP program's goals. (OAA sec. 503(a)(1)). The State Plan provisions are listed at proposed § 641.325.

§ 641.305 Who is responsible for developing and submitting the State Plan?

The Governor of each State is responsible for developing and submitting the State Plan to the Department.

§ 641.310 May the Governor delegate responsibility for developing and submitting the State Plan?

Yes, the Governor may delegate responsibility for developing and submitting the State Plan, provided that any such delegation is consistent with State law and regulations. To delegate responsibility, the Governor must submit to the Department a signed statement indicating the individual and/or organization that will be submitting the State Plan on his or her behalf.

§ 641.315 Who participates in developing the State Plan?

(a) In developing the State Plan the Governor must obtain the advice and recommendations of representatives from:

(1) The State and Area Agencies on Aging;

(2) State and Local Boards under the Workforce Investment Act (WIA);

(3) Public and private nonprofit agencies and organizations providing employment services, including each grantee operating an SCSEP project within the State, except as provided for in § 641.320(b);

(4) Social service organizations providing services to older individuals;

(5) Grantees under title III of the OAA;

(6) Affected communities;

(7) Underserved older individuals;

(8) Community-based organizations serving older individuals;

(9) Business organizations; and

(10) Labor organizations.

(b) The Governor may also obtain the advice and recommendations of other interested organizations and individuals, including SCSEP program participants, in developing the State Plan. (OAA sec. 503(a)(2)).

§ 641.320 Must all national grantees operating within a State participate in the State planning process?

(a) Yes, although section 503(a)(2) requires the Governor to obtain the advice and recommendations of SCSEP national grantees with no reciprocal provision requiring the national grantees to participate in the State planning process, the eligibility provision at section 514(c)(5) requires grantees to coordinate with other organizations at the State and local level. Therefore, any national grantee that does not participate in the State planning process may be deemed ineligible to receive SCSEP funds in the following Program Year.

(b) National grantees serving older American Indians are exempted from participating in the planning requirements under section 503(a)(8) of the OAA. These national grantees may choose not to participate in the State planning process, however, the Department encourages participation. If a national grantee serving older American Indians does not participate in the State planning process, it must describe its plans for serving older American Indians in its application for SCSEP grant funds.

§ 641.325 What information must be provided in the State Plan?

The Department issues instructions detailing the information that must be provided in the State Plan. At a minimum, the State Plan must include information on the following:

(a) The ratio of eligible individuals in each service area to the total eligible population in the State;

(b) The relative distribution of:

(1) Eligible individuals residing in urban and rural areas within the State;

(2) Eligible individuals who have the greatest economic need;

(3) Eligible individuals who are minorities; and

(4) Eligible individuals who have the greatest social need;

(c) The employment situations and the types of skills possessed by eligible individuals;

(d) The localities and populations for which community service projects of the type authorized by title V are most needed;

(e) Actions taken or planned to coordinate activities of SCSEP grantees with the activities being carried out in the State under title I of WIA;

(f) A description of the State's procedures and time line for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment;

(g) Public comments received, and a summary of the comments;

(h) A description of the steps taken to avoid disruptions to the greatest extent possible (see § 641.365); and

(i) Such other information as the Department may require in the State Plan instructions. (OAA sec. 503(a)(3)–(4), (6)).

§ 641.330 How should the State Plan reflect community service needs?

The Governor must ensure that the State Plan identifies the types of community services that are needed and the places where these services are most needed. The State Plan should specifically identify the needs and locations of those individuals most in need of community services and the groups working to meet their needs. (OAA sec. 503(a)(4)(E)).

§ 641.335 How should the Governor address the coordination of SCSEP services with activities funded under title I of WIA?

The Governor must seek the advice and recommendations from representatives of the State and Area Agencies on Aging in the State and the State and Local Boards established under title I of WIA. (OAA sec. 503(a)(2)). The State Plan must describe the steps that are being taken to coordinate SCSEP activities within the State with activities being carried out under title I of WIA. (OAA sec. 503(a)(4)(F)). The State Plan must describe the steps being taken to ensure that the SCSEP is an active partner in each One-Stop Delivery System and the steps that will be taken to encourage and improve coordination with the One-Stop Delivery System.

§ 641.340 Must the Governor submit a State Plan each year?

The Governor is not required to submit a full State Plan each year; however, at a minimum, the Governor must seek the advice and recommendations of the individuals and organizations identified in the statute at section 503(a)(2) about what, if any, changes are needed, and publish the changes to the State Plan for public comment each year and submit a modification to the Department.

§ 641.345 What are the requirements for modifying the State Plan?

(a) Modifications are required when:

(1) There are changes in Federal or State law or policy that substantially change the assumptions upon which the State Plan is based;

(2) There are changes in the State's vision, strategies, policies, performance indicators, or organizational responsibilities;

(3) The State has failed to meet performance goals and must submit a corrective action plan; or

(4) There is a change in a grantee or grantees.

(b) Modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the State Plan under §§ 641.325 and 641.350.

(c) The Department will issue additional instructions for the procedures that must be followed when requesting modifications to the State Plan. (OAA sec. 503(a)(1)).

§ 641.350 How should public comments be solicited and collected?

The Governor should follow established State procedures to solicit and collect public comments. The State Plan must include a description of the State's procedures and schedule for ensuring an open and inclusive planning process that provides meaningful opportunity for public comment.

§ 641.355 Who may comment on the State Plan?

Any individual or organization may comment on the Plan.

§ 641.360 How does the State Plan relate to the equitable distribution (ED) report?

The two documents address some of the same areas, and are prepared at different points in time. The ED report is prepared by State agencies at the beginning of each fiscal year and provides a "snapshot" of the actual distribution of all of the authorized positions within the State, grantee-by-grantee, and the optimum number of participant positions in each designated area based on the latest available Census data. It provides a basis for improving the distribution of SCSEP positions within the State. (See OAA sec. 508). The State Plan is prepared by the Governor and covers many areas in addition to equitable distribution, as discussed in § 641.325, and sets forth a proposed plan for distribution of authorized positions in the State. Any distribution or redistribution of positions made as a result of a State Plan proposal will be reflected in the subsequent year's ED report, which then forms the basis for the proposed distribution in the next year's State Plan. This process is iterative in that it moves the authorized positions from over-served areas to underserved areas over a period of time.

§ 641.365 How must the equitable distribution provisions be reconciled with the provision that disruptions to current participants should be avoided?

Governors must describe the steps that are being taken to comply with the statutory requirement to avoid disruptions in the State Plan. (OAA sec. 503(a)(6)). When there are new Census data indicating that there has been a shift in the location of the eligible population or when there is over-enrollment for any other reason, the Department recommends a gradual shift that encourages current participants in subsidized community service positions to move into unsubsidized employment to make positions available for eligible individuals in the areas where there has been an increase in the eligible population. The Department does not define disruptions to mean that participants are entitled to remain in a subsidized community service employment position indefinitely. As discussed in §§ 641.570 and 641.575, grantees may, under certain circumstances, place time limits on an SCSEP community service assignment, thus permitting positions to be transferred over time. Grantees shall not transfer positions from one geographic area to another without first notifying the State agency responsible for preparing the State Plan and equitable distribution report. Grantees must submit, in writing, any proposed changes in distribution that occur after submissions of the equitable distribution report to the Federal Project Officer for approval. All grantees are strongly encouraged to coordinate any proposed changes in position distribution with the other grantees servicing in the State, including the State project director, prior to submitting the proposed changes to their Federal Project Officer for approval.

Subpart D—Grant Application, Eligibility, and Award Requirements

§ 641.400 What entities are eligible to apply to the Department for funds to administer SCSEP community service projects?

(a) *National Grants.* Entities eligible to apply for national grants include nonprofit organizations, Federal public agencies, and Tribal organizations. These entities must be capable of administering a multi-State program.

State and local agencies may not apply for these funds.

(b) *National Grants in a State.* Section 514(e)(3) of the OAA permits nonprofit organizations, public agencies, and States to receive SCSEP funds when a national grantee in a State fails to meet its performance measures in the second and third year of failure. The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(c) *State Grants.* Section 506(e) of the OAA requires the Department to enter into agreements with each State to provide SCSEP services. States may use individual State agencies, political subdivisions of a State, a combination of such political subdivisions, or a national grantee operating in the State to administer SCSEP funds. If the State's funds are competed under section 514(f) of the OAA, other agencies within the State, political subdivisions of a State, a combination of political subdivisions of a State, and national grantees operating in the State are eligible to apply for funds. Other States may not apply for this funding.

§ 641.410 How does an eligible entity apply?

(a) *General.* An eligible entity must follow the application guidelines issued by the Department. The Department will issue application guidelines announcing the availability of State and national SCSEP funds whether they are awarded on a competitive or noncompetitive basis. The guidelines will contain application due dates, application instructions, and other necessary information. All entities must submit applications in accordance with the Department's instructions.

(b) *National Grant Applicants.* All applicants for SCSEP national grant funds, except organizations proposing to serve older American Indians, must submit their applications to the Governor of each State in which projects are proposed before submitting the application to the Department. (OAA sec. 503(a)(5)).

(c) *State Applicants.* A State that submits a Unified Plan under WIA section 501 may include the State's SCSEP community service project grant application in its Unified Plan. Any State that submits an SCSEP grant application as part of its WIA Unified Plan must address all of the application requirements as published in the Department's instructions. State Plan applications and modifications are addressed in §§ 641.340 and 641.345.

§ 641.420 What factors will the Department consider in selecting grantees?

The Department will select grantees from among applicants that are able to meet the eligibility and responsibility review criteria at section 514 of the OAA. (Section 641.430 contains the eligibility criteria and §§ 641.440 and 641.450 contain the responsibility criteria.) If there is a full and open competition, the Department also will take the rating criteria described in the Solicitation for Grant Application or other instrument into consideration, including the applicant's/grantee's past performance in any prior Federal grants or contracts for the past 3 years.

§ 641.430 What are the eligibility criteria that each applicant must meet?

To be eligible to receive SCSEP funds, each applicant must be able to demonstrate:

(a) An ability to administer a program that serves the greatest number of eligible participants, giving particular consideration to individuals with greatest economic need, greatest social need, poor employment history or prospects, and over the age of 60;

(b) An ability to administer a program that provides employment for eligible individuals in communities in which they reside, or in nearby communities, that will contribute to the general welfare of the community;

(c) An ability to administer a program that moves eligible participants into unsubsidized employment;

(d) An ability to move participants with multiple barriers to employment into unsubsidized employment;

(e) An ability to coordinate with other organizations at the State and local levels, including the One-Stop Delivery System;

(f) An ability to properly manage the program, including its plan for fiscal management of the SCSEP program;

(g) An ability to minimize program disruption for current participants if there is a change in project sponsor and/or location, and its plan for minimizing disruptions; and

(h) Any additional criteria that the Secretary of Labor deems appropriate in order to minimize disruptions for current participants.

§ 641.440 What are the responsibility conditions that an applicant must meet?

Each applicant must meet each of the listed responsibility "tests" by not having committed any of the acts of misfeasance or malfeasance described in § 641.440(a)–(n) of this section.

(a) The Department has been unable to recover a debt from the applicant, whether incurred by the applicant or by one of its subgrantees or subcontractors, or the applicant has failed to comply with a debt repayment plan to which it agreed. In this context, a debt is established by final agency action, followed by three demand letters to the applicant, without payment in full by the applicant.

(b) Established fraud or criminal activity of a significant nature within the applicant's organization.

(c) Serious administrative deficiencies identified by the Department, such as failure to maintain a financial management system as required by Federal regulations.

(d) Willful obstruction of the auditing or monitoring process.

(e) Failure to provide services to applicants as agreed to in a current or recent grant or to meet applicable performance measures.

(f) Failure to correct deficiencies brought to the grantee's attention in writing as a result of monitoring activities, reviews, assessments, or other activities.

(g) Failure to return a grant closeout package or outstanding advances within 90 days after the grant expiration date or receipt of closeout package, whichever is later, unless an extension has been requested and granted.

(h) Failure to submit required reports.

(i) Failure to properly report and dispose of Government property as instructed by the Department.

(j) Failure to have maintained effective cash management or cost controls resulting in excess cash on hand.

(k) Failure to ensure that a subgrantee complies with applicable audit requirements, including OMB Circular A–133 audit requirements specified at 20 CFR 667.200(b) and § 641.821.

(l) Failure to audit a subgrantee within the period required under § 641.821.

(m) Final disallowed costs in excess of five percent of the grant or contract award if, in the judgment of the Grant Officer, the disallowances are egregious findings.

(n) Failure to establish a mechanism to resolve a subgrantee's audit in a timely fashion.

§ 641.450 Are there responsibility conditions that alone will disqualify an applicant?

(a) Yes, an applicant may be disqualified if either of the first two responsibility tests listed in § 641.440 is not met.

(b) The remainder of the responsibility tests listed in § 641.440 require a substantial or persistent failure (for 2 or more consecutive years).

(c) The second responsibility test addresses "fraud or criminal activity of a significant nature." The existence of significant fraud or criminal activity will be determined by the Department and typically will include willful or grossly negligent disregard for the use, handling, or other fiduciary duties of Federal funding where the grantee has no effective systems, checks, or safeguards to detect or prevent fraud or criminal activity. Additionally, significant fraud or criminal activity will typically include coordinated patterns or behaviors that pervade a grantee's administration or are focused at the higher levels of a grantee's management or authority. To be consistent with the OAA section 514(d)(4)(B), this determination will be made on a case-by-case basis regardless of what party identifies the alleged fraud or criminal activity.

§ 641.460 How will the Department examine the responsibility of eligible entities?

The Department will conduct a review of available records to assess each applicant's overall fiscal and administrative ability to manage Federal funds. The Department's responsibility review may consider any available information, including the organization's history with regard to the management of other grants awarded by the Department or by other Federal agencies. (OAA sec. 514(d)(1) and (d)(2)).

§ 641.465 Under what circumstances may the Department reject an application?

(a) The Department may question any proposed project component of an application if it believes that the component will not serve the purposes of the SCSEP program. The Department may reject the application if the applicant does not submit or negotiate an acceptable alternative.

(b) The Department may reject any application that the Grant Officer determines unacceptable based on the content of the application, rating score, past performance, fiscal management, or any other factor the Grant Officer believes serves the best interest of the program, including the application's comparative rating in a competition.

§ 641.470 What happens if an applicant's application is rejected?

(a) Any entity whose application is rejected in whole or in part will be provided a timely notice as well as an explanation, or debriefing, of the Department's basis for its rejection. Notifications will include an explanation of the Department's decision and suggestions as to how to improve the applicant's position for future competitions.

(b) Incumbent grantees will not have an opportunity to cure in an open competition because that will create an inequity in favor of incumbents which already have opportunities to correct deficiencies through technical assistance, provided by the Department, under OAA sec. 514(e)(2)(A).

(c) If the Administrative Law Judge (ALJ) rules that the organization should have been selected, in whole or in part, and the organization continues to meet the requirements of this part, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the slots which are the subject of the ALJ's decision will be awarded, in whole or in part, to the organization and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees and the operational needs of the SCSEP. The Grant Officer must return the decision to the ALJ for review. In the event that the Grant Officer determines that it is not feasible, the successful appellant will be awarded its bid preparation costs or a pro rata share of those costs if Grant Officer's finding applies to only a portion of the funds that would be awarded to the successful appellant. An applicant so selected is not entitled to the full grant amount but will only receive the funds remaining in the grant that have not been expended by the current grantee through its operation of the grant and its subsequent closeout. The available remedy in an SCSEP non-selection appeal is the right to be selected in the future as an SCSEP grantee for the remainder of the current grant cycle. Neither retroactive nor immediately effective selection status may be awarded as relief in a non-selection appeal under this section and § 641.900.

Any organization selected and/or funded as an SCSEP grantee is subject to having its slots reduced or to being removed as an SCSEP grantee of an ALJ decision so orders. The Grant Officer provides instructions on transition and closeout to both the newly designated grantee and to the grantee whose slots are affected or which is being removed. All parties must agree to the provisions of this paragraph as a condition of being an SCSEP grantee.

§ 641.480 May the Governor make recommendations to the Department on grant applications?

(a) Yes, each Governor will have a reasonable opportunity to make comments on any application to operate a SCSEP project located in the Governor's State before the Department makes a final decision on a grant award. The Governor's comments should be directed to the Department and may include the anticipated effect of the proposal on the overall distribution of program positions within the State; recommendations for redistribution of positions to underserved areas as vacancies occur in previously encumbered positions in other areas; and recommendations for distributing any new positions that may become available as a result of an increase in funding for the State. The Governor's recommendations should be consistent with the State Plan.

(b) Under noncompetitive conditions, the Governor may make the authorized recommendations on all applications. However, under competitive conditions, the Governor has the option of making the authorized recommendations on all applications or only on those applications proposed for award following the rating process. It is incumbent on each Governor to inform the Department of his or her intent to review the applications before or after the rating process.

§ 641.490 When may SCSEP grants be awarded competitively?

(a) The Department must hold a competition for SCSEP funds when a grantee (national grantee, national grantee in a State, or State grantee) fails to meet its performance measures; the eligibility requirements; or the responsibility tests established by section 514 of the OAA.

(b) The Department may hold a full and open competition before the beginning of a new grant period, or if additional grantees are funded. The details of the competition will be provided in a Solicitation for Grant Applications published in the **Federal Register**. The Department believes that full and open competition is the best way to assure the highest quality of services to eligible participants.

Subpart E—Services to Participants

§ 641.500 Who is eligible to participate in the SCSEP?

(a) Anyone who is at least 55 years old and who is a member of a family with an income that is not more than 125 percent of the family income levels prepared by the Department of Health and Human Services and approved by the Office of Management and Budget (OMB) (poverty guidelines) is eligible to participate in the SCSEP. (OAA sec. 516(2)). A person with a disability may be treated as a "family of one" for

income eligibility determination purposes. The Department will issue administrative guidance on the procedures for computing family income for purposes of determining SCSEP eligibility.

(b) States may enter into agreements between themselves to permit cross-border enrollment of eligible participants. Such agreements should cover both State and national grantee slots and must be submitted to the Department.

§ 641.505 When is eligibility determined?

Initial eligibility is determined at the time individuals apply to participate in the SCSEP. Once individuals become SCSEP participants, the grantee/subgrantee is responsible for verifying their continued income eligibility at least once every 12 months. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.507 What types of income are included and excluded for participant eligibility determinations?

(a) The prior practice of excluding the first $500 of a participant's income for eligibility purposes is contrary to the section 516(2) of the OAA, which limits SCSEP eligibility to no more than 125 percent of the poverty guidelines established by OMB. Therefore, this practice will no longer be permitted, either for current participants or new applicants.

(b) The Department will use the U.S. Census Bureau's Current Population Survey (CPS) as the standard for determining income eligibility for the SCSEP. The Department will issue administrative guidance regarding income definitions and income inclusion and exclusion standards for determining eligibility.

§ 641.510 What happens if a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP due to an increase in family income?

If a grantee/subgrantee determines that a participant is no longer eligible for the SCSEP, the grantee/subgrantee must give the participant written notification of termination within 30 days, and the participant must be terminated 30 days after the participant receives the notice. The only exception is for participants found ineligible because of providing false information who must be terminated immediately with written notification of the reason therefore. Grantees/subgrantees must refer such individuals to the services provided under the One-Stop Delivery System or other appropriate partner program. Participants may file a grievance according to the grantee's procedures and subpart I.

§ 641.515 How must grantees/subgrantees recruit and select eligible individuals for participation in the SCSEP?

(a) Grantees and subgrantees must develop methods of recruitment and selection that assure that the maximum number of eligible individuals have an opportunity to participate in the program. To the extent feasible, grantees should seek to enroll individuals who are eligible minorities, limited English speakers, Indians, or who have the greatest economic need at least in proportion to their numbers in the area, taking into consideration their rates of poverty and unemployment. (OAA sec. 502(b)(1)(M)).

(b) Grantees and subgrantees must list all community service opportunities with the State Workforce Agency and all appropriate local offices and must use the One-Stop Delivery System in the recruitment and selection of eligible individuals. (OAA sec. 502(b)(1)(H)).

§ 641.520 Are there any priorities that grantees/subgrantees must use in selecting eligible individuals for participation in the SCSEP?

(a) Yes, in selecting eligible individuals for participation in the SCSEP, priority must be given to:

(1) Individuals who are at least 60 years old (OAA sec. 516(2)); and

(2) A veteran, or the spouse of a veteran who died of a service-connected disability, a member of the Armed Forces on active duty, who has been listed for a total of more than 90 days as missing in action, captured in the line of duty by a hostile force, or forcibly detained by a foreign government or power, the spouse of any veteran who has a total disability resulting from a service-connected disability, and the spouse of any veteran who died while a disability so evaluated was in existence, who meet program eligibility requirements under section 2 of the Jobs for Veterans Act, Public Law 107–288 (2002).

(b) Grantees must apply these priorities in the following order:

(1) Veterans and qualified spouses at least 60 years old;

(2) Other individuals at least 60 years old;

(3) Veterans and qualified spouses aged 55–59; and

(4) Other individuals aged 55–59.

§ 641.525 Are there any other groups of individuals who should be given special consideration when selecting SCSEP participants?

Yes, in selecting participants from among those individuals who are eligible, special consideration must be given, to the extent feasible, to individuals who have incomes below the poverty level, who have poor employment prospects and who have the greatest social and/or economic need and to individuals who are eligible minorities, limited English speakers, or Indians, as further defined in § 641.515. (OAA sec. 502(b)(1)(M)).

§ 641.530 Must the grantee/subgrantee always select priority or preference individuals?

Grantees must always select qualified individuals in accordance with § 641.520. Grantees must apply the preference, to the extent feasible, when selecting individuals within the priority groups, unless the grantee determines based on an assessment of their circumstances and the available community service employment opportunities, that a non-preference individual should receive services over a preference individual. When the Department examines the characteristics of a grantee's participant population, the grantee may be asked to provide evidence that it is adhering to the enrollment priorities and preferences set forth in §§ 641.515, 641.520, and 641.525.

§ 641.535 What services must grantees/subgrantees provide to participants?

(a) When individuals are selected for participation in the SCSEP, the grantee/subgrantee is responsible for:

(1) Providing orientation to the SCSEP, including information on project goals and objectives, community service assignments, training opportunities, available supportive services, the availability of a free physical examination, participant rights and responsibilities, and permitted and prohibited political activities (OAA sec. 502);

(2) Assessing participants' work history, skills and interests, talents, physical capabilities, aptitudes, needs for supportive services, occupational preferences, training needs, potential for performing community service assignments, and potential for transition to unsubsidized employment as necessary, but no less frequently that two times during a twelve month period;

(3) Using the information gathered during the assessment to develop IEPs for participants; except that if an assessment has already been performed and an IEP developed under title I of WIA, the WIA IEP will satisfy the requirement for an SCSEP assessment and IEP (see § 641.260) and updating the IEPs as necessary to reflect information

gathered during the participant assessments (OAA sec. 502(b)(1)(N));

(4) Placing participants in appropriate community service activities in the community in which they reside, or in a nearby community (OAA sec. 502(b)(1)(B));

(5) Providing or arranging for necessary training specific to the participants' community service assignments (OAA sec. 502(b)(1)(I));

(6) Assisting participants in arranging for other training identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(7) Assisting participants in arranging for needed supportive services identified in their SCSEP IEPs (OAA sec. 502(b)(1)(N));

(8) Providing participants with wages and fringe benefits for time spent working in the assigned community service employment activity (OAA sec. 502(c)(6)(A)(i));

(9) Ensuring that participants have safe and healthy working conditions at their community service worksites (OAA sec. 502(b)(1)(J));

(10) Verifying participant income eligibility at least once every 12 months;

(11) Assisting participants in obtaining unsubsidized employment, including providing or arranging for employment counseling in support of their IEPs;

(12) Providing appropriate services for participants through the One-Stop Delivery System established under WIA (OAA sec. 502(b)(1)(O));

(13) Providing counseling on participants' progress in meeting the goals and objectives identified in their IEPs, and in meeting their supportive service needs (OAA sec. 502(b)(1)(N)(iii));

(14) Following-up with participants placed into unsubsidized employment during the first 6 months of placement to make certain that participants receive any follow-up services they may need to ensure successful placements; and

(15) Following-up at 6 months with participants who are placed in unsubsidized employment to determine whether they are still employed (OAA sec. 513(c)(2)(B));

(b) In addition to the services listed in paragraph (a) of this section, grantees and subgrantees must provide service to participants according to administrative guidelines that may be issued by the Department.

(c) Grantees may not use SCSEP funds for individuals who only need job search assistance or job referral services. Grantees may provide job search assistance and job club activities to participants who are enrolled in the SCESEP and are assigned to community service assignments.

§ 641.540 What types of training may grantees/subgrantees provide to SCSEP participants?

(a) Grantees and subgrantees must arrange skill training that is realistic and consistent with the participants' IEP, and that makes the most effective use of their skills and talents. This section does not apply to training provided as part of a community service assignment.

(b) Training may be provided before or after placement in a community service activity.

(c) Training may be in the form of lectures, seminars, classroom instruction, individual instruction, on-the-job experiences, or other arrangements, including but not limited to, arrangements with other workforce development programs such as WIA. (OAA sec. 502(c)(6)(A)(ii)).

(d) Grantees and subgrantees are encouraged to place a major emphasis on training available through on-the-job experience.

(e) Grantees/subgrantees are encouraged to obtain training through locally available resources, including host agencies, at no cost or reduced cost to the SCSEP.

(f) Grantees/subgrantees may pay reasonable costs for instructors, classroom rental, training supplies and materials, equipment, tuition, and other costs of training. Participants may be paid wages while in training. (OAA sec. 502(c)(6)(A)(ii)).

(g) Grantees/subgrantees may pay for costs associated with travel and room and board necessary to participate in training.

(h) Nothing in this section prevents or limits participants from engaging in self-development training available through other sources during hours when not assigned to community service activities.

§ 641.545 What supportive services may grantees/subgrantees provide to participants?

(a) Grantees/subgrantees may provide or arrange for supportive services to assist participants in successfully participating in SCSEP projects, including but not limited to payment of reasonable costs of transportation; health care and medical services; special job-related or personal counseling; incidentals such as work shoes, badges, uniforms, eyeglasses, and tools; child and adult care; temporary shelter; and follow-up services. (OAA sec. 502(c)(6)(A)(iv)).

(b) To the extent practicable, the grantee/subgrantee should provide for the payment of these expenses from other resources.

§ 641.550 What responsibility do grantees/subgrantees have to place participants in unsubsidized employment?

Because one goal of the program is to foster economic self-sufficiency, grantees and subgrantees should make reasonable efforts to place as many participants as possible into unsubsidized employment, in accordance with each participant's IEP. Grantees are responsible for working with participants to ensure that, for those participants whose IEPs include an unsubsidized employment goal, the participants are receiving services and taking actions designed to help them achieve this goal. Grantees and subgrantees must contact private and public employers directly or through the One-Stop Delivery System to develop or identify suitable unsubsidized employment opportunities. They must also encourage host agencies to assist participants in their transition to unsubsidized employment, including unsubsidized employment with the host agency.

§ 641.555 What responsibility do grantees have to participants who have been placed in unsubsidized employment?

(a) Grantees must contact placed participants during the first 6 months to determine if participants have the necessary supportive services to remain in the job.

(b) Grantees must contact participants 6 months after placement to determine if they have been retained by the employer or use wage records to verify continued employment. (OAA sec. 513(c)(2)(B)).

(c) Grantees may have other follow-up requirements under subparts G and H.

§ 641.560 May grantees place participants directly into unsubsidized employment?

Grantees are encouraged to refer individuals who may be placed directly in an unsubsidized employment position to an employment provider, including the One-Stop for job placement assistance under WIA. The SCSEP encourages grantees to work closely with participants to develop an IEP and assessment to determine what training the individual may need. The Department encourages grantees to work with those participants who are the most difficult to place to provide them with the services necessary to develop the skills needed for job placement.

§ 641.565 What policies govern the provision of wages and fringe benefits to participants?

(a) *Wages.* Grantees must pay participants the highest applicable minimum wage for time spent in orientation, training required by the

grantee/subgrantee, and work in community service assignments. The highest applicable minimum wage is either the minimum wage applicable under the Fair Labor Standards Act of 1938; the State or local minimum wage for the most nearly comparable covered employment; or the prevailing rate of pay for persons employed in similar public occupations by the same employer.

(b) *Fringe benefits*—(1) *Required fringe benefits.* Except as provided in paragraphs (b)(3) and (b)(4) of this section, grantees must ensure that participants receive all fringe benefits required by law.

(i) Grantees must provide fringe benefits uniformly to all participants within a project or subproject, unless the Department agrees to waive this provision due to a determination that such a waiver is in the best interests of applicants, participants, and project administration.

(ii) Grantees must offer participants the opportunity to receive physical examinations annually.

(A) Physical examinations are a fringe benefit, and not an eligibility criterion. The examining physician must provide, to participants only, a written report of the results of the examination. Participants may, at their option, provide the grantee or subgrantee with a copy of the report.

(B) Participants may choose not to accept the physical examination. In that case, the grantee or subgrantee must document this refusal, through a signed statement or other means, within 60 workdays after commencement of the community service assignment. Each year thereafter, grantees and subgrantees must offer the physical examination and document the offer and any participant's refusal.

(iii) When participants are not covered by the State workers' compensation law, the grantee or subgrantee must provide participants with workers' compensation benefits equal to those provided by law for covered employment.

(2) *Allowable fringe benefit costs.* Grantees may provide the following fringe benefits: annual leave; sick leave; holidays; health insurance; social security; and any other fringe benefits approved in the grant agreement and permitted by the appropriate Federal cost principles found in OMB Circulars A–87 and A–122, except for retirement costs. (See subpart H, §§ 641.847 and 641.850).

(3) *Retirement.* Grantees may not use grant funds to provide contributions into a retirement system or plan.

(4) *Unemployment compensation.* Unless required by law, grantees may not pay the cost of unemployment insurance for participants.

§ 641.570 Is there a time limit for participation in the program?

No, there is no time limit for participation in the SCSEP; however, a grantee may establish a maximum duration of enrollment in the grant agreement, when authorized by the Department. If there is such a time limit on enrollment established in the grant agreement, the grantee must provide for a system to transition participants to unsubsidized employment or other assistance before the maximum enrollment duration has expired. Provisions for transition must be reflected in the participant's IEP.

§ 641.575 May a grantee establish a limit on the amount of time its participants may spend at each host agency?

Yes, grantees may establish limits on the amount of time that its participants may spend at a host agency. Such limits should be established in the grant agreement, as approved by the Department, and reflected in the participants' IEPs.

§ 641.580 Under what circumstances may a grantee terminate a participant?

(a) If, at any time, a grantee or subgrantee determines that a participant was incorrectly declared eligible as a result of false information given by that individual, the grantee or subgrantee must immediately terminate the participant and provide the participant with a written notice that explains the reason for termination.

(b) If, during annual income verification, a grantee finds a participant to be no longer eligible for enrollment because of changes in family income, the grantee may terminate the participant. In order to terminate the participant in such a case, the grantee must provide the participant with a written notice and terminate the participant 30 days after the participant receives the notice. (*See* § 641.505).

(c) If, at any time, the grantee or subgrantee determines that it incorrectly determined a participant to be eligible for the program through no fault of the participant, the grantee or subgrantee must give the participant immediate written notice explaining the reason(s) and must terminate the participant 30 days after the participant receives the notice.

(d) A grantee and subgrantee may terminate a participant for cause. In doing so, the grantee or subgrantee must inform the participant, in writing, of the reason(s) for termination. Grantees must discuss the proposed reasons for such terminations in the grant application, and must discuss such reasons with participants and provide each participant a written copy of its policies for terminating a participant for cause or otherwise at the time of enrollment.

(e) A grantee or subgrantee may terminate a participant if the participant refuses to accept a reasonable number of job offers or referrals to unsubsidized employment consistent with the SCSEP IEP and there are no extenuating circumstances that would hinder the participant from moving to unsubsidized employment.

(f) When a grantee or subgrantee makes an unfavorable determination of enrollment eligibility under paragraphs (a), (b), and (c) of this section, it must give the individual a reason for termination and, when feasible, should refer the individual to other potential sources of assistance, such as the One-Stop Delivery System.

(g) Any termination, as described in paragraphs (a) through (f) of this section, must be consistent with administrative guidelines issued by the Department, and the termination must be subject to the applicable grievance procedures described in § 641.910.

(h) Participants may not be terminated from the program solely on the basis of their age. Grantees and subgrantees may not impose an upper age limit for participation in the SCSEP.

§ 641.585 Are participants employees of the Federal Government?

(a) No, participants are not Federal employees. (OAA sec. 504(a)).

(b) If a Federal agency is a grantee or host agency, § 641.590 applies.

§ 641.590 Are participants employees of the grantee, the local project, and/or the host agency?

Grantees must determine if a participant is an employee of the grantee, local project, or host agency as the definition of an "employee" varies depending on the laws defining an employer/employee relationship.

Subpart F—Private Sector Training Projects Under Section 502(e) of the OAA

§ 641.600 What is the purpose of the private sector training projects authorized under section 502(e) of the OAA?

The purpose of the private sector training projects authorized under section 502(e) of the OAA is to allow States, public agencies, nonprofit organizations and private businesses to develop and operate projects designed to provide SCSEP participants with second career training and placement

opportunities with private business concerns. In addition, the OAA provides section 502(e) grantees or contractors with opportunities to initiate or enhance their relationships with the private sector, fostering collaboration with the One-Stop Delivery System, improving their ability to meet and exceed performance standards, and broadening the range of options available to SCSEP participants.

§ 641.610 How are section 502(e) activities administered?

(a) The Department may enter into agreements with States, public agencies, private nonprofit organizations, and private businesses to carry out section 502(e) projects.

(b) To the extent possible, private sector training activities should emphasize different work modes, such as job sharing, flex-time, flex-place, arrangements relating to reduced physical exertion, and innovative work modes with a focus on second career training and placement in growth industries in jobs requiring new technological skills.

(c) Grantees must coordinate section 502(e) private sector training activities with programs carried out under title I of WIA and with SCSEP projects operating in the area whenever possible.

§ 641.620 How may an organization apply for section 502(e) funding?

Organizations applying for section 502(e) funding must follow the instructions issued by the Department which will be published in the **Federal Register**, or in another appropriate medium.

§ 641.630 What private sector training activities are allowable under section 502(e)?

Allowable activities authorized under section 502(e) include:

(a) Providing participants with services leading to transition to private sector employment, including:

(1) Training in new technological skills;

(2) On-the-job training with private-for-profit employers;

(3) Work experience with private-for-profit employers;

(4) Adult basic education;

(5) Classroom training;

(6) Occupational skills training;

(7) In combination with other services listed in paragraphs (a)(1) through (6) of this section or in conjunction with the local One-Stop Delivery System, job clubs or job search assistance;

(8) In combination with other services listed in paragraphs (a)(1) through (7) of this section, supportive services, which may include counseling, motivational training, and job development; or

(9) Combinations of the above-listed activities.

(b) Working with employers to develop jobs and innovative work modes including job sharing, flex-time, flex-place and other arrangements, including those relating to reduced physical exertion.

§ 641.640 How do the private sector training activities authorized under section 502(e) differ from other SCSEP activities?

(a) The private sector training activities authorized under section 502(e) are not required to have a community service project component. However, 502(e) participants must also be co-enrolled in a community service assignment in a SCSEP project.

(b) The private sector training activities authorized under section 502(e) focus solely on providing SCSEP-eligible individuals with second career training, placement opportunities, and other assistance necessary to obtain unsubsidized employment in the private sector.

(c) The Department is authorized to pay all of the costs of section 502(e) activities (*i.e.*, there is no non-Federal share requirement). However section 502(e) grantees may choose to provide a non-Federal share and are encouraged to do so.

(d) The Department may enter directly into agreements with private businesses for section 502(e) activities.

(e) Grantees may fund private-for-profit and other organizations that do not have the IRS 501(c)(3) designation or are not public agencies to conduct section 502(e) activities if provided for in their grant or contract agreement with the Department.

§ 641.650 Does the requirement that not less than 75 percent of the funds be used to pay participant wages and fringe benefits apply to section 502(e) activities?

Yes, under section 502(c)(6)(B) of the OAA, 75 percent of SCSEP funds made available through a grant must be used to pay for the wages and fringe benefits of participants employed under SCSEP projects. This requirement applies to the total grant, and not necessarily to individual components of the grant. For entities that receive an SCSEP grant for both community service projects and section 502(e) projects, the requirement applies to the total grant. For entities that receive only a section 502(e) grant, the requirement applies to that grant.

§ 641.660 Who is eligible to participate in section 502(e) private sector training activities?

The same eligibility criteria used in the community service portion of the program apply for participation in the private sector training activities. (See subpart E, §§ 641.500, 641.510, 641.520, 641.525, and 641.530).

§ 641.665 When is eligibility determined?

Eligibility is determined at the time individuals apply to participate in the SCSEP. Grantees may also verify an individual's eligibility as circumstances require.

§ 641.670 May an eligible individual be enrolled simultaneously in section 502(e) private sector training activities operated by one grantee and a community service SCSEP project operated by a different SCSEP grantee?

Yes, an eligible individual must be enrolled simultaneously in section 502(e) private sector training activities and a community service SCSEP project, operated by two different SCSEP grantees. This is known as co-enrollment.

§ 641.680 How should grantees report on participants who are co-enrolled?

Referrals from a regular SCSEP grantee to a 502(e) only grantee that result in an unsubsidized placement may also be credited to the referring SCSEP grantee. However, if the SCSEP grantee is also a 502(e) grantee, the unsubsidized placement of the participant may only be counted once. The Department will issue administrative guidance on additional requirements.

§ 641.690 How is the performance of section 502(e) grantees measured?

(a) The following performance measures apply to section 502(e) grantees. The common performance measures that apply to this program are:

(1) Entered employment;

(2) Retention in employment; and

(3) Earnings increase.

(b) These measures are defined in and governed by subpart G of this part and the applicable provisions of administrative issuances implementing the SCSEP performance standards.

(c) If a section 502(e) grantee fails to meet its performance standards, the Department may require corrective action, may provide technical assistance, or may decline to fund the grantee in the next Program Year.

Subpart G—Performance Accountability

§ 641.700 What performance measures apply to SCSEP grantees?

(a) The OAA, at section 513(b), enumerates the indicators of performance as follows:

(1) The number of persons served, with particular consideration given to individuals with greatest economic need, greatest social need, or poor employment history or prospects, and individuals who are over the age of 60;

(2) Community services provided;

(3) Placement into and retention in unsubsidized public or private employment;

(4) Satisfaction of the participants, employers, and their host agencies with their experiences and the services provided; and

(5) Additional indicators of performance that the Department determines to be appropriate to evaluate services and performance.

(b) The additional indicator of performance is earnings increase.

§ 641.710 How are these performance indicators defined?

(a) For ease of calculation and to make the indicators better measures of performance, the Department has divided some of the indicators into multiple parts.

(b) The individual indicators are defined as follows:

(1) *The number of persons served* is defined by comparing the total number of participants served to a grantee's authorized number of positions adjusted for the differences in wages required paid in a State or area.

(2) *The number of persons served with the greatest economic need, greatest social need or with poor employment history or prospects and individuals who are over age 60* is defined by comparing the total number of participants served to the total number of participants who:

(i) Have an income level at or below the poverty line; (OAA sec. 101(27))

(ii) Have physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of the individual to perform normal daily tasks, or threatens the capacity of the individual to live independently; or (OAA sec. 101(28))

(iii) Have poor employment history or prospects; and

(iv) Are over the age of 60.

(3) *Community services provided* is defined as the number of hours of community service provided by SCSEP participants. *Community service* is defined in the OAA at section 516(1) and in § 641.140.

(4) *Placement into unsubsidized public or private employment* is defined by comparing the number of participants placed into unsubsidized employment, as defined in § 641.140, to the total number authorized positions. (OAA sec. 513(c)(2)(A)).

(5) *Retention in public or private unsubsidized employment* means the number of participants retained in unsubsidized employment, as defined in § 641.140, compared to the total number of those who are employed in the first quarter after exit—*i.e.*, the number placed. (OAA sec. 513(c)(2)(B)).

(6) *Satisfaction of participants* means the results accumulated as the results of surveys of the participant customer group of their satisfaction with their experiences and the services provided.

(7) *Satisfaction of employers* means the results accumulated as the results of surveys of the employer customer group of their satisfaction with their experiences and the services provided.

(8) *Satisfaction of host agencies* means the results accumulated as the results of surveys of the host agency customer group of their satisfaction with their experiences and the services provided.

(9) *Earnings increase* means the percentage change in earnings pre-registration to post-program, and between the first quarter after exit and the third quarter after exit.

(c) The Department will publish administrative issuances that elaborate on these definitions and their application.

§ 641.715 What are the common performance measures?

The common performance measures are a Government-wide initiative adopted by the Department that apply to DOL-funded employment and job training programs. Adoption of these common measures across government will help implement the President's Management Agenda for budget and performance integration as well as reduce barriers to integrated service delivery through the local One-Stop Career Centers. Grantees will be required to report on the common performance measures as required under § 641.879. The common performance measure indicators are:

(a) Entered employment, defined as the percentage employed in the first quarter after program exit;

(b) Retention in employment, defined as the percentage of those employed in the first quarter after exit who were still employed in the second and third quarter after program exit; and

(c) Earnings increase, defined as the percentage change in earnings pre-registration to post-program; and between the first quarter after exit and the third quarter after exit.

(d) Program efficiency is defined as the cost per participant.

§ 641.720 How do the common performance measures affect grantees and the OAA performance measures?

One of the common performance measures, earnings increase, has been included as a performance measures under §§ 641.700 and 641.710 under the Secretary's discretionary authority. The two additional common performance measures will be used to determine the overall success of the program as compared to other programs Government-wide. The results will be the basis for making funding determinations for the SCSEP. The Department will require grantees to collect data for the common performance measures as a reporting requirement under § 641.879.

§ 641.730 How will the Department set and adjust performance levels?

(a) Before the beginning of each Program Year, the Department will negotiate and set baseline levels of negotiated performance for each measure with each grantee, taking into consideration the need to promote continuous improvement in the program overall, past performance, and, when applicable, the performance of similar programs.

(b) The baseline level of negotiated performance for "placement into public or private unsubsidized employment" is set at 20 percent. (OAA sec. 513(a)(2)(C)).

(c) Grantees may request adjustments from these baseline levels before or during the Program Year. Grantees may base such requests only on the factors in paragraph (d) of this section. The Department will issue guidance for negotiating adjustment requests.

(d) Adjustments to performance levels may be made based on the following conditions only:

(1) High rates of unemployment, poverty, or welfare recipiency in the areas served by a grantee relative to other areas of the State or Nation;

(2) Significant economic downturns in the areas served by the grantee or in the national economy; or

(3) Significantly higher numbers or proportions of participants with one or more barriers to employment served by a grantee relative to grantees serving other areas of the State or Nation. (OAA sec. 513(a)(2)(B)).

(e) Grantees may seek an adjustment to their performance levels, based on the factors listed in paragraph (d) of this section, during the negotiation process or during the grant period.

§ 641.740 How will the Department determine whether a grantee fails, meets, or exceeds negotiated levels of performance?

(a) The Department will evaluate each performance indicator to determine the level of success that a grantee has achieved and take the aggregate to determine if, on the whole, the grantee met its performance objectives. The aggregate is calculated by combining the percentage results achieved on each of the individual measures to obtain an average score.

(b) Once the aggregate is determined, if a grantee is unable to meet 80 percent of the negotiated levels of performance for the aggregate of all of the performance measures, that grantee has failed to meet its performance measures. Performance in the range of 80 to 100 percent constitutes meeting the levels for the performance measures. Performance in excess of 100 percent constitutes exceeding the levels for the performance measures.

(c) A national grantee in a State must meet 80 percent of the negotiated level of performance for its national measures, and it must meet the measures negotiated for the State in which the national grantee serves.

(d) The Department will impose the sanctions outlined in section 514 of the OAA and in §§ 541.750, 541.760, 541.770 and 541.790 when a grantee fails to meet overall negotiated levels of performance.

(e) When a grantee fails one or more measures, but does not fail to meet its performance measures in the aggregate, the Department will provide technical assistance on the particular measures that a grantee failed.

(f) The Department will provide further guidance through administrative issuances.

§ 641.750 What sanctions will the Department impose if a grantee fails to meet negotiated levels of performance?

(a) Grantees that fail to meet negotiated levels of performance will be subject to the sanctions established in section 514 of the OAA. The sanctions that apply are grantee specific (*i.e.*, national grantee, national grantee in a State, or State grantee). These sanctions range from requiring grantees to submit a corrective action plan and receive technical assistance, to competition of part of the grant funds, to a competition of all of the grant funds.

(b) Until the Department establishes baseline levels for customer satisfaction measures, grantees that only fail the customer satisfaction performance measure, but meet or exceed all other performance measures, will not be subject to sanctions. The Department will provide additional instructions for how it will measure customer satisfaction.

§ 641.760 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance under the total SCSEP grant?

(a) The Department will annually assess the performance of each national grantee no later than 120 days after the end of a Program Year to determine if a national grantee has failed to meet its negotiated levels of performance. (OAA sec. 514(e)(1)).

(b) If the Department determines that a national grantee has failed to meet its negotiated levels of performance for a Program Year, the national grantee must submit a corrective action plan not later than 160 days after the end of that Program Year. The plan must detail the steps the national grantee will take to improve performance. The Department will provide technical assistance related to performance issue(s). (OAA sec. 514(e)(2)(A)–(e)(2)(B)).

(c) If a national grantee fails to meet its negotiated levels of performance for a second consecutive Program Year, the Department will conduct a national competition to award an amount equal to 25 percent of that organization's funds in the following full Program Year. (OAA sec. 514(e)(2)(C)). The Department reserves the right to specify the locations of the positions that will be subject to competition. The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(d) If a national grantee fails to meet its negotiated levels of performance for a third consecutive Program Year, the Department will conduct a national competition to award an amount equal to the full amount of that organization's remaining grant after deducting the amount awarded in paragraph (c) of this section. (OAA sec. 514(e)(2)(D)). The poor performing grantee that had its funds competed is not eligible to compete for the same funds.

(e) To the extent possible, the competitions outlined in paragraphs (c) and (d) of this section will be conducted in such a way as to minimize the disruption of services to participants. (OAA sec. 514(e)(2)(C)).

(f) The organizations selected to receive a grant through the national competitions discussed in paragraphs (c) and (d) of this section must continue to provide service to the geographic areas formerly served by the national grantee(s) whose positions were the subject of the competition. (OAA sec. 514(e)(2)(D)).

§ 641.770 What sanctions will the Department impose if a national grantee fails to meet negotiated levels of performance in any State it serves?

(a) Each national grantee must be assessed on the performance of the projects it operates within any State. Such an assessment may lead to a finding that the national grantee has failed to meet negotiated levels of performance for its projects in a particular State. A national grantee's failure to meet performance measures in a State may be mitigated by justifying the failure, taking into consideration the adjustments permitted under section 513(a)(2)(B) of the OAA, or size of the project. (OAA sec. 514(e)(3)(A)).

(b) If the Department determines that there has been a failure to meet negotiated levels of performance within a State, the Department will require a corrective action plan and may take other appropriate actions, including transfer of the responsibility for the project to other grantees or providing technical assistance. (OAA sec. 514(e)(3)(B)).

(c) The Department will take corrective action if there is a second consecutive Program Year of failure by a national grantee operating within a particular State. Such corrective action may include transfer of, or a competition for, all or a portion of the project(s) of the national grantee in the State to another entity. Entities that were the subject of this corrective action will not be eligible to receive the funds of the transfer or to compete. (OAA sec. 514(e)(3)(C)).

(d) If there is a third consecutive Program Year of failure, the Department will conduct a competition for all of the funds available to a national grantee for operations within a particular State. Entities that are the subject of this corrective action will not be eligible to participate in the competition. (OAA sec. 514(e)(3)(D)).

§ 641.780 When will the Department assess the performance of a national grantee in a State?

(a) The Department will assess the performance of a national grantee in a State annually.

(b) The Department may also initiate an assessment of a national grantee's performance in a State if:

(1) The Department receives information indicating that a grantee is having difficulty implementing a particular performance indicator; or

(2) The Governor of a State, or his or her designee, requests the Department to review the performance of a particular national grantee serving in the State. (OAA sec. 514(e)(4)).

§ 641.790 What sanctions will the Department impose if a State grantee fails to meet negotiated levels of performance?

(a) The Department will annually assess the performance of State grantees no later than 120 days after the end of a Program Year to determine if the State has failed to meet its negotiated levels of performance. (OAA sec. 514(f)(1)).

(b) A State failing to meet its negotiated levels of performance must submit a corrective action plan not later than 160 days after the end of the Program Year in which the failure occurred. The plan must detail the steps the State will take to improve performance. The Department will also provide technical assistance. (OAA sec. 514(f)(2) and (f)(3)).

(c) If a State fails to meet its negotiated levels of performance after two consecutive years, then the State must conduct a competition to award an amount equal to 25 percent of its allotted funds for the following year. The Department reserves the right to specify the locations of the positions that will be subject to competition.

(d) In the event that a State fails to meet its negotiated levels of performance after three consecutive years, then the State must conduct a competition to award an amount equal to 100 percent of its allotted funds for the following year.

(e) Entities that operated any portion of the State's program that contributed to the failure will not be eligible to participate in the competitions.

§ 641.795 Will there be incentives for exceeding performance measures?

Yes, the Department will address non-financial incentives in administrative issuances. The Department is authorized by section 515(c)(1) of the OAA to use recaptured funds to provide incentive grants. The Department will issue administrative guidance detailing how incentive grants will be awarded.

Subpart H—Administrative Requirements

§ 641.800 What uniform administrative requirements apply to the use of SCSEP funds?

(a) SCSEP recipients and subrecipients must follow the uniform administrative requirements and allowable cost requirements that apply to their type of organization. (OAA sec. 503(f)(2)).

(b) Governments, State, local, and Indian Tribal Organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments" (10/07/1994) (further amended 08/29/1977), codified at 29 CFR part 97.

(c) Nonprofit and commercial organizations, institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations that receive SCSEP funds under grants or cooperative agreements must follow the common rule implementing OMB Circular A–110, codified at 29 CFR part 95.

§ 641.803 What is program income?

Program income, as described in 29 CFR 97.25 (governments) and 29 CFR 95.2(bb) (nonprofit and commercial organizations), is income earned by the recipient or subrecipient during the grant period that is directly generated by an allowable activity supported by grant funds or earned as a result of the award of grant funds. Program income includes income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. (*See* 29 CFR 95.24(e) and 29 CFR 97.25(e)). Costs of generating SCSEP program income may be deducted from gross income received by SCSEP recipients and subrecipients to determine SCSEP program income earned or generated provided these costs have not been charged to the SCSEP program.

§ 641.806 How must SCSEP program income be used?

(a) SCSEP recipients that earn or generate program income during the grant period must add the program income to the Federal and non-Federal funds committed to the SCSEP program and use it for the program, as provided in 29 CFR 95.24(a) or 29 CFR 97.25(g)(2), as applicable.

(b) Recipients that continue to receive an SCSEP grant from the Department must spend program income earned or generated from SCSEP funded activities after the end of the grant period for SCSEP purposes in the Program Year it was received.

(c) Recipients that do not continue to receive an SCSEP grant from the Department must remit unexpended program income earned or generated during the grant period from SCSEP funded activities to the Department after the end of the grant period.

§ 641.809 What non-Federal share (matching) requirements apply to the use of SCSEP funds?

(a) The Department will pay no more than 90 percent of the total cost of activities carried out under a SCSEP grant. (OAA sec. 502(c)(1)).

(b) All SCSEP recipients, including Federal agencies if there is no statutory exemption, must provide or ensure that at least 10 percent of the total cost of activities carried out under an SCSEP grant (non-Federal share of costs) consists of non-Federal funds, except as provided in paragraphs (e) and (f) of this section.

(c) Recipients must determine the non-Federal share of costs in accordance with 29 CFR 97.24 for governmental units, or 29 CFR 95.23 for nonprofit and commercial organizations.

(d) The non-Federal share of costs may be provided in cash, or in-kind, or a combination of the two. (OAA sec. 502(c)(2)).

(e) A recipient may not require a subgrantee or host agency to provide non-Federal resources for the use of the SCSEP project as a condition of entering into a subrecipient or host relationship.

(f) The Department may pay all of the costs of activities carried out under section 502(e) of the OAA. (OAA sec. 502(e)).

(g) The Department may pay all of the costs of activities in an emergency or disaster project or a project in an economically distressed area. (OAA sec. 502(c)(1)).

§ 641.812 What is the period of availability of SCSEP funds?

(a) Except as provided in § 641.815, recipients must expend SCSEP funds during the Program Year for which they are awarded (July 1–June 30). (OAA sec. 515(b)).

(b) SCSEP recipients must ensure that no sub-agreement provides for the expenditure of any SCSEP funds before July 1, or after the end of the grant period, except as provided in § 641.815.

§ 641.815 May the period of availability be extended?

SCSEP recipients may request in writing, and the Department may grant, an extension of the period during which SCSEP funds may be obligated or expended. SCSEP recipients requesting an extension must justify that an extension is necessary. (OAA sec. 515(b)). The Department will notify recipients in writing of the approval or disapproval of any such requests.

§ 641.818 What happens to funds that are unexpended at the end of the Program Year?

(a) The Department may recapture any unexpended funds at the end of any Program Year and use the recaptured funds during the two succeeding Program Years for:

(1) Incentive grants;

(2) Technical assistance; or

(3) Grant and contract awards for any other SCSEP programs and activities. (OAA sec. 515(c)).

(b) The Department will provide the necessary information through an administrative issuance.

§ 641.821 What audit requirements apply to the use of SCSEP funds?

(a) Recipients and subrecipients receiving Federal awards of SCSEP funds must follow the audit requirements in paragraphs (b) and (c) of this section that apply to their type of organization. As used here, Federal awards of SCSEP funds include Federal financial assistance and Federal cost-reimbursement contracts received directly from the Department or indirectly under awards by SCSEP recipients or higher-tier subrecipients. (OAA sec. 503(f)(2)).

(b) All governmental and nonprofit organizations that are recipients or subrecipients must follow the audit requirements of OMB Circular A–133. These requirements are codified at 29 CFR parts 96 and 99 and referenced in 29 CFR 97.26 for governmental organizations; and in 29 CFR 95.26 for institutions of higher education, hospitals, and other nonprofit organizations.

(c) (1) The Department is responsible for audits of SCSEP recipients that are commercial organizations.

(2) Commercial organizations that are subrecipients under the SCSEP program and that expend more than the minimum level specified in OMB Circular A–133 ($500,000, for fiscal years ending after December 31, 2003) must have either an organization-wide audit conducted in accordance with OMB Circular A–133 or a program-specific financial and compliance audit.

§ 641.824 What lobbying requirements apply to the use of SCSEP funds?

SCSEP recipients and subrecipients must comply with the restrictions on lobbying codified in the Department's regulations at 29 CFR part 93. (Also refer to § 641.850(c), "Lobbying costs.")

§ 641.827 What general nondiscrimination requirements apply to the use of SCSEP funds?

(a) SCSEP recipients, subrecipients, and host agencies are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR parts 31 and 32.

(b) Recipients and subrecipients of SCSEP funds are required to comply with the nondiscrimination provisions codified in the Department's regulations at 29 CFR part 37 if:

(1) The recipient:

(i) is a One-Stop partner listed in section 121(b) of WIA, and

(ii) operates programs and activities that are part of the One-Stop Delivery System established under the Workforce Investment Act; or

(2) The recipient otherwise satisfies the definition of "recipient" in 29 CFR 37.4.

(c) Recipients must ensure that participants are provided informational materials relating to age discrimination and/or their rights under the Age Discrimination in Employment Act of 1975 that are distributed to recipients by the Department pursuant to section 503(b)(3) of the OAA.

(d) Questions about, or complaints alleging a violation of the nondiscrimination requirements cited in this section may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210, for processing. (See § 641.910(d)).

(e) The specification of any right or protection against discrimination in paragraphs (a) through (d) of this section must not be interpreted to exclude or diminish any other right or protection against discrimination in connection with an SCSEP program that may be available to any participant, applicant for participation, or other individual under any applicable Federal, State, or local laws prohibiting discrimination, or their implementing regulations.

§ 641.833 What policies govern political patronage?

(a) A recipient or subrecipient must not select, reject, promote, or terminate an individual based on political services provided by the individual or on the individual's political affiliations or beliefs. In addition, as indicated in § 641.827(b), certain recipients and subrecipients of SCSEP funds are required to comply with the Workforce Investment Act nondiscrimination regulations in 29 CFR part 37. These regulations prohibit discrimination on the basis of political affiliation or belief.

(b) A recipient or subrecipient must not provide funds to any subrecipient, host agency or other entity based on political affiliation.

(c) SCSEP recipients must ensure that every entity that receives SCSEP funds through the recipient is applying the policies stated in paragraphs (a) and (b) of this section.

§ 641.836 What policies govern political activities?

(a) No project under title V of the OAA may involve political activities. SCSEP recipients must ensure compliance with the requirements and prohibitions involving political activities described in paragraphs (b) and (c) of this section.

(b) State and local employees involved in the administration of SCSEP activities may not engage in political activities prohibited under the Hatch Act (5 U.S.C. chapter 15), including:

(1) Seeking partisan elective office;

(2) Using official authority or influence for the purpose of affecting elections, nominations for office, or fund-raising for political purposes. (5 U.S.C. 1502).

(c) SCSEP recipients must provide all persons associated with SCSEP activities with a written explanation of allowable and unallowable political activities under the Hatch Act. A notice explaining these allowable and unallowable political activities must be posted in every workplace in which SCSEP activities are conducted. The Department will provide the form and content of the notice and explanatory material by administrative issuance. (OAA sec. 502(b)(1)(P).

(d) SCSEP recipients must ensure that:

(1) No SCSEP participants or staff persons engage in partisan or nonpartisan political activities during hours for which they are being paid with SCSEP funds.

(2) No participants or staff persons engage in partisan political activities in which such participants or staff persons represent themselves as spokespersons for the SCSEP program.

(3) No participants are employed or out-stationed in the offices of a Member of Congress, a State or local legislator, or on the staff of any legislative committee.

(4) No participants are employed or out-stationed in the immediate offices of any elected chief executive officer of a State or unit of general government, except that:

(i) Units of local government may serve as host agencies for participants, provided that their assignments are non-political; and

(ii) While assignments may technically place participants in such offices, such assignments actually must be concerned with program and service activities and not in any way involved in political functions.

(5) No participants are assigned to perform political activities in the offices of other elected officials. Placement of participants in such offices in non-political assignments is permissible, however, provided that:

(i) SCSEP recipients develop safeguards to ensure that participants placed in these assignments are not involved in political activities; and

(ii) These safeguards are described in the grant agreement and are subject to review and monitoring by the SCSEP recipient and by the Department.

§ 641.839 What policies govern union organizing activities?

Recipients must ensure that SCSEP funds are not used in any way to assist, promote, or deter union organizing.

§ 641.841 What policies govern nepotism?

(a) SCSEP recipients must ensure that no recipient or subrecipient hires, and no host agency serves as a worksite for, a person who works in an SCSEP community service position if a member of that person's immediate family is engaged in a decision-making capacity (whether compensated or not) for that project, subproject, recipient, subrecipient, or host agency. The Department may exempt this requirement from worksites on Native American reservations and in rural areas provided that adequate justification can be documented, such as that no other persons are eligible and available for participation in the program.

(b) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, SCSEP recipients must ensure that the more restrictive requirement is followed.

(c) For purposes of this section, "Immediate family" means wife, husband, son, daughter, mother, father, brother, sister, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild.

§ 641.844 What maintenance of effort requirements apply to the use of SCSEP funds?

(a) Employment of a participant funded under title V of the OAA is permissible only in addition to employment that would otherwise be funded by the recipient, subrecipient, and host agency without assistance under the OAA. (OAA sec. 502(b)(1)(F)).

(b) Each project funded under title V:

(1) Must result in an increase in employment opportunities in addition to those that would otherwise be available;

(2) Must not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

(3) Must not impair existing contracts for service or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(4) Must not substitute SCSEP-funded positions for existing Federally assisted jobs; and

(5) Must not employ or continue to employ any participant to perform work that is the same or substantially the same as that performed by any other person who is on layoff. (OAA sec. 502(b)(1)(G)).

§ 641.847 What uniform allowable cost requirements apply to the use of SCSEP funds?

(a) *General.* Unless specified otherwise in this part or the grant agreement, recipients and subrecipients must follow the uniform allowable cost requirements that apply to their type of organization. For example, a local government subrecipient receiving SCSEP funds from a nonprofit organization must use the allowable cost requirements for governmental organizations in OMB Circular A–87. The Department's regulations at 29 CFR 95.27 and 29 CFR 97.22 identify the Federal principles for determining allowable costs that each kind of organization must follow. The applicable Federal principles for each kind of organization are described in paragraphs (b)(1) through (b)(5) of this section. (OAA sec. 503(f)(2)).

(b) *Allowable costs/cost principles.* (1) Allowable costs for State, local, and Indian Tribal government organizations must be determined under OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments."

(2) Allowable costs for nonprofit organizations must be determined under OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(3) Allowable costs for institutions of higher education must be determined under OMB Circular A–21, "Cost Principles for Educational Institutions."

(4) Allowable costs for hospitals must be determined in accordance with appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(5) Allowable costs for commercial organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 must be determined under the provisions of the Federal Acquisition Regulation (FAR), at 48 CFR part 31.

§ 641.850 Are there other specific allowable and unallowable cost requirements for the SCSEP?

(a) Yes, in addition to the generally applicable cost principles in § 641.847(b), the cost principles in paragraphs (b) through (g) of this section apply to SCSEP grants.

(b) *Claims against the Government.* For all types of entities, legal expenses for the prosecution of claims against the Federal Government, including appeals to an Administrative Law Judge, are unallowable.

(c) *Lobbying costs.* In addition to the prohibition contained in 29 CFR part 93, SCSEP funds must not be used to pay any salaries or expenses related to any activity designed to influence legislation or appropriations pending before the Congress of the United States or any State legislature. (See § 641.824).

(d) *One-Stop Costs.* Costs of participating as a required partner in the One-Stop delivery system established in accordance with section 134(c) of the Workforce Investment Act of 1998 are allowable, provided that SCSEP services and funding are provided in accordance with the Memorandum of Understanding required by the Workforce Investment Act and section 502(b)(1)(O) of the Older Americans Act, and costs are determined in accordance with the applicable cost principles.

(e) *Building repairs and acquisition costs.* Except as provided in paragraph (e) of this section and as an exception to the allowable cost principles in § 641.847(b), no SCSEP funds may be used for the purchase, construction, or renovation of any building except for the labor involved in:

(1) Minor remodeling of a public building necessary to make it suitable for use for project purposes;

(2) Minor repair and rehabilitation of publicly used facilities for the general benefit of the community; and

(3) Minor repair and rehabilitation by participants of housing occupied by persons with low incomes who are declared eligible for such services by authorized local agencies.

(f) *Accessibility and reasonable accommodation.* Recipients and subrecipients may use SCSEP funds to meet their obligations under section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990 and any other applicable Federal disability nondiscrimination laws to provide

physical and programmatic accessibility and reasonable accommodation/modifications for, and effective communications with, individuals with disabilities. (29 U.S.C. 794).

(g) *Participants' fringe benefit costs.* Recipients and subrecipients may use SCSEP funds for participant fringe benefit costs only under the conditions set forth in § 641.565.

§ 641.853 How are costs classified?

(a) All costs must be classified as "administrative costs" or "program costs." (OAA sec. 502(c)(6)).

(b) Recipients and subrecipients must assign participants' wage and fringe benefit costs and other participant (enrollee) costs such as supportive services to the Program Cost cost category. (See § 641.864). When participants' community service assignments involve functions whose costs are normally classified as Administrative Cost, compensation provided to the participants shall be charged as program costs instead of administrative costs, since participant wage and fringe benefit costs are always charged to the Program Cost category.

§ 641.856 What functions and activities constitute costs of administration?

(a) The costs of administration are that allocable portion of necessary and reasonable allowable costs of recipients and first-tier subrecipients (as defined in paragraph (c) of this section) that are associated with those specific functions identified in paragraph (b) of this section and that are not related to the direct provision of programmatic services specified in § 641.864. These costs may be both personnel and non-personnel and both direct and indirect costs.

(b) The costs of administration are the costs associated with:

(1) Performing overall general administrative and coordination functions, including:

(i) Accounting, budgeting, financial, and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) Audit functions;

(viii) General legal services functions; and

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(2) Oversight and monitoring responsibilities related to administrative functions;

(3) Costs of goods and services used for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities or the overall management of the program; and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development, and operating costs of such systems. (OAA sec. 502(c)(4)).

(c) First-tier subrecipients are those subrecipients that receive SCSEP funds directly from an SCSEP recipient and perform the following activities for all participants:

(1) Eligibility determination;

(2) Participant assessment;

(3) Development of and placement into community service opportunities.

§ 641.859 What other special rules govern the classification of costs as administrative costs or program costs?

(a) Recipients and subrecipients must comply with the special rules for classifying costs as administrative costs or program costs set forth in paragraphs (b) through (e) of this section.

(b)(1) Costs of awards by recipients and first-tier subrecipients that are solely for the performance of their own administrative functions are classified as administrative costs.

(2) Costs incurred by recipients and first tier subrecipients for administrative functions listed in § 641.856(b) are classified as administrative costs.

(3) Costs incurred by vendors performing administrative functions for recipients and first tier subrecipients are classified as administrative costs.

(4) Except as provided in paragraph (b)(1), all costs incurred by subrecipients other than first-tier subrecipients are classified as program costs.

(5) Except as provided in paragraph (b)(3) of this section (*i.e.*, costs that are incurred to perform administrative functions for recipients and first tier subrecipients), all costs incurred by vendors are program costs. (See 29 CFR 99.210 for a discussion of factors differentiating subrecipients from vendors.)

(c) Personnel and related non-personnel costs of staff who perform both administrative functions specified in § 641.856(b) and programmatic services or activities must be allocated as administrative or program costs to the benefiting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(d) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost must be charged as a program cost. Documentation of such charges must be maintained.

(e) Costs of the following information systems including the purchase, systems development and operating (*e.g.*, data entry) costs are charged to the "program cost" category:

(1) Tracking or monitoring of participant and performance information;

(2) Employment statistics information, including job listing information, job skills information, and demand occupation information; and

(3) Local area performance information.

§ 641.861 Must SCSEP recipients provide funding for the administrative costs of subrecipients?

(a) Recipients and subrecipients must obtain funding for administrative costs to the extent practicable from non-Federal sources. (OAA sec. 502(c)(5)).

(b) SCSEP recipients must ensure that sufficient funding is provided for the administrative activities of subrecipients that receive SCSEP funding through the recipient. Each SCSEP recipient must describe in its grant application the methodology used to ensure that subrecipients receive sufficient funding for their administrative activities. (OAA sec. 502(b)(1)(R)).

§ 641.864 What functions and activities constitute program costs?

Program costs include, but are not limited to, the costs of the following functions:

(a) Participant Wages and Fringe Benefits, consisting of wages paid and fringe benefits provided to participants for hours of community service assignments, as described in § 641.565;

(b) Outreach, recruitment and selection, intake, orientation, assessment, and preparation and updating of IEPs;

(c) Participant training provided on the job, in a classroom setting, or utilizing other appropriate arrangements, consisting of reasonable costs of instructors' salaries, classroom space, training supplies, materials, equipment, and tuition;

(d) Subject to the restrictions in § 641.535(c), job placement assistance,

including job development and job search assistance, job fairs, job clubs, and job referrals; and

(e) Participant supportive services, as described in § 641.545. (OAA sec. 502(c)(6)(A)).

§ 641.867 What are the limitations on the amount of SCSEP administrative costs?

(a) Except as provided in paragraph (b), no more than 13.5 percent of the SCSEP funds received for a Program Year may be used for administrative costs.

(b) The Department may increase the amount available for administrative costs to not more than 15 percent, in accordance with § 641.870. (OAA sec. 502(c)(3)).

§ 641.870 Under what circumstances may the administrative cost limitation be increased?

(a) SCSEP recipients may request that the Department increase the amount available for administrative costs. The Department may honor the request if:

(1) The Department determines that it is necessary to carry out the project; and

(2) The recipient demonstrates that:

(i) Major administrative cost increases are being incurred in necessary program components, including liability insurance, payments for workers' compensation, costs associated with achieving unsubsidized placement goals, and other operation requirements imposed by the Department;

(ii) The number of employment positions in the project or the number of minority eligible individuals participating in the project will decline if the amount available for paying the cost of administration is not increased; or

(iii) The size of the project is so small that the amount of administrative expenses incurred to carry out the project necessarily exceeds 13.5 percent of the amount for such project. (OAA sec. 502(c)(3)).

(b) A request by a recipient or prospective recipient for an increase in the amount available for administrative costs may be submitted as part of the grant application or as a separate submission at any time after the grant award.

§ 641.873 What minimum expenditure levels are required for participant wages and fringe benefits?

(a) Not less than 75 percent of the SCSEP funds provided under a grant from the Department must be used to pay for the wages and fringe benefits of participants in such projects, including awards made under section 502(e) of the OAA. (OAA sec. 502(c)(6)(B)).

(b) An SCSEP recipient is in compliance with this provision if at least 75 percent of the total expenditures of SCSEP funds provided to the recipient were for wages and benefits, even if one or more subrecipients did not expend at least 75 percent of their SCSEP funds for wages and fringe benefits for community service projects.

(c) Recipients receiving both general SCSEP funds and section 502(e) funds must meet the 75 percent requirement based on the total of both grants.

§ 641.876 When will compliance with cost limitations and minimum expenditure levels be determined?

The Department will determine compliance by examining expenditures of SCSEP funds. The cost limitations and minimum expenditure level requirements must be met at the time all such funds have been expended or the period of availability of such funds has expired, whichever comes first.

§ 641.879 What are the fiscal and performance reporting requirements for recipients?

(a) In accordance with 29 CFR 97.40 or 29 CFR 95.51, as appropriate, each SCSEP recipient must submit an SCSEP Quarterly Progress Report (QPR) to the Department in electronic format via the Internet within 30 days after the end of each quarter of the Program Year (PY). The SCSEP recipient must prepare this report to coincide with the ending dates for Federal PY quarters. Each SCSEP recipient must also submit a final QPR to the Department within 90 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal Program Year quarter, the SCSEP recipient must submit the final QPR covering the entire grant period no later than 90 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

(b) In accordance with 29 CFR 97.41 or 29 CFR 95.52, each SCSEP recipient must submit an SCSEP Financial Status Report (FSR) in electronic format to the Department via the Internet within 30 days after the ending of each quarter of the Program Year. Each SCSEP recipient must also submit a final FSR to the Department via the Internet within 90 days after the end of the grant period. If the grant period ends on a date other than the last day of a Federal PY quarter, the SCSEP recipient must submit the final FSR covering the entire grant period no later than 90 days after the ending date of the grant. The Department will provide instructions for the preparation of this report. (OAA sec. 503(f)(3)).

(1) Financial data are required to be reported on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities.

(2) If the SCSEP recipient's accounting records are not normally kept on the accrual basis of accounting, the SCSEP recipient must develop accrual information through an analysis of the documentation on hand.

(c) Each State agency receiving title V funds must annually submit an equitable distribution report of SCSEP positions by all recipients in the State. The Department will provide instructions for the preparation of this report. (OAA sec. 508).

(d) Each SCSEP recipient that receives section 502(e) funds must submit reports on its section 502(e) activities. The Department will provide instructions for the preparation of these reports. (OAA sec. 503(f)(3)).

(e) Each SCSEP recipient must collect data and submit reports regarding the program performance measures and the common performance measures. *See* §§ 641.700–641.720. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(f) Each SCSEP recipient may be required to collect data and submit reports about the demographic characteristics of program participants. The Department will provide instructions detailing these measures and how recipients must prepare this report.

(g) Federal agencies that receive and use SCSEP funds under interagency agreements must submit project fiscal and progress reports in accordance with this section. Federal recipients must maintain the necessary records that support required reports according to instructions provided by the Department. (OAA sec. 503(f)(3)).

(h) Recipients may be required to maintain records that contain any other information that the Department determines to be appropriate in support of any other reports that the Department may require. (OAA sec. 503(f)(3)).

(i) Grantees submitting reports that cannot be validated or verified as accurately counting and reporting activities in accordance with the reporting instructions may be treated as failing to submit reports, which may result in failing one of the responsibility tests outlined in § 641.440 and section 514(d) of the OAA.

§ 641.881 What are the SCSEP recipient's responsibilities relating to awards to subrecipients?

(a) The SCSEP recipient is responsible for all grant activities, including the performance of SCSEP activities by subrecipients, and ensuring that subrecipients comply with the OAA and this part. (See also OAA sec. 514 on responsibility tests).

(b) Recipients must follow their own procedures for allocating funds to other entities. The Department will not grant funds to another entity on the recipient's behalf.

§ 641.884 What are the grant closeout procedures?

SCSEP recipients must follow the grant closeout procedures at 29 CFR 97.50 or 29 CFR 95.71, as appropriate. The Department will issue supplementary closeout instructions to title V recipients as necessary.

Subpart I—Grievance Procedures and Appeals Process

§ 641.900 What appeal process is available to an applicant that does not receive a grant?

(a) An applicant for financial assistance under title V of the OAA that is dissatisfied because the Department has issued a determination not to award financial assistance, in whole or in part, to such applicant, may request that the Grant Officer provide the reasons for not awarding financial assistance to that applicant (debriefing). The request must be filed within 10 days of the date of notification indicating that it would not be awarded. The Grant Officer must provide the protesting applicant with a debriefing and with a written decision stating the reasons for the decision not to award the grant within 20 days of the protest. Applicants may appeal to the U.S. Department of Labor, Office of Administrative Law Judges, within 21 days of the date of the Grant Officer's notice providing reasons for not awarding financial assistance. The appeal may be for a part or the whole of a denial of funding. This appeal will not in any way interfere with the Department's decisions to fund other organizations to provide services during the appeal period.

(b) Failure to either request a debriefing within 10 days or to file an appeal within 21 days provided in paragraph (a) of this section constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this section must state specifically those issues in the Grant Officer's notification upon which review is requested. Those provisions of the Grant Officer's notification not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street, NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96, published at 61 FR 19978 (May 3, 1996)), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

(f) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(1) The appeal is not considered as a complaint; and

(2) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of 29 CFR part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(g) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record.

(h) The remedies available are provided in § 641.470.

(i) This section only applies to multi-year grant awards.

§ 641.910 What grievance procedures must grantees make available to applicants, employees, and participants?

(a) Each grantee must establish, and describe in the grant agreement, grievance procedures for resolving complaints, other than those described by paragraph (d) of this section, arising between the grantee, employees of the grantee, subgrantees, and applicants or participants.

(b) The Department will not review final determinations made under paragraph (a) of this section, except to determine whether the grantee's grievance procedures were followed, and according to paragraph (c) of this section.

(c) Allegations of violations of Federal law, other than those described in paragraph (d) of this section, which are not resolved within 60 days under the grantee's procedures, may be filed with the Chief, Division of Older Worker Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Allegations determined to be substantial and credible will be investigated and addressed.

(d) Questions about, or complaints alleging a violation of, the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 188 of the Workforce Investment Act of 1998 (WIA), or their implementing regulations may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue, NW., Washington, DC 20210. In the alternative, complaints alleging violations of WIA section 188 may be filed initially at the grantee level. See 29 CFR 37.71, 37.76. In such cases, the grantee must use complaint processing procedures meeting the requirements of 29 CFR 37.70 through 37.80 to resolve the complaint.

§ 641.920 What actions of the Department may a grantee appeal and what procedures apply to those appeals?

(a) Appeals from a final disallowance of costs as a result of an audit must be made under 29 CFR 96.63.

(b) Appeals of suspension or termination actions taken on the grounds of discrimination are processed under 29 CFR part 31 or 37, as appropriate.

(c) Protests and appeals of decisions not to award a grant, in whole or in part, will be handled under § 641.900.

(d) Upon a grantee's receipt of the Department's final determination relating to costs (except final disallowance of costs as a result of an audit, as described in paragraph (a) of this section), payment, suspension or termination or the imposition of sanctions, the grantee may appeal the final determination to the Department's Office of Administrative Law Judges, as follows:

(1) Within 21 days of receipt of the Department's final determination, the grantee may transmit by certified mail, return receipt requested, a request for a hearing to the Chief Administrative Law Judge, United States Department of Labor, 800 K Street, NW., Room 400 N, Washington, DC 20001 with a copy to the Department official who signed the final determination. The Chief Administrative Law Judge will designate an Administrative Law Judge to hear the appeal.

(2) The request for hearing must be accompanied by a copy of the final determination, and must state specifically those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review.

(3) The Rules of Practice and Procedures for Administrative Hearings Before the Office of Administrative Law Judges, set forth at 29 CFR part 18, govern the conduct of hearings under this section, except that:

(i) The appeal is not considered as a complaint; and

(ii) Technical rules of evidence, such as the Federal Rules of Evidence and Subpart B of 29 CFR Part 18, will not apply to any hearing conducted under this section. However, rules designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied when the Administrative Law Judge conducting the hearing considers them reasonably necessary. The certified copy of the administrative file transmitted to the Administrative Law Judge by the official issuing the final determination must be part of the evidentiary record of the case and need not be moved into evidence.

(4) The Administrative Law Judge should render a written decision no later than 90 days after the closing of the record. In ordering relief, the ALJ may exercise the full authority of the Secretary under the OAA.

(5) The decision of the ALJ constitutes final agency action unless, within 21 days of the decision, a party dissatisfied with the ALJ's decision, in whole or in part, has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 2–96), specifically identifying the procedure, fact, law or policy to which exception is taken. The Department will deem any exception not specifically urged to have been waived. A copy of the petition for review must be sent to the opposing party at that time. Thereafter, the decision of the ALJ constitutes final agency action unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 641.930 Is there an alternative dispute resolution process that may be used in place of an OALJ hearing?

(a) Parties to a complaint that has been filed according to the requirements of § 641.920 (a), (c), and (d) may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) Unless the parties agree in writing to extend the period, the waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached or a decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as the final agency decision.

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Federal Register

Friday,
April 9, 2004

Part III

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Native American CDFI Development Programs; Notices

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component (Incorporating Native American Technical Assistance)

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change of Application Deadline; Change in Eligibility Criteria.

SUMMARY: On February 4, 2003, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Technical Assistance Component (incorporating Native American Technical Assistance) of the CDFI Program (68 FR 5735) that the deadline for applications for assistance through the Technical Assistance Component is 5 p.m. ET on May 31, 2004. This notice extends that application deadline to 5 p.m. ET on June 1, 2004, since May 31 is a federal holiday. Under the same NOFA, the Fund announced that it will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements. The Fund recently obtained clarification from the Office of Management and Budget that results in an extension of the deadline by which an awardee must provide us with its audited financial statement. As a result of this clarification, this notice revises the current NOFA to state that the Fund will not consider the late submission of audited financial statements an eligibility criterion for the Technical Assistance Component FY 2003 and FY 2004 funding rounds.

Please note that for those prior awardee applicants, lateness in submitting a FY 2003 Annual Financial Report will not make your organization ineligible to apply for funding under this NOFA. However, the Fund will continue to consider applicants ineligible for funding if any other current year reports are overdue as of the funding application deadline. All other information and requirements set forth in the February 4, 2003 NOFA for the Technical Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for the Technical Assistance Component, contact the Fund's CDFI Program Manager. If you have programmatic questions about the Native American Technical Assistance Component contact the Financial and Special Initiatives Manager. If you have questions regarding administrative requirements, contact the Fund's Grants Management and Compliance Manager. The Fund's Managers may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 5, 2004.

Owen M. Jones,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 04–8091 Filed 4–8–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Community Development Financial Institutions Program—Financial Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change in eligibility criteria.

SUMMARY: On February 26, 2004, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Financial Assistance Component of the CDFI Program (69 FR 9018) that the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements. The Fund recently obtained clarification from the Office of Management and Budget that results in an extension of the deadline by which an awardee must provide us with its audited financial statement. As a result of this clarification, this notice revises the current NOFA to state that the Fund will not consider the late submission of audited financial statements an eligibility criterion for the Financial Assistance Component FY 2004 funding round.

Please note that for those prior awardee applicants, lateness in submitting a FY 2003 Annual Financial Report will not make your organization ineligible to apply for funding under this NOFA. However, the Fund will continue to consider applicants ineligible for funding if any other current year reports are overdue as of the funding application deadline. All other information and requirements set forth in the February 26, 2004 NOFA for the Financial Assistance Component shall remain effective, as published.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Program Operations Manager. If you have questions regarding administrative requirements, contact the Fund's Grants Management and Compliance Manager. The CDFI Program Manager and the Grants Management and Compliance Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 5, 2004.

Owen M. Jones,

Acting Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Native American CDFI Assistance Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change in eligibility criteria.

SUMMARY: On December 4, 2003, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Native American CDFI Assistance Program (68 FR 67908) that the Fund will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements. The Fund recently obtained clarification from the Office of Management and Budget that results in an extension of the deadline by which an awardee must provide us with its audited financial statement. As a result

of this clarification, this notice revises the current NOFA to state that the Fund will not consider the late submission of audited financial statements an eligibility criterion for the Native American CDFI Assistance Program FY 2003 and 2004 funding rounds.

Please note that for those prior awardee applicants, lateness in submitting a FY 2003 Annual Financial Report will not make your organization ineligible to apply for funding under this NOFA. However, the Fund will continue to consider applicants ineligible for funding if any other current year reports are overdue as of the funding application deadline. All other information and requirements set forth in the December 4, 2003 NOFA for the Native American CDFI Assistance Program shall remain effective, as published.

FOR FURTHER INFORMATION, CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Financial and Special Initiatives Manager. If you have questions regarding administrative requirements, contact the Fund's Grants Management and Compliance Manager. The Financial and Special Initiatives Manager and the Grants Management and Compliance Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 5, 2004.

Owen M. Jones,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 04–8090 Filed 4–8–04; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability Inviting Applications for the Native American CDFI Development Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Change of application deadline; change in eligibility criteria.

SUMMARY: On February 4, 2003, the Community Development Financial Institutions Fund (the "Fund") announced in a NOFA for the Native American CDFI Development Program of the CDFI Program (68 FR 5731) that the deadline for applications for assistance through the Native American CDFI Development Program is 5 p.m. ET on May 31, 2004. This notice extends that application deadline to 5 p.m. ET on June 1, 2004, since May 31 is a federal holiday.

Under the same NOFA, the Fund announced that it will not consider an application submitted by an applicant that is a previous Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements. The Fund recently obtained clarification from the Office of Management and Budget that results in an extension of the deadline by which an awardee must provide us with its audited financial statement. As a result of this clarification, this notice revises the current NOFA to state that the Fund will not consider the late submission of audited financial statements an eligibility criterion for the Native American CDFI Development Program FY 2003 and 2004 funding rounds.

Please note that for those prior awardee applicants, lateness in submitting a FY 2003 Annual Financial Report will not make your organization ineligible to apply for funding under this NOFA. However, the Fund will continue to consider applicants ineligible for funding if any other current year reports are overdue as of the funding application deadline. All other information and requirements set forth in the February 4, 2003 NOFA for the Native American CDFI Development Program shall remain effective, as published.

FOR FURTHER INFORMATION, CONTACT: If you have any questions about the programmatic requirements for this program, contact the Fund's Financial and Special Initiatives Manager. If you have questions regarding administrative requirements, contact the Fund's Grants Management and Compliance Manager. The Financial and Special Initiatives Manager and the Grants Management and Compliance Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov*, by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 5, 2004.

Owen M. Jones,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 04–8093 Filed 4–8–04; 8:45 am]

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To authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes. (Apr. 5, 2004; 118 Stat. 579)

H.R. 3926/P.L. 108–216

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H.R. 4062/P.L. 108–217

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes. (Apr. 5, 2004; 118 Stat. 591)

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