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FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 617

RIN 3052–AC04

Loan Policies and Operations; Borrower Rights; Effective Interest Rate Disclosure

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, agency, we, or our) issues this final rule amending its regulations governing disclosure of effective interest rates (EIR) and related information on loans. This final rule clarifies when and how qualified lenders must disclose the EIR and other loan information to borrowers; when and how the cost of Farm Credit System (FCS or System) borrower stock must be disclosed to borrowers; and how loan origination charges and other loan information must be disclosed to borrowers. The final rule requires lenders to use a discounted cash flow method in determining the EIR to provide meaningful disclosures to borrowers but does not prescribe detailed calculation procedures. To make the regulations easy to understand and use by borrowers, lenders, and other users, we have rewritten the existing regulations in part 614, subpart K, Disclosure of Loan Information, in a question-and-answer format and moved them to part 617, Borrower Rights.

EFFECTIVE DATE: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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or
Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives for this rule are to:

- Ensure that borrowers receive meaningful and timely disclosure of the EIR and related information on loans;
- Promote consistency in the method used to determine the EIR; and
- Make the regulations easy to understand and use by borrowers, lenders, and other users.

II. Background

As discussed in the preamble to the proposed rule (*See* 68 FR 5587, February 4, 2003), section 4.13(a) of the Farm Credit Act of 1971, as amended (Act),[1] requires the FCA to enact regulations requiring "qualified lenders" [2] to provide borrowers, not later than the time of loan closing, with meaningful and timely disclosure of:

- The current rate of interest on the loan;
- The amount and frequency of interest rate adjustments and the factors that the lender may take into account in adjusting rates for adjustable or variable rate loans;
- The effect of any loan origination charges or purchases of stock or participation certificates on the rate of interest on the loan;
- A statement indicating that stock purchased is at risk; and
- A statement indicating the various types of loan options available to borrowers.

The requirements of section 4.13 of the Act are applicable to all loans made by "qualified lenders" not subject to the Truth in Lending Act (TILA).[3] Under section 4.13(a) of the Act, qualified lenders must give borrowers notice of any change in the interest rate applicable to a borrower's loan within a "reasonable time" after the change. In addition, section 4.13(b) of the Act requires qualified lenders that offer more than one rate of interest to borrowers, at the request of a borrower, to: (1) Provide a review of the loan to determine if the proper rate has been established; (2) explain to the borrower, in writing, the basis for the interest rate charged; and (3) explain to the borrower, in writing, how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Current FCA regulations (initially adopted in 1988) implement the disclosure requirements of the Act, but contain limited guidance on several key issues. In recent years, new stock purchase requirements, new loan programs, and varied methodologies for calculation of effective interest rates has meant that compliance with current EIR disclosure regulations has become more challenging and led to inconsistent disclosure among qualified lenders. This final rule rewrites our existing regulations to provide more guidance in a user-friendly format.

The final rule is the second component of our current rulemaking on borrower rights. This final rule amends part 617, Borrower Rights, which was rearranged by the Distressed Loan Restructuring rule adopted by the FCA Board on February 10, 2004, and published in the **Federal Register** on March 9, 2004 (*See* 69 FR 10901). Consequently, part 617 will contain all regulations on borrower rights after both rules become effective.

III. Comments

We received comments on the proposed rule from the Farm Credit Council (Council), two Farm Credit banks, and 10 Farm Credit System associations. In general, commenters expressed support for FCA's efforts to clarify its EIR rules. However, a number of the comments raised general and specific objections to various parts of the proposed rule. FCA's responses to these comments are discussed in our section-by-section analysis below.

In addition to comments on specific proposals, the Council urged FCA, in light of the dramatic change in the nature and extent of System stock purchase requirements since the 1980s, to "evaluate the benefit (if any) members receive from these disclosures

[1] 12 U.S.C. 2199(a).

[2] "Qualified lenders" include System lenders (except for a bank for cooperatives), and non-System lenders (other financing institutions (OFIs)) for loans that OFIs make with funding from a Farm Credit bank. *See* 12 U.S.C. 2202a(a)(6).

[3] 15 U.S.C. 1601, *et seq.* TILA applies to consumer loans and specifically exempts agricultural loans.

in the context of the costs incurred by the associations in making the disclosures and their value to the customers (given the minimal purchase requirements)." Regardless of FCA's view of the benefit of EIR disclosures, Congress mandated (in section 4.13 of the Act) that qualified lenders make these disclosures. Therefore, FCA has sought, in this rule, to make the required statutory disclosures as meaningful as possible to borrowers without adding unnecessary regulatory burden to qualified lenders.

After carefully considering the comments, we are adopting the final rule as proposed with only one substantive and several technical changes. Specifically, we are deleting proposed § 617.7115(b) and § 617.7130(a)(5), which would have required qualified lenders to separately disclose to borrowers all fees not included in "loan origination charges" that borrowers are required to pay to obtain a loan. Also, we are eliminating the proposed definitions of "loan" and "qualified lender" and other changes to the existing parts 611, 612, 614, and 617 from this rule because they have been implemented by the Distressed Loan Restructuring rule.

IV. FCA's Section-by-Section Response to Comments

Subpart A—General

Section 617.7000—Definitions

One association suggested FCA add a definition for "covered loan," which would establish a maximum dollar amount for loans subject to EIR disclosure regulations. However, section 4.13 of the Act requires lenders to make disclosures to borrowers for "all loans" not subject to TILA. We received no other comments on the definitions. As a result, we eliminate the proposed definitions of "loan" and "qualified lender" from this rule because they have been implemented by the Distressed Loan Restructuring rule and adopt other definitions as proposed.

Subpart B—Disclosure of Effective Interest Rates

Section 617.7100—Who Must Make and Who Is Entitled To Receive an Effective Interest Rate Disclosure?

One Farm Credit bank and six of its affiliated associations objected to proposed § 617.7100(b), which provides what a lender must do when there is more than one borrower obligated on a loan. As explained below, we adopt proposed § 617.7100 as final without change.

Current § 614.4367(d) allows the lender to satisfy the disclosure requirements by providing the disclosure to any one of the primary obligors on the loan. The final rule will give borrowers the opportunity to designate, in writing, the person they wish to receive the disclosures. If the borrowers do not designate a particular recipient, the lender must provide the disclosures to at least one borrower primarily liable for repayment of the loan. The objecting commenters asserted:

(1) There is no basis in the Act authorizing this designation;

(2) The regulation would create an unnecessary burden on System lenders, including requiring lenders to prepare and maintain documentation of the borrowers' designation choice; and

(3) In a default situation, a lender may be unable to locate or contact the designee and, therefore, the regulation could be raised as a legal impediment to a System lender's collection or foreclosure actions.

First, while a strict reading of the Act would require that each borrower receive disclosure, we believe that where there is one loan, allowing disclosure to one borrower complies with the Act and is less burdensome to lenders. We also believe that the proposed rule—giving borrowers an opportunity to designate an EIR disclosure recipient—is consistent with Congress's intent in creating "borrower rights" in the Act. Second, we do not believe that the new regulation will be unduly burdensome because all it requires is that qualified lenders honor the borrowers' written designation request, if one is made. Many System associations already allow borrowers to designate an EIR disclosure recipient without reported incident or undue burden. Third, § 617.7100 applies only to EIR disclosures that are primarily made at or before loan closing.

This rule would not apply to any other notices required by the Act or otherwise and therefore has no plausible relationship to a loan default situation. When a qualified lender determines that a loan is, or has become, distressed, provisions in subpart E of part 617 regarding distressed loan restructuring apply. Under § 617.7410(d), the lender must notify all primary obligors. If the obligors identify one party to receive notices, the qualified lender should send the original notice to that person and send copies to the other obligors.

Section 617.7105—When Must a Qualified Lender Disclose the Effective Interest Rate to a Borrower?

Section 617.7105 revises the criteria that establish the circumstances in which EIR disclosure is necessary. Paragraph (b) of this section provides that a qualified lender must provide a new EIR disclosure to existing borrowers on or before the date the borrower:

(1) Executes a new promissory note or other comparable evidence of indebtedness;

(2) Purchases additional stock or participation certificates as a condition of obtaining new funds from the qualified lender; or

(3) Pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

The Council commended this clarification and stated that the new rule will benefit System institutions. One association requested that FCA state in the rule or preamble that no new EIR disclosure is required for a "loan servicing action." However, "loan servicing action" is not defined in the Act or our regulations, and required disclosure is not based on whether an action is described as a "loan servicing action." Instead, § 617.7105 requires that if any loan action does not result in a new note, purchase of new stock, or new loan origination charges as a condition of obtaining new funds, no new disclosure is required. If it does, new disclosure is required. We believe that proposed § 617.7105 provides clarity to qualified lenders and adopt it as final.

Section 617.7110—How Should a Qualified Lender Disclose the Cost of Borrower Stock or Participation Certificates?

Section 617.7110 provides that the cost of borrower stock or participation certificates must be included in the EIR calculation only at the time the stock or participation certificates is purchased in connection with a loan transaction, whether purchased with cash, included in a promissory note, or otherwise paid. For subsequent loans to existing borrowers, only the cost of new stock or participation certificates, if any, purchased in connection with the transaction must be included in the EIR calculation. We received no comments on this proposed provision and adopt it as final.

Section 617.7115—How Should a Qualified Lender Disclose Loan Origination and Other Charges?

Many commenters commended FCA for clarifying in proposed § 617.7115(a)

exactly what "loan origination charges" must be included in the EIR calculation, indicating that the new rule should reduce regulatory burden and result in greater accuracy in reflecting the true cost of credit to the borrower.

We received negative comments from a Farm Credit bank and a number of associations on proposed § 617.7115(b), which provides that all other payments that a borrower is required to make to obtain a loan, but not included as a loan origination charge in the EIR calculation, must be disclosed separately at the time of loan closing. Objections to the proposal included:

(1) Requiring a separate list of all fees not included as loan origination charges in the EIR calculation goes far beyond FCA's authority;

(2) The new rule would mirror TILA and Regulation Z [4] requirements, which are not applicable to agricultural loans;

(3) Developing a new automated form to include these items would be costly to implement;

(4) A lender may have no knowledge of certain amounts a borrower pays directly to third parties for items such as taxes or insurance.

Upon consideration of the comments, we are deleting the proposed requirements of §§ 617.7115(b) and 617.7130(a)(5).

Section 4.13(a)(3) of the Act requires qualified lenders to disclose the effect of "loan origination charges" on the effective rate of interest. Proposed § 617.7115(a) identified what "loan origination charges" must be disclosed for purposes of implementing section 4.13(a)(3). The Act does not specifically require disclosure of any other fees or costs not constituting "loan origination charges." Additionally, as we discussed in the preamble to the proposed rule, Congress specifically exempted agricultural loans from TILA coverage and its more extensive disclosure requirements. For these reasons, we are eliminating proposed paragraph (b) of this section in order to avoid adding unnecessary regulatory burden to qualified lenders.

However, while we are not imposing this additional disclosure as a requirement, we continue to believe, as one association commenter stated, "disclosure of such fees at or prior to loan closing is sound lending practice." This is particularly true for inexperienced borrowers, such as beginning farmers. Therefore, we encourage additional voluntary disclosure by qualified lenders in loan transactions.

[4] Federal Reserve Board regulation that implements TILA.

Section 617.7120—How Should a Qualified Lender Present the Disclosures to a Borrower?

Proposed § 617.7120 was intended to provide reasonable assurance that qualified lenders provide user-friendly, meaningful disclosures to borrowers. We received no comments on proposed § 617.7120 and adopt it as final.

Section 617.7125—How Should a Qualified Lender Determine the Effective Interest Rate?

One association objected to the requirement of § 617.7125(a) that the EIR be calculated using a discounted cash flow methodology. That association asserted:

(1) This is an inappropriate TILA-style requirement;

(2) This will impose an increased burden since there are a variety of payment schedules employed to accommodate borrowers' agricultural needs and non-FCS lenders do not have such a requirement.

As we discussed in the preamble to the proposed rule, while the proposal is conceptually similar to the formula prescribed in Regulation Z for determination of the annual percentage rate (APR) on loans subject to TILA, a discounted cash flow is also the standard accepted methodology used in the financial services industry as the best measurement of the cost of credit over time and to develop loan amortization schedules. As we also noted in the proposed rule preamble, although the discounted cash flow method involves somewhat complex mathematical computations, the FCA does not believe a requirement to use this method would cause undue burden to lenders. A survey of System lender disclosures we conducted in the spring of 2002 indicated that a substantial majority (more than 80 percent) of FCS lenders have already incorporated discounted cash flows in their EIR calculations. In addition, a variety of computer-based tools for calculating effective interest rates are readily available in the market place at a reasonable cost.

Additionally, another association requested that we add a provision establishing a tolerance level—similar to the Regulation Z provision—for the accuracy of the EIR disclosure. Regulation Z provides that an annual percentage rate is considered accurate (and the lender is not in violation of Regulation Z) if the rate disclosed is within a tolerance level. We considered, but rejected, that approach because, unlike Regulation Z, our rules provide for flexibility in calculating the EIR. FCA believes that the complexity of agricultural lending requires a more flexible disclosure approach than provided for under Regulation Z. Therefore, instead of a fixed formula mandated by FCA, we provide in § 617.7125(c) that lenders must establish policies and procedures for disclosing the effect of the cost of borrower stock (or participation certificates) and loan origination charges on the interest rate of a loan. Qualified lenders will also be required to establish policies and procedures for determining the major assumptions used in calculating the EIR, such as for calculating the EIR for adjustable rate loans, revolving or open-end lines of credit, or other loans where key terms may vary or may not be fixed. The rule places responsibility on a qualified lender to use due diligence in calculating the EIR. Redisclosure would only be necessary if a lender made a material error in the original calculation.

A third association opposed the requirement that the cost of the required stock purchase be included as a "borrowing expense" with no assumption of retirement at loan payoff allowed in the calculation of the EIR, stating that the risk of loss of stock is extremely minimal and to "make the assumption that stock will not be recovered is to raise unfounded concern on the part of the borrower that such loss is anticipated." While the commenter may be factually correct in asserting that the borrower's risk of loss of stock is minimal, we believe the Act requires this result.

Congress provided in section 4.13(a)(3) of the Act that the purchase of borrower stock must be disclosed as a cost of the credit in determining the effective rate of interest on a loan. In other parts of the Act, Congress further provided that borrower stock is an "at-risk" equity investment. Assumption of stock retirement in the EIR calculation is contrary to the at-risk feature of borrower stock. While purchase of stock is a prerequisite for obtaining a loan, section 4.3A of the Act [5] precludes automatic retirement of borrower stock upon loan payoff. Therefore, a qualified lender cannot explicitly or implicitly guarantee or assume stock retirement.

One association also objected to the requirement of proposed § 617.7125(c) that qualified lenders must develop policies and procedures establishing criteria on how the cost of borrower stock and loan origination charges are assigned among multiple loans obtained simultaneously. The association asserts that the requirement will be

[5] 12 U.S.C. 2154a.

burdensome and limits the association's flexibility. However, we believe that policies and procedures establishing criteria are necessary to ensure fairness and consistency in disclosure to borrowers and to prevent misleading information. We continue to believe that the proposed rule will allow an association to adopt policies and procedures broad enough to allow some discretion and flexibility on a case-by-case basis. For all the reasons discussed above, we adopt proposed § 617.7125 as final with one conforming change to reference § 617.7115 in paragraph (b)(3) of this section.

Section 617.7130—What Initial Disclosures Must a Qualified Lender Make to a Borrower?

As discussed in the preamble to the proposed rule, the Council previously stated that existing § 614.4367(a)(3), which requires the computation of EIR to be made on a transaction-specific basis, goes beyond the requirement of § 4.13(a)(3) of the Act. The Council made the same comment about proposed § 617.7130 (which keeps the existing requirement), stating that the statutory requirement could be satisfied by using a representative example based on a generic transaction and recommended that FCA allow disclosure through the use of a standard example.

As we stated in the proposed rule preamble (and in all prior rulemakings in this area), we disagree with this approach and believe that in order for borrower disclosure to be "meaningful," as is required by statute, the disclosure should take into account the specific loan for which the disclosure is being provided. The EIR disclosed should be derived from the interest rate and related charges applicable to the loan being made to the borrower. However, for adjustable or revolving loans where the terms and conditions are not fixed or are subject to change, a disclosure of the EIR based on the terms and conditions known at the inception of the loan, coupled with representative examples showing the effect of changes in any of the cost elements of the loan, *e.g.*, borrower stock, loan origination charges, or interest rate, on the EIR would be appropriate under the circumstances. We received no other comments on proposed § 617.7130 and adopt it as final with only one change to remove proposed paragraph (a)(5) of this section in conformance with the change to proposed § 617.7115.

Section 617.7135—What Subsequent Disclosures Must a Qualified Lender Make to a Borrower?

As discussed in the proposed rule preamble, the Council recommended that where an interest rate is based on a widely publicized external index plus a spread, disclosure of a change of interest rate should not be required when the index changes but should be required only when the change in rate is caused by a change in the spread. The Council, a Farm Credit bank, and five associations also reiterated this position in their comments on proposed rule § 617.7135. However, as we discussed in the earlier preamble, we believe eliminating the notice of interest rate changes for index rate loans is not appropriate. The Act requires notice of "any change in the interest rate applicable to the borrower's loan."[6] While the contract rate (index plus spread) may not have changed, it is clear that when the index changes, the rate of interest the borrower pays on the loan has changed. There is nothing in the legislative history of the Act to suggest that Congress intended to exempt index rate loans from the disclosure requirement. Furthermore, we believe it is important to remind borrowers that interest rate changes will affect their payment amounts.

In the preamble to the proposed rule, we indicated that any form of correspondence to borrowers could satisfy the required written notice, including a newsletter. The Council urged FCA to specifically authorize that any required disclosure may be made on a System institution's Web site or by calling a telephone information line. While sending an e-mail to an individual borrower (in compliance with any applicable e-commerce requirement, including the parties' agreement) would satisfy the notice requirement of this section, we do not believe posting information on a Web site or telephone information line would satisfy statutory requirements. The Act requires that qualified lenders provide "notice to the borrower" of a change in the borrower's interest rate.[7] However, a "widely publicized external index" does not provide notice directly to a borrower, and information available to borrowers on the Web or by telephone does not provide such notice. For these reasons, we adopt § 617.7135 as final without change.

[6] 12 U.S.C. 2199(a)(4).

[7] 12 U.S.C. 2199(a)(4).

Subpart C—Disclosure of Differential Interest Rates

Section 617.7200—What Disclosures Must a Qualified Lender Make to a Borrower on Loans Offered With More Than One Rate of Interest?

We did not receive any comments on this section and adopt it as final.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with their affiliated associations and service corporations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

■ For the reasons stated in the preamble, parts 614 and 617 of chapter VI, title 12 of the Code of Federal Regulations, are amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart K—[Removed]

■ 2. Remove subpart K, consisting of §§ 614.4365 through 614.4368.

PART 617—BORROWER RIGHTS

■ 3. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252(a)(9)).

Subpart A—General

■ 4. Amend § 617.7000 by adding the following definitions alphabetically to read as follows:

§ 617.7000 Definitions.

* * * * *

Adjustable rate loan means a loan where the interest rate payable over the term of the loan may change. This includes adjustable rate, variable rate, or other similarly designated loans.

Effective interest rate means a measure of the cost of credit, expressed as an annual percentage rate, that shows the effect of the following costs, if any, on the interest rate on a loan charged by a qualified lender to a borrower:

(1) The amount of any stock or participation certificates that a borrower is required to buy to obtain the loan; and

(2) Any loan origination charges paid by a borrower to a qualified lender to obtain the loan.

Interest rate means the stated contract rate of interest.

* * * * *

■ 5. Amend part 617 by adding new subparts B and C to read as follows:

Subpart B—Disclosure of Effective Interest Rates

Sec.

Subpart B—Disclosure of Effective Interest Rates

§ 617.7100 Who must make and who is entitled to receive an effective interest rate disclosure?

(a) A qualified lender must make the disclosures required by subparts B and C of this part to borrowers for all loans not subject to the Truth in Lending Act.

(b) For a single loan involving more than one borrower, a qualified lender is required to provide only one set of disclosures to borrowers. All borrowers may designate, in writing, one person who will receive the effective interest rate disclosure. If the borrowers do not designate a particular recipient, the lender may provide the disclosure to at least one of the borrowers who is primarily liable for repayment of the loan.

§ 617.7105 When must a qualified lender disclose the effective interest rate to a borrower?

(a) *Disclosure to prospective borrowers.* A qualified lender must provide written effective interest rate disclosure for each loan no later than the time of loan closing.

(b) *Disclosure to existing borrowers.*

(1) A qualified lender must provide a new effective interest rate disclosure to an existing borrower on or before the date:

(i) The borrower executes a new promissory note or other comparable evidence of indebtedness;

(ii) The borrower purchases additional stock or participation certificates as a condition of obtaining new funds from the qualified lender; or

(iii) The borrower pays an additional loan origination charge to the qualified lender as a condition of obtaining new funds.

(2) A qualified lender is not required to provide a new effective interest rate disclosure when it advances new funds to an existing borrower if none of the conditions of paragraph (b)(1) of this section apply and the advance is made pursuant to a preexisting contract that specifically provides for future advances.

§ 617.7110 How should a qualified lender disclose the cost of borrower stock or participation certificates?

The cost of borrower stock or participation certificates must be included in the effective interest rate calculation at the time the stock or participation certificate is purchased in connection with a loan transaction. For subsequent loans to existing borrowers, only the cost of new stock or participation certificates, if any, purchased in connection with a new loan or advance of new funds must be included in the effective interest rate calculation for the transaction.

§ 617.7115 How should a qualified lender disclose loan origination charges?

Any one-time charge paid by a borrower to a qualified lender in consideration for making a loan must be included in the effective interest rate as a loan origination charge. These include, but are not limited to, loan origination fees, application fees, and conversion fees. Loan origination charges also include any payments made by a borrower to a qualified lender to reduce the interest rate that would otherwise be charged, including any charges designated as "points."

§ 617.7120 How should a qualified lender present the disclosures to a borrower?

A qualified lender must:

(a) Disclose the effective interest rate and other information required by subparts B and C of this part clearly and conspicuously in writing, in a form that is easy to read and understand and that the borrower may keep; and

(b) Not combine the disclosures with any information not directly related to the information required by §§ 617.7130 and 617.7135.

§ 617.7125 How should a qualified lender determine the effective interest rate?

(a) A qualified lender must calculate the effective interest rate on a loan using the discounted cash flow method showing the effect of the time value of money.

(b) For all loans, the cash flow stream used for calculating the effective interest rate of a loan must include:

(1) Principal and interest;

(2) The cost of stock or participation certificates that a borrower is required to purchase in connection with the loan; and

(3) Loan origination charges described in § 617.7115.

(c) A qualified lender must establish policies and procedures for EIR disclosures that clearly show the effect of the cost of borrower stock (or participation certificates) and loan origination charges on the interest rate of a loan. A qualified lender must also establish policies and procedures for determining major assumptions used in calculating the effective interest rate, *e.g.*, criteria on how the cost of borrower stock (or participation certificates) and loan origination charges are assigned or allocated among multiple loans obtained by a borrower simultaneously.

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

(1) The interest rate on the loan;

(2) The effective interest rate of the loan;

(3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;

(4) All loan origination charges included in the effective interest rate;

(5) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and

(6) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

(1) The circumstances under which the rate can be adjusted;

(2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;

(3) How often the rate can be adjusted;

(4) Any limitations on the amount or frequency of adjustments; and

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

(a) *Notice of interest rate change.*

(1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

(i) The new interest rate on the loan;

(ii) The date on which the new rate is effective; and

(iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change within forty-five (45) days after the effective date of the change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock (or participation certificates) a borrower must own during the term of a loan, the lender must send a written notice to the borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

(1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;

(2) The date on which the new rate is effective; and

(3) The reason for the increase in the borrower stock (or participation certificates) purchase requirement.

Subpart C—Disclosure of Differential Interest Rates

Sec.

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

Subpart C—Disclosure of Differential Interest Rates

§ 617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

(a) Provide a review of the loan to determine if the proper interest rate has been established;

(b) Explain to the borrower in writing the basis for the interest rate charged; and

(c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Dated: March 23, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–6968 Filed 3–29–04; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 620, 630

RIN 3052–AC07

Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors In Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, agency, we, or our) issues this final rule amending our regulations governing the Farm Credit System's (System) mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). Additionally, with this final rule, the agency amends the System's disclosure to shareholders and investors to include reporting on its service to YBS farmers and ranchers.

EFFECTIVE DATE: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

Wendy R. Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this rule is to ensure that the System provides sound and constructive credit and services [1] to YBS farmers and ranchers.[2] To accomplish this objective, the rule amends our existing regulations to provide:

1. Clear, meaningful, and results-oriented guidelines for System YBS policies and programs; and

2. Enhanced reporting and disclosure to the public on the System's performance and compliance with its statutory YBS mission (YBS mission or mission).

Through these amendments, the public will be better able to measure the

[1] The term "services" includes leases and related services to YBS farmers and ranchers.

[2] The Farm Credit Act of 1971 (1971 Act) gave the production credit associations and the banks for cooperatives the authority to finance "producers or harvesters of aquatic products" in addition to financing "farmers and ranchers." The 1980 amendments to the 1971 Act gave the Federal land banks expanded authority to finance "producers or harvesters of aquatic products" and put such producers and harvesters on the same footing as "farmers and ranchers." Thus, in accordance with the amendments to the 1971 Act, whenever we refer to "YBS farmers and ranchers" or "YBS borrowers" in this rule, we are including "producers or harvesters of aquatic products."

System's performance in fulfilling its YBS mission.

II. Background

As discussed in the preamble to the proposed rule (*see* 68 FR 53915, September 15, 2003), section 4.19 of the Farm Credit Act of 1971, as amended (Act), requires each System association to prepare a program for furnishing sound and constructive credit and related services to YBS farmers and ranchers. Congress added this section to the Act in 1980 to focus the System's attention on the need to have programs for such borrowers. Our current YBS regulations restate the YBS requirements in the Act. Further interpretation of the Act's YBS requirements currently is found in agency policy guidance.[3]

As stated in our proposed rule, YBS farmers and ranchers, like all those in agriculture today, face a wide range of challenges, including access to capital and credit; the impact of rising costs on profitability; urbanization and the availability of resources like land, water and labor; globalization; and competition from larger or more established farms. Although all agricultural producers face these challenges, the hurdles that YBS farmers and ranchers face are often greater. We continue to believe the System's YBS mission is important to enable small and start-up farmers and ranchers to make successful entries into agricultural production. The System's YBS mission is also critical to facilitate the transfer of agricultural operations from one generation to the next. For all these reasons, the agency remains committed to ensuring that the System fulfills its important public purpose mission to YBS farmers and ranchers.

In the proposed rule, the agency set forth minimum components that each System direct lender association must include in its YBS program and added requirements to enhance the reporting and disclosure to the public of the System's YBS programs, compliance, and performance.

The content of the proposed rule was an outgrowth of an initiative undertaken by the agency to renew the System's commitment to its YBS mission. This initiative began in 1998, with the adoption of an FCA Board policy statement that provided guiding principles for enhanced service to YBS farmers and ranchers.[4] To implement the policy statement, the agency issued a bookletter that included revised YBS definitions and YBS reporting procedures.[5] The revised reporting procedures contained in the bookletter require System institutions to submit detailed annual reports to the agency on all aspects of their YBS programs.

In furtherance of this initiative, in 1999, YBS lending programs became a "focus area" of agency examinations where, among other factors, the agency reviewed System institutions' YBS board policies and procedures; YBS credit enhancement programs and underwriting standards; YBS program coordination with Federal, state, System or other credit sources; demographic studies; marketing, advertising, and other outreach programs; and the quality of YBS reporting to System institutions' boards and FCA. Additionally, for the past 3 years, the FCA recognized the exemplary YBS programs of several System associations.

In the proposed rule, we also discussed the March 8, 2002, General Accounting Office (GAO) report on our oversight of the System's mission to serve YBS farmers and ranchers.[6] The GAO report recommended, in part, that the agency strengthen its oversight role of the System's YBS lending, promote YBS compliance, and highlight the System's efforts to provide services to YBS farmers and ranchers by:

1. Promulgating a regulation that outlines specific activities and standards that constitute an acceptable program to implement the YBS statutory requirement;

2. Ensuring that examiners follow the guidance, complete the appropriate examination procedures related to YBS, and adequately document the work performed and conclusions drawn during examinations; and

3. Publicly disclosing the results of the examinations for YBS compliance for individual System associations.

In the proposed rule we noted that in its response to Congress, the FCA expressed its commitment to address the issues raised in the GAO report.

In continuance of our YBS initiative, the agency sought public input through an advance notice of proposed rulemaking (ANPRM)[7] and a public meeting held on November 13, 2002, in Kansas City, Missouri.[8] We discussed that our objectives for the ANPRM and public meeting were to seek the public's suggestions on possible YBS regulatory approaches and policy initiatives and to hear about ways to enhance the System's service to YBS farmers and ranchers. The comments, in response to the ANPRM and from the testimony at the public meeting, reflected a multitude of opinions on the issue of whether the agency should provide more guidance to the System on YBS policies and programs. The preamble to the proposed rule provided an extensive discussion of those comments together with the agency's responses. Overall, the comments were generally divided between those that opposed the issuance of revisions to the agency's YBS regulation and those that supported additional regulatory requirements.

III. General Comments Received

In response to the proposed YBS rule, the agency received 52 comment letters. Commenters included the Farm Credit Council, System institutions, commercial banks, the American Bankers Association, the Independent Community Bankers of America, and other associations or trade groups involved in agriculture, such as the Sustainable Agriculture Coalition and the Farmers' Legal Action Group. Many of these commenters included by reference their previous comments in response to the ANPRM. In fact, a majority of the comments received in response to the proposed rule were identical or similar to the comments on the ANPRM and testimony at the public meeting and are addressed in our responses to the comments below. The commenters generally can be divided into two groups—those that oppose the additional requirements in the proposed rule and those that believe the proposed rule should go further in delineating YBS program, reporting, and disclosure requirements. Our responses to all these commenters are included in this section on general comments and in the section-by-section response further on in part VI of this preamble.

A few commenters supported the proposed rule, stating specifically that it supports FCA's effort to help YBS farmers and ranchers and that the reporting requirements should help improve transparency and accountability. The agency agrees that the final YBS rule, which provides results-oriented guidelines for YBS . policies and programs and enhanced reporting and disclosure requirements,

[3] *See* infra, notes 4 and 5.

[4] FCA–PS–75, Farm Credit System Service to Young, Beginning, and Small Farmers and Ranchers effective December 10, 1998, available on the FCA Web site, *http://www.fca.gov* (under Legal Info., FCA Handbook).

[5] FCA BL–040, Policy and Reporting Changes for Young, Beginning, and Small Farmers and Ranchers Programs, issued December 11, 1998, available on the FCA Web site, *http://www.fca.gov* (under Legal Info., FCA Handbook).

[6] Farm Credit Administration: Oversight of Special Mission to Serve Young, Beginning, and Small Farmers Needs to be Improved (GAO–02–304), available on the GAO Web site, *http://www.gao.gov/cgi-bin/getrpt?GAO–02–304.*

[7] *See* 67 FR 59479, September 23, 2002.

[8] *See* 67 FR 64320, October 18, 2002.

should ensure that the System continues to remain focused on and committed to its YBS mission.

Many commenters opposed the proposed rule, stating that:

- The requirements would create additional burdens and costs for System institutions without providing new tools for better servicing YBS farmers and ranchers or increasing the number of YBS loans;
- Additional costs resulting from a revised YBS rule would be passed on to the farmers and ranchers and is inconsistent with congressional directives to eliminate unnecessary and burdensome regulations;
- The System, which is tasked with serving all of American agriculture, recognizes the importance of and is already adequately serving the credit needs of YBS farmers and ranchers; and
- There is no evidence suggesting YBS farmers and ranchers are being denied access to credit by the System.

The commenters expressed concern that the proposed rule is the product of a GAO report on the agency's oversight of the System's mission to serve YBS farmers and ranchers and requested that FCA reconsider the issuance of a revised YBS rule, as well as its response to GAO. Many of these commenters suggested that, rather than issuing a revised YBS rule, the agency should use its enforcement authority to address any System shortfalls in meeting the credit needs of YBS borrowers.

Many of the foregoing comments are similar or identical to comments made in response to the ANPRM and the testimony at the public meeting on YBS guidance. As we stated previously, section 4.19 of the Act requires the System to pay particular attention to the credit and related services needs of YBS farmers and ranchers. Congress inserted section 4.19 of the Act, in part, as a response to a recognition that the family farm was declining in American agriculture at an alarming rate. This final rule is not a response to a perception that the System does not value or adequately serve YBS borrowers. Rather, the rule is a means to ensure that the System remains focused on this very important group of potential borrowers so that they can continue to have a future in agriculture. Thus, the agency does not believe that a regulation to ensure the System meets its YBS statutory mandate is unnecessary.

Further, we do not believe that this YBS final rule will result in significant additional burdens or costs for the System. Many of the rule's requirements already exist in current YBS guidance and examination and reporting requirements to which the System must currently adhere. Although the 2002 GAO report focused attention on the agency's oversight role of the System's YBS mission, well before the issuance of the report, the agency had taken significant steps to direct the System to refocus on its YBS mission. Specifically, in 1998, the agency issued a policy statement and bookletter on the YBS mission and, in 1999, the agency made YBS a focus area of agency examinations. In fact, since 1980, when Congress first added section 4.19 to the Act, the agency has had regulatory and policy guidance on the System's YBS mission to supplement the Act's general YBS requirements for System banks and direct lender associations. As seen by our efforts previous to the GAO report, the final rule is not simply a response to GAO, but a means to ensure that the System continues to actively and creatively seek ways to finance and service the needs of YBS borrowers.

Finally, FCA has taken a proactive approach to its oversight role of the System's YBS mission. By issuing this final rule, we strive to ensure that the System will successfully fulfill its YBS mission and diminish the need for ensuring mission accomplishment through the use of our enforcement authorities. We note, however, that by moving much of the current YBS guidance from a policy statement and a bookletter to a rule, we are strengthening our ability to more effectively take an enforcement action against a System institution for its failure to meet its YBS responsibilities should it become necessary.

A number of commenters suggested the agency eliminate the scope of lending restrictions limiting lending to less than full-time farmers so that part-time farmers have more access to credit. This issue is currently under review as part of a separate agency rulemaking on scope and eligibility. However, even if FCA were to remove the scope of lending restrictions, a regulation on YBS would still serve to enhance the System's fulfillment of its YBS mission.

One commenter suggested that the removal of territorial restrictions would enable some System associations with a strong commitment to serving YBS farmers and ranchers to fill a need when a neighboring association fails to adequately serve its YBS market. A consideration to remove territorial restrictions is not currently listed in the agency's regulatory performance plan (available on the agency's Web site, *http://www.fca.gov*). However, with this final rule, the agency can better assess the effectiveness of an association's YBS program and determine, through the examination process, whether an association is adequately serving its YBS market.

Some commenters suggested that the agency allow the use of System subsidiary entities, which, they believe, would make it easier for System associations to provide funding for higher risk YBS loans and increase lending to YBS borrowers. Efforts to create new corporate structures for System institutions have broad implications beyond service to YBS farmers and ranchers. Some System institutions have approached the agency to discuss their desire to create new entities for various purposes, including YBS-related purposes. The agency will continue to respond directly to those requests, but believes that the issue raised by the commenters goes beyond the scope of this rulemaking.

One commenter recommended that the agency require System institutions to expand their YBS programs by adding a fourth category for "socially disadvantaged" farmers and ranchers. Similarly, another commenter recommended that the System gather data about the gender and ethnicity of the borrowers they serve to ensure credit is being provided equally across such categories. Requiring the System to implement either of these recommendations is beyond the agency's authority because the Act neither includes a special mission to serve "socially disadvantaged" farmers or ranchers nor a directive to serve borrowers of a certain gender or ethnicity. We note, however, that these groups are not excluded from the System's overall mission. Section 1.1(a) of the Act requires the System to serve all eligible American farmers and ranchers. In fact, System YBS programs often include service to socially-disadvantaged, women, and minority farmers and ranchers, as these groups often comprise either young, beginning, or small farmers and ranchers. Thus, the enhanced YBS rule should also advance the System's service to these groups of potential borrowers.

Two commenters stated that the FCA needs to prohibit System institutions from engaging in below-market pricing of loans in order to avoid "cherry-picking" the best borrowers. This same comment was made in response to the ANPRM on YBS. At that time, we responded by explaining that sections 1.8(b) and 2.4(c)(2) of the Act provide that "it shall be the objective" of System lenders to set interest rates and other charges "at the lowest reasonable costs on a sound business basis" taking into consideration the lender's cost of funds,

necessary reserves, and the cost of providing services to its members. Thus, the System is fulfilling its public purpose under the Act when it provides interest rates at the lowest reasonable cost on a sound business basis. In addition, through the examination process, the agency routinely reviews each System institution's loan pricing to ensure that interest rates charged to borrowers cover costs and provide additional capital to ensure the institution's ongoing safety and soundness. Moreover, in our oversight and regulatory role, we ensure that the System is providing sound, adequate, and constructive credit and related services to all eligible American farmers and ranchers.

Finally, one commenter suggested that the agency remove any suggestions or recommendations from the final rule so that it is clear what the rule requires. The agency believes that the requirements in the rule are clearly marked by the use of the word "must." One section of the rule, namely § 614.4165(c) on *direct lender association YBS programs*, contains suggestions, marked by the use of the words "may" or "could." The agency deliberately used suggestive language in this section to allow a direct lender association maximum flexibility in designing a YBS program that best fits the needs of its territory and is within its risk-bearing capacity. Thus, although all System associations *must* develop annual quantitative YBS targets, the rule offers suggestions only on what such targets might look like. Similarly, although direct lender associations YBS programs *must* include annual qualitative YBS goals and methods to ensure that such programs are offered in a safe and sound manner and within their risk-bearing capacity, the way in which associations fulfill these components of the program is left up to them. We believe that through the use of the words "must" and "may," the final rule clearly delineates what is required from what is simply suggested as a way of meeting a particular program component requirement.

Another section of the proposed rule, namely § 614.4165(d) on *advisory committees*, is also not a requirement but only a suggested activity for an association's YBS program. However, because the formation of a YBS advisory committee is a type of outreach activity, we have moved this suggestion in the final rule to § 614.4165(c)(3)(iii) on *outreach programs* rather than retain it as a separate, suggested component. We believe this change in the rule will make it clearer that the formation of a YBS advisory committee is a suggested activity, rather than a required component, of a YBS program.

Lastly, one commenter opposed any programs that support YBS farmers and ranchers, especially if such programs are financed with taxpayer dollars. This commenter appears to be unclear about the purpose of the proposed rule and the role of the System. Section 4.19 of the Act requires the System to serve the credit and related services needs of YBS farmers and ranchers. A regulation on System YBS programs serves to support the YBS statutory requirement. Further, we note that, as a Government-sponsored enterprise (GSE), the System does not operate with taxpayer dollars and so its YBS programs are financed with private funds rather than public monies.

IV. Comments on the Pass/Fail Rating

In the preamble to the proposed rule, the agency discussed its intention to assign a "pass" or "fail" rating to each direct lender association's overall YBS program. We further stated that this YBS compliance rating would be based on a review of the direct lender association's YBS program components during an examination of an association. We also mentioned the FCA Board's intention to publicly disclose the results of the System's YBS compliance.

Many commenters raised opposition to the implementation of any kind of YBS rating or the disclosure of compliance results to the public. These commenters stated that such disclosures would not be useful because the circumstances of each association are unique. These same commenters expressed further concerns that the agency had not clearly set forth the criteria it would use to determine a "pass" or "fail" rating, and therefore the determination of such ratings would be arbitrary. The commenters expressed concern that without clear criteria, a "pass" rating would not provide the public with any useful information, while a "fail" rating could unfairly damage an association's reputation and competitive position. These commenters questioned whether such disclosure was appropriate or even authorized by Congress, stating further that examination results are, and should remain, confidential. Finally, these commenters stated that such ratings were unnecessary because of the extensive reporting and disclosure requirements in the proposed rule.

Many other commenters expressed support for rating the YBS programs of direct lender associations. In addition, these commenters suggested that FCA not only require disclosure of each direct lender association's YBS rating, but also disclosure of agency examination results of each association's YBS program. These commenters also asserted that the agency's YBS ratings should be expanded to be more comparable to the ratings other financial institutions are subject to under the Community Reinvestment Act (CRA) and the Home Mortgage Disclosure Act of 1975 (HMDA). These commenters point out that financial institutions subject to CRA and HMDA are required to disclose to the public their performance ratings in serving low and moderate income households. The commenters note that, under CRA, a financial institution's performance is rated as "outstanding," "satisfactory," "needs improvement," or "substantial noncompliance." The commenters stated that since the System is a GSE, the agency should impose YBS ratings at least as stringent as CRA ratings. Many of these same commenters also suggested that the agency make both the YBS rating and examination results of each direct lender association available to the public on the agency's Web site, similar to the practice of the other Federal financial regulators under CRA. Finally, several of the commenters state that many of their recommendations are consistent with the issues raised in the GAO report.

Many of these comments are similar, if not identical, to comments we received and addressed in response to the ANPRM. The commenters that remain opposed to the imposition and disclosure of a YBS compliance ratings and those that desire expansions to the "pass/fail" ratings provide little or no new arguments in support of their positions. The agency continues to believe it is important to measure and provide the public with a complete and accurate picture of the System's YBS compliance and performance. Again, we believe this will be best accomplished through disclosure of some form of rating that indicates each direct lender association's compliance with the minimum components for a YBS program, along with the requirement that each System institution report on and publicly disclose its YBS mission results.

In consideration of the comments on the "pass/fail" rating, we now want to clarify that the "pass/fail" rating is a compliance rating only that will simply indicate whether direct lender association YBS programs meets the requirements of this rule. In contrast, the enhanced YBS reporting and disclosure requirements in the rule will reveal the performance results of each association's YBS program. We also point out that the "pass/fail" rating

process, which has not been incorporated into the rule itself, is an internal examination function that we discuss in this preamble only to highlight the direction of FCA concerning its YBS examination efforts.

The agency is considering what type of examination procedures are necessary for evaluating each direct lender association's YBS program compliance with the provisions in this rule. Once developed, the YBS examination criteria also will be included in the agency's examination manual (available on our Web site at *http://www.fca.gov*).

The agency continues to believe that some form of disclosure of direct lender associations' YBS ratings, combined with the required YBS reporting and disclosure requirements in this final rule, will provide the public with a sound understanding of each association's YBS compliance and performance and will also help the System to better fulfill its YBS mission. Furthermore, the agency continues to believe that it not only has the authority, but also the responsibility in its oversight and regulatory role, to disclose YBS compliance ratings and to ensure that the System describes its performance results to the public. The agency will continue to assess the most effective way to make the YBS ratings available to the public.

As stated in the preamble to the proposed rule, the agency believes it is inappropriate to disclose confidential examination report information. In addition, we continue to believe the additional transparency provided by the enhanced reporting and disclosure requirements in the rule will give the public a sound understanding of the System's YBS compliance and performance results and will, therefore, preclude the need for disclosing the YBS sections of agency examination reports. If the agency determines that an institution's reporting and disclosure do not provide a sound understanding of the System's YBS compliance and performance results, the agency can remedy any shortcomings through its supervisory and enforcement authorities. As to the suggestions for implementing disclosures similar to CRA and HMDA, we note that the Act does not have the same requirements for YBS ratings and disclosure as those set forth in the CRA or HMDA. However, we believe that the enhanced rating, reporting, and disclosure requirements of this rule fulfill the YBS provisions in the Act and will provide effective disclosure to the public on the System's YBS programs, as well as mission shortfalls and accomplishments.

V. Comments on YBS Data Collection Issues

Many commenters once again made suggestions on ways to improve the accuracy of the YBS data collected by the agency from System institutions. Some commenters suggested the agency ensure that loans to father and son operations are counted as YBS loans only when the son is actively involved in the farm operation. Under current agency guidance, if a son is co-obligated on the father's loan or has an ownership interest with his father in the farm operations, the loan can qualify as a YBS loan as long as one or more of the YBS definitions is met. We believe this criteria is appropriate for counting the loan in any of the YBS categories. Requiring a YBS borrower to be actively involved in the farming operations is inconsistent with the purpose of YBS lending. The purpose of the YBS mission is to permit YBS farmers, who often are required to earn off-farm income to maintain their farming operations, to get started in agriculture by a variety of means. Thus, we do not see where additional criteria to assess a son's actual involvement in the farming operations would substantially improve upon the accuracy of the YBS data collected by the System or improve upon the System's service to YBS farmers and ranchers.

These commenters also suggested that the agency aggregate loans to one borrower to determine whether the borrower is a "small" farmer and that we add a category for "part-time" farmers to the YBS categories. Under current agency procedures, our determination of a "small" farmer is based on gross sales of agricultural or aquatic products rather than loan volume. As discussed at length in the preamble to the proposed rule, we believe the current definitions for the YBS categories, which were revised in 1998, properly reflect the changes in agriculture over the years and provide the most accurate picture of the System's service to YBS farmers and ranchers. Thus, we see no benefit to changing our definition of "small" farmer.

Similarly, we see no benefit to adding a separate category for part-time farmers. Congress mandated the agency to collect information on "young," "beginning," and "small" farmers and ranchers. The commenters provided no rationale for requiring System institutions to distinguish between part-time and full-time farmers in their YBS reporting. Moreover, we believe that part-time YBS farmers, who often need off-farm income to make ends meet, are just as deserving of YBS credit and services as full-time farmers.

Other commenters reiterated their concern that the System be prevented from inflating its YBS numbers by allowing the same loan to be counted separately in each applicable YBS category. These commenters also expressed a preference for having the System count and report on the number of YBS *borrowers* rather than *loans*.

The foregoing comments are similar to comments we addressed in response to the ANPRM. We continue to disagree with the implications of these comments that the reported YBS information is inaccurate and misleading. As explained in the preamble to the proposed rule, the practice of reporting a loan in each applicable YBS category is consistent with other GSE mission-related reporting, such as the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) reports on their annual housing goals,[9] as well as with congressional intent to report on the System's service to each category of YBS farmers and ranchers. Finally, in the agency's Performance and Accountability Report for fiscal year 2002, the information on the System's YBS lending explicitly states that YBS categories are not mutually exclusive. Therefore, one cannot add across YBS categories to count total YBS lending.

As also explained in our response to the comments received on the ANPRM, in 1998, the agency made several changes to the way it collected YBS data from the System, including collecting YBS data based on the number of YBS loans rather than the number of YBS borrowers. The changes were consistent with the new YBS definitions the agency developed at that time and were made to capture more complete information on the System's extension of credit and services to YBS farmers and ranchers. In addition, we believe that the collection of loan numbers in combination with loan volume (that is, the average size of an institution's YBS loan) provides the public a base for a more useful comparison of the System's extension of credit to YBS borrowers. The agency continues to believe that the key issue in YBS data collection is consistent YBS reporting throughout the System. We believe that our current method of categorizing and counting the System's YBS loan numbers and loan volume provides the most accurate and

[9] The annual housing goals are established and supervised by the Department of Housing and Urban Development, Fannie Mae's and Freddie Mac's regulator.

complete picture of the System's YBS mission fulfillment.

Finally, other commenters suggested that FCA examiners verify the accuracy of the YBS data being reported by System institutions. We note that data verification, conducted on a sampling basis, is already a part of YBS examination procedures.

The remaining comments discussing the particulars of the proposed rule are addressed in the following section of this document.

VI. FCA's Section-by-Section Response to Comments

Section 614.4165(a)—Definitions

The proposed definition section clarified various terms used in section 4.19 of the Act. For instance, this section clarifies that, for purposes of this subpart, the term "credit" includes all loans and interests in participations made by System banks and direct lender associations operating under titles I or II of the Act. The term "services," as used in section 4.19(a) of the Act, includes all leases made under titles I or II authorities and all related services made by System banks and direct lender associations operating under titles I or II of the Act.

We received only one comment on this section, suggesting that we develop a meaningful definition of a small farm or ranch, one that is useful in today's market environment and based on input from all appropriate entities.

As mentioned in the preamble to our proposed rule, the agency's current definitions for "young," "beginning," and "small" farmers and ranchers are set forth in 1998 FCA guidance.[10] The guidance defines "small" as a farmer, rancher, or producer or harvester of aquatic products who normally generates less than $250,000 in annual gross sales of agricultural or aquatic products. We discussed the extensive research the agency undertook in arriving at this definition of "small" farmer and rancher, which included evaluating terms used by the United States Department of Agriculture (USDA) and other regulatory agencies who collect data on "small" farmers and ranchers. Thus, we continue to believe the definition for "small" farmers and ranchers currently in use by the agency is appropriate. For the foregoing reasons, we adopt proposed § 614.4165(a) as final without change.

[10] See *supra* note 5.

Section 614.4165(b)—Farm Credit Bank Policies

This section implements certain provisions of section 4.19 of the Act, which require each:

1. Direct lender association to adopt a YBS program under the polices of its funding[11] Farm Credit bank board;
2. Direct lender association to coordinate with other System institutions in its territory, and other governmental and private sources of credit in extending credit and services to YBS farmers and ranchers;
3. Direct lender association to report annually on its YBS programs and performance results to its funding bank; and
4. Farm Credit bank to report annually to the FCA summarizing the YBS program operations and achievements of its affiliated direct lender associations.

Two commenters expressed concern that requiring banks to have written policies on their affiliated associations' YBS programs is contrary to FCA's recognition that direct lender associations have gained more autonomy from their funding banks since 1980, when section 4.19 was first added to the Act. Notwithstanding the fact that System banks have taken a diminished role in overseeing the operations of their affiliated direct lender associations, the requirements in this section track the requirements of section 4.19 of the Act, which we simply are not at liberty to disregard. Therefore, we adopt § 614.4165(b) as final without change.

Section 614.4165(c)—Direct Lender Association YBS Programs

This section sets forth the minimum components that each direct lender association must include in its YBS program while at the same time allowing each association to design a YBS program unique to its territory. At a minimum, when developing a YBS program, each direct lender association must:

1. Develop a YBS program mission statement describing the YBS program objectives and specific means of achieving those objectives;
2. Develop annual quantitative targets for credit to YBS farmers and ranchers that are based on an understanding of reasonably reliable demographic data for the lending territory;
3. Develop annual qualitative goals that include efforts to offer services that are responsive to the needs of YBS borrowers, take full advantage of opportunities for coordinating credit and services with other providers of credit, and implement effective outreach programs to attract YBS farmers and ranchers; and
4. Establish methods to ensure that it is conducting its YBS program in a safe and sound manner and within its risk-bearing capacity.

Several commenters commended § 614.4165(c) of the proposed rule because it allows System associations to take into consideration the demographics and economy of their territories along with their risk-bearing capacities when establishing their YBS programs. Two commenters supported the minimum YBS components required by the proposed rule. However, many commenters stated that in the Act Congress left the design of each association's YBS program up to their respective funding banks. These commenters stated that Congress recognized that local conditions warrant different approaches and deferred to the wisdom and local knowledge of the System bank boards to establish policies to guide these programs.

Since 1980, when section 4.19 was first included in the Act, the relationship between the funding banks and their affiliated associations has significantly changed, with the associations operating much more independently from their funding banks. Although the rule retains the statutory directive for associations to establish their YBS programs *under the policies* of their funding banks, in recognition of the autonomy with which associations now operate, we have kept the bank policies to a minimum, as discussed earlier. Moreover, we agree that Congress intended YBS programs to be developed by the System lenders who have the most knowledge of their territories. We have, therefore, developed this section to allow each direct lender association maximum flexibility in creating a YBS program that takes into consideration the economy and demographics of its territory, as well as its risk-bearing capacity. In so doing, the YBS rule is consistent with congressional intent to allow each association to design a YBS program that best fits the needs of its lending territory.

Section 614.4165(c)(1)—Mission Statement

One commenter stated that it is inappropriate and potentially confusing for a regulation to require a mission statement that focuses only on YBS programs rather than on the System's

[11] Although section 4.19 of the Act refers to "district" and "supervising" Farm Credit banks, we use the term "funding" bank, which we believe more appropriately reflects the current relationship between a Farm Credit bank and its affiliated direct lender associations.

mission to serve all of American agriculture.

We do not agree with the commenter's concern that a mission statement focusing strictly on an association's service to YBS farmers and ranchers is inappropriate or confusing. We believe the exercise of developing a mission statement will compel each direct lender association to focus on the objectives of its YBS program and the steps it must take to accomplish such objectives. Further, developing a mission statement to give direction to an association's YBS program does not in any way hinder an association's capacity and responsibility to serve all of American agriculture.

Section 614.4165(c)(2)—Quantitative Targets

Many commenters responded to this section of the proposed rule. One commenter suggested that this section be changed to permit System associations to consider their financial condition and risk-bearing capacity when establishing quantitative targets. In fact, § 614.4165(c)(4) requires each System association to have methods to ensure that it offers credit and related services to YBS borrowers in a safe and sound manner and within its risk-bearing capacity. Thus, quantitative targets and qualitative goals must be established with these safety and soundness factors in mind.

One commenter pointed out that the agency should understand the distinction between loan number goals and borrower number goals, as well as new-borrower goals versus new-loan goals. The agency is aware of the distinctions of establishing YBS quantitative targets by number of loans versus number of borrowers or by number of new loans versus new borrowers. However, we have left it to the decision of each direct lender association to determine how best to establish its quantitative YBS targets. This approach allows an association, for example, to establish a quantitative target based on increasing the number of new YBS borrowers if it determines that it wants to achieve a greater number of YBS borrowers versus YBS loans.

One commenter supported the requirement that an association establish quantitative targets that reasonably reflect the YBS demographics in its territory rather than basing such targets on nationwide data. However, many other commenters stated that no meaningful demographic data exists that is reflective of an association's territory and that using the data currently available will lead to distortion and faulty analysis of an institution's YBS market penetration. Another commenter stated that requiring quantitative targets to reasonably relate to demographic data is unduly burdensome. Still, another commenter asked the agency to explain further what it means when it states that the quantitative targets must be based on "reasonably reliable" demographic data that "reasonably reflect" the YBS demographics in the lending territory. This commenter believes these terms are too vague.

A reliable measurement is necessary to ensure that the System is adequately fulfilling its YBS public purpose mission. We believe that demographic data is necessary for each direct lender association to adequately assess its YBS market characteristics, and we note that none of the commenters suggested a more viable alternative for assessment. Although we recognize that not all available demographic data may be an ideal representation of the YBS market in each association's territory, we still believe such data is useful and is a reasonable representation of the YBS market in a lending territory.

Further, we do not believe it is burdensome to require that quantitative targets be based on demographic data, as there is available and easily obtainable data from the *United States Department of Agriculture's National Agricultural Statistics Service Census of Agriculture* (USDA Census). We have attempted to make the reliance on demographic data less burdensome and costly by *not* requiring each direct lender association, or an independent source, to complete a demographic study. Instead, the rule allows for the use of the available demographic data as long as an association can explain any differences between its YBS quantitative targets and the data it is relying upon to establish such targets. Finally, we note that associations are free to obtain demographic data from other available sources besides the USDA Census, such as state and county demographic data or by any other appropriate means.

We do not believe the phrase "reasonably reliable" demographic data that "reasonably reflects" the YBS demographics in a lending territory is vague or lacking in sufficient specificity. The selection of these terms employs the "reasonable person" standard "that is, whether a reasonable person with knowledge of the relevant facts would question an association's reliance on the demographic data or the reasonableness of its quantitative targets in light of such data. This standard enables associations to draw on their sound business judgment and knowledge of their territory in establishing their quantitative targets. Hence, even when the demographic data is not an ideal representation of an association's YBS market, the reasonable person standard allows associations to establish targets in variance of such data as long as they can justify the difference. Nevertheless, we have revised § 614.4165(c)(2) in the final rule to make it clear that each direct lender association's quantitative targets must be based on an understanding of how the data relates to the YBS market in the association's lending territory, not directly based on the demographic data. Since we believe "reasonably reliable demographic data" encompasses the meaning of the phrase in the proposed rule "that reasonably reflect the YBS demographics", the latter phrase has been removed.

One commenter suggested that the quantitative targets should reflect not only existing demographics, but also more far-reaching assessments of the needed changes in the distribution of farm assets to achieve a more balanced and diverse structure of agriculture and future borrower pools. The commenter suggested that this be accomplished by inserting at the end of the first sentence in § 614.4165(c)(2) the following: "and that progressively increase self-employment opportunities in agriculture within the lending territory."

The System's mission is to serve the credit and related services needs of all farmers and ranchers. Although the System is not directly responsible for increasing self-employment opportunities in agriculture, its mission certainly helps to accomplish this goal by making more agricultural credit available. Thus, we believe it is unnecessary to add the suggested language to this section.

A number of commenters were dissatisfied with the rule's approach permitting each direct lender association to establish their own quantitative targets rather than defining specific targets in the rule for the associations. The comments on this issue contained a number of suggestions, including that the agency: develop specific targets on the number of guaranteed loans made to beginning farmers and ranchers; look to the targets of other GSE regulators, such as those required for Freddie Mac and Fannie Mae, to help it set specific targets for the System associations; and impose penalties when an association fails to meet the specific targets.

The agency has strived throughout this rule to avoid dictating a uniform Systemwide approach to fulfilling its YBS mission. Establishing specific YBS quantitative targets for all System

associations would be inconsistent with our approach and impractical given the unique demographic and lending environments of each association's territory. The agency's examination and enforcement authorities will enable us to evaluate the reasonableness of each association's quantitative targets and to require adjustments to the targets where deemed necessary.

Section 614.4165(c)(3)—Qualitative Goals

One commenter expressed concern that § 614.4165(c)(3)(i), which requires YBS services to be offered in coordination with others, interferes with a direct lender association's ability to make its own choices on the types of related services it wishes to offer. This requirement, to *coordinate with others* when offering related services, is required by section 4.19(a) of the Act. Neither the Act nor this rule dictate what type of related services must be offered. However, the requirement to *coordinate with others* ensures that YBS borrowers, a group that can especially benefit from related services, will receive the help they need in their farming or ranching operations. By offering such services in coordination with others, associations may find the expertise and the cost-sharing benefits necessary to provide a full array of services.

One commenter suggested we add language to § 614.4165(c)(3)(i) and (ii) that specifically includes nongovernmental organizations when describing the offering of credit and services in coordination with others. We do not believe this language change is necessary because the rule, at § 614.4165(c)(3)(ii), requires that each direct lender association take full advantage of opportunities for coordinating credit and services offered by other Farm Credit System institutions, and other governmental *and private sources of credit and services.* Private sources of credit would include nongovernmental organizations, as the commenter suggested.

Another commenter believed that § 614.4165(c)(3)(iii), which requires direct lender associations to implement outreach programs, is inappropriate and usurps board authority and accountability. The commenter further stated that the rule should not prescribe how board and management assess customer needs and how they communicate with the customers through their marketing efforts. The requirement in the proposed rule to implement outreach programs is similar to current FCA policy on System YBS programs. The rule does not take any responsibility out of the hands of an association's board to oversee its YBS outreach efforts nor does it tie management's hands in implementing outreach programs. The rule simply states that a minimum component of an association's YBS program must include outreach programs and suggests types of outreach activities that an association might consider. An association board and management are free to pursue appropriate outreach activities, including others than those suggested in the rule.

Finally, one commenter suggested that the final rule include goals for loan restructuring for YBS borrowers. Direct lender associations must provide borrower rights to all of their borrowers.[12] The decision to restructure a distressed loan is a fact-specific one that must be made on a case-by-case basis. Setting goals for restructuring YBS loans would be contrary to sound lending practices and could jeopardize the safe and sound operations of an association.

Section 614.4165(c)(4)—Credit Enhancements and Risk-bearing Capacity

One commenter suggested that the final rule include special credit treatment, special interest rates, and loan participation programs for YBS borrowers. Similar to all of the minimum components for a YBS program set forth in this rule, this section simply states that YBS loans must be offered in a safe and sound manner and within an association's risk-bearing capacity. This section of the rule then suggests types of credit enhancements that an association can use to manage risk while providing more opportunities to its YBS borrowers.

In all of the minimum components, our approach remains consistent. That is, each direct lender association has the flexibility to design a YBS program within the rule's minimum requirements. We believe it would be inconsistent with our role as a safety and soundness regulator to require specific types of credit enhancements. Therefore, although we agree with the commenter that special credit treatment, special interest rates, and loan participation programs are reasonable types of credit enhancements, it is up to each direct lender association to determine if sound business practices and its risk-bearing capacity would permit it to offer such enhancements.

One commenter stated that this section's reference to risk-bearing capacity will be used by System associations as an excuse not to lend to YBS borrowers. System associations must always consider their risk-bearing capacity when extending credit and services. It is especially important to consider risk when extending credit to a potentially less financially stable group of borrowers, such as YBS borrowers. Nevertheless, associations are still expected to demonstrate that they are meeting the credit and services needs of the YBS community in their respective territories. The requirements for YBS programs set forth in this final rule should enhance System YBS programs and help ensure that the System successfully achieves its YBS mission in a safe and sound manner.

For all the foregoing reasons, we are adopting § 614.4165(c) as final with only two changes. As we explained above, we have revised § 614.4165(c)(2) in the final rule to make it clear that each direct lender association's quantitative targets must be based on an understanding of how the data relates to the YBS market in the association's lending territory, not directly based on the demographic data. Since we believe "reasonably reliable demographic data" encompasses the meaning of the phrase in the proposed rule "that reasonably reflect the YBS demographics", the latter phrase has been removed.

Further, as explained in the following section, in the final rule we are adding the following language to the end of § 614.4165(c)(3)(iii): "as well as an advisory committee comprised of "young," "beginning," and "small" farmers and ranchers to provide views on how the credit and services of the direct lender association could best serve the credit and services needs of YBS farmers and ranchers."

Section 614.4165(d)—YBS Advisory Committee

This section of the proposed rule explains that each direct lender association could, at its option, establish and maintain an advisory committee comprised of young, beginning, and small farmers and ranchers. We included this recommendation because we believe a YBS advisory committee could help each association determine the credit and services needs of YBS farmers and ranchers in its territory. Similarly, this committee could serve as the association's conduit to the YBS community and other agricultural interest groups and lending sources

[12] On February 10, 2004, the FCA board adopted a final rule that revised the borrower rights regulations at Part 614, subpart N and redesignated them to Part 617; *see* 69 FR 10901, March 9, 2004.

serving the needs of YBS farmers and ranchers.

One commenter supported the inclusion of this recommendation in the final rule and suggested we make the YBS advisory committee a requirement of each direct lender association's YBS program rather than an option. The commenter also suggested that the membership of the advisory committee be expanded to include university and nongovernmental organization representatives that work with YBS farmers and ranchers. Although we certainly encourage each direct lender association to establish an advisory committee as a way of reaching out to the YBS community in its territory, we recognize that it may not be feasible or cost-effective for every association to create and maintain such a committee. Further, given the unique demographics of each direct lender association's territory, we think it best to allow each association to determine the makeup of its advisory committee membership should it choose to create one. Therefore, we have not incorporated these suggestions into the final rule.

As we explained earlier, one commenter expressed concern that the use of suggestions and recommendations in the YBS rule left the System unclear as to what the rule actually requires. Because the formation of an advisory committee is a type of outreach activity, we have moved the suggestion of an advisory committee to § 614.4165(c)(3)(iii) of the final rule and deleted § 614.4165(d). We believe this change in the final rule will make it clearer that the formation of a YBS advisory committee is a suggested rather than required component of a YBS program.

Section 614.4165(e)—Review and Approval of YBS Programs

This section implements section 4.19(a) of the Act, which requires each direct lender association's YBS program to be subject to the "review and approval" of its funding bank. One commenter noted that there is no benefit to involving the funding banks in monitoring or approving the YBS programs of its affiliated direct lender associations. We note that the "review and approval" language is statutory and reflects congressional intent to involve the System banks, to some extent, in the YBS programs of their affiliated direct lender associations. The agency has no authority to simply disregard this congressional directive. Clearly, the System banks and associations have a common goal in ensuring that the special direction from Congress with regard to YBS farmers and ranchers is accomplished. For instance, System banks may want to work with their affiliated associations in coordinating credit and service opportunities for the YBS community in its district. Thus, we see a benefit in keeping the funding banks aware of the YBS programs being conducted by their affiliated associations to further ensure the accomplishment of the System's YBS mission.

Contrary to the previous comment, another commenter commended FCA for correctly reflecting the evolved relationship between System banks and their affiliated direct lender associations by appropriately defining the bank's approval requirements of an association's YBS program. In narrowly interpreting the "review and approval" statutory language, the agency does indeed recognize the autonomy gained by direct lender associations since the addition of section 4.19 to the Act in 1980. For all the foregoing reasons, we redesignate this section as § 614.4165(d) and adopt it as final.

Section 614.4165(f)—YBS Program and the Operational and Strategic Business Plan

This section of the rule requires direct lender associations to include their YBS quantitative targets and qualitative goals in their operational and strategic business plans. One commenter supported this section while another commenter suggested that this section be deleted from the final rule. This latter commenter expressed concern that this section imposes additional administrative and reporting burdens on System institutions while providing no greater flexibility to serve YBS farmers and ranchers. We do not find the commenter's concerns convincing. This provision is intended to help associations define the steps by which they will accomplish their mission to serve YBS borrowers and build on their commitment to meeting their YBS targets and goals. We do not believe it is overly burdensome to include the YBS targets and goals, which associations must already develop, in their operational and strategic business plans. Moreover, most associations that have been adopting effective business plans under § 618.8440 of FCA regulations have already been including their YBS program projections in such plans. For all the foregoing reasons, we redesignate this section as § 614.4165(e) and adopt it as final.

Section 614.4165(g)—YBS Program Internal Controls

The rule requires that each direct lender association include, as part of its YBS program, comprehensive and detailed internal controls. These internal controls include establishing clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly reporting. Regular and reliable reporting to the board of directors helps an association to assess the strengths and weaknesses of its YBS program. The quarterly reporting requirement in the final rule will provide the board of directors an opportunity to assess its association's YBS program and consider any necessary changes or adjustments to its program components. Oversight and control of an association's YBS program will help ensure that the program is managed effectively and will contribute to its overall success. We received no comments on this section. Therefore, we redesignate the section as § 614.4165(f) and adopt it as final.

Section 620.5(n)—Contents of the Annual Report to Shareholders

The rule requires each direct lender association to include in its annual report to shareholders a description of its YBS program, including a status report on each program component, as set forth in § 614.4165(c) of the proposed rule, as well as the definitions of "young," "beginning," and "small" farmers and ranchers. The rule also requires that the YBS discussion provide other information necessary for a comprehensive understanding of the direct lender association's YBS program and its results. In addition, the rule requires each Farm Credit bank to include in its annual report to shareholders a summary report of just the quantitative YBS data from its affiliated direct lender associations as described in FCA's instructions for the annual YBS year-end report. The rule also requires each Farm Credit bank's annual report to include the definitions of "young," "beginning," and "small" farmers and ranchers, as well as any other information that may be necessary for an ample understanding of the YBS mission results of the affiliated direct lender associations in its district.

Many commenters supported the requirement to include in the annual reports of each direct lender association and System bank a discussion of YBS program and performance results. A few commenters suggested that we require each direct lender association to report YBS program activity on an individual institution basis. Other commenters suggested that the annual reports be made available to the public, either on the banks and associations Web sites and/or on FCA's Web site. The rule already requires each direct lender

association to report on its YBS program activity in its annual report to shareholders and in the YBS year-end report to the FCA. We also note that many System institutions currently make their annual reports available to the public on their Web sites. The System's YBS year-end reports, listed by individual associations, are also available on the agency's Web site. However, the question of whether FCA should require annual reports to be posted on System institution Web sites is an issue for consideration beyond the scope of this rulemaking and one that will be considered if the agency should decide to revise its disclosure regulations at some future time. Finally, the public may request a copy of any System institution's annual report from either the individual institution or the FCA.

Several commenters opposed the requirement to include YBS information in System institutions' annual reports to shareholders, recommending that the annual report requirements be deleted altogether. These commenters advocated that the decision to include YBS information in an annual report should be left up to each institution's board of directors. The commenters also suggested that FCA runs the risk of reducing innovation in System YBS program development as direct lender associations focus more on meeting the agency's reporting requirements than on working with YBS customers. One commenter stated that the annual report should not become a replacement document for business plans, or measurements for examination purposes, but instead should remain a vehicle to report the operating results of the institution. The agency is not swayed by these comments to delete any of the proposed annual YBS reporting requirements.

Moreover, we continue to believe reporting to shareholders and the public on the YBS mission results will underscore the importance of the System's public purpose YBS mission and will result in greater transparency to the public on the System's accomplishment of this mission.

One commenter suggested the agency require direct lender associations to include in their annual reports a description of special credit treatments, special interest rates, and loan participation programs available to YBS borrowers. This commenter believes the proposed rule did not go far enough in encouraging the use of such credit enhancements.

The rule requires each direct lender association to include in its annual report a description of its YBS program, including a status report on each program component set forth in § 614.4165(c). Establishing qualitative goals is a required component of an association's YBS program, which includes credit enhancement programs. Thus, we believe the rule already requires associations to describe its credit enhancement program goals in its annual report.

One commenter indicated that it was unclear in the rule whether associations will be required to include in their annual reports their YBS performance with regards to related services offered to their YBS borrowers. The rule clearly requires associations to report on their related services offered under their YBS programs. Specifically, § 620.5(n)(2) of the rule requires a status report on each program component as set forth in § 614.4165(c). The offering of related services is a program component under § 614.4165(c)(3)(i) of the rule. Thus, associations must include in their annual reports to shareholders a status report of their efforts to offer related services under their YBS programs.

In contrast to the previous comments, which address the reporting and disclosure of YBS information by System institutions, the following comments address FCA's role in reporting and disclosing YBS data. Several commenters stated that if the proposed rule is made final without major revisions to its public disclosure requirements, FCA will have failed as a Federal regulator by abrogating its mission to protect the public's right to know about how the System is fulfilling its YBS mission. The commenters believe the FCA should compile the YBS information itself and release it to the public. The FCA disagrees with the commenters' statement.

Under section 4.19(b) of the Act, it is the System associations who must report on their YBS activities to the banks and, in turn, the banks must submit an annual report to FCA summarizing the YBS operations and achievements of their affiliated associations. It is clearly the responsibility of the System institutions rather than the FCA to report on their YBS operations and achievements. However, in addition to System YBS yearend reports, the agency also includes a summary of the System's YBS results in our annual performance report (these reports are available on FCA's Web site). Finally, as noted earlier, the agency is taking steps to disclose future System institutions' YBS compliance ratings to the public. The agency believes these various YBS reports are more than sufficient to give the public an ample understanding of each direct lender association's YBS program and related performance results as well as the System's overall YBS performance and achievements.

Finally, several commenters stated that FCA should disclose consolidated YBS data for each district rather than require System banks to do so in their annual reports to shareholders. The commenters assert that there is no basis in the Act for such a reporting requirement and that requiring the banks to include in their annual reports to shareholders YBS information gathered from their affiliated associations imposes an unnecessary burden in light of the fact that the associations are the shareholders of their respective funding banks.

The FCA disagrees that there is no basis in the Act for this requirement. As previously noted, section 4.19(b) of the Act requires System banks to provide FCA with a report summarizing the YBS operations and achievements of its affiliated direct lender associations. Further, sections 5.17(8) and 5.19(b)(1) of the Act give the agency broad authority to establish reporting requirements for System institutions so that all parties interested in the operations of the System, including shareholders, investors, Congress, and the public at large, can assess the System's performance and mission fulfillment as a GSE. Further, although the banks acquire their YBS information from their affiliated associations, it is still helpful for the associations to view, at a glance, how the district as a whole is performing its YBS mission. Thus, we believe the inclusion of this YBS data in the annual reports of the banks would be helpful to the associations. Moreover, we do not believe the consolidated YBS reporting requirements are burdensome for the banks. The rule requires the System banks to include in their annual reports to shareholders a summary report of just the YBS quantitative data from their affiliated direct lender associations. This quantitative data must already be submitted to the agency in each bank's annual YBS yearend report. Thus, it is not significantly more burdensome for the banks to include this same data in their annual reports to shareholders. Finally, the agency believes it is first and foremost the responsibility of each System institution, rather than the FCA, to report information regarding its YBS program results.

For all the foregoing reasons, we adopt proposed § 620.5(n) as final without change.

Section 630.20(p)—Contents of the Annual Report to Investors

The rule requires the funding banks to include a report on consolidated YBS lending data of their affiliated associations in their Systemwide annual report to investors and to include the definitions of "young," "beginning," and "small" farmers and ranchers. Additionally, the rule requires that the report include any other information that may be necessary for ample understanding of the System's YBS mission results.

Several commenters raised concerns about the System banks not having enough time to collect and analyze the YBS data for inclusion in the report to investors. (This same concern was raised with respect to including YBS data in the System banks' and associations' annual reports to shareholders.) These commenters raised this concern because of anticipated new and shorter timeframes for publishing such reports in order to be more responsive to the marketplace. The agency believes the impact of adding the YBS data to the report to investors will be insignificant compared to all the other data the banks must include in this report.

For all the foregoing reasons, we adopt proposed § 630.20(p) as final without change.

VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with their affiliated associations and service corporations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, parts 614, 620, and 630, chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

■ 1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart D—General Loan Policies for Banks and Associations

■ 2. Section 614.4165 is revised to read as follows:

§ 614.4165 Young, beginning, and small farmers and ranchers.

(a) *Definitions.*

(1) For purposes of this subpart, the term "credit" includes:

(i) Loans made to farmers and ranchers and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Interests in participations made to farmers and ranchers and producers or harvesters of aquatic products under title I or II of the Act.

(2) For purposes of this subpart, the term "services" includes:

(i) Leases made to farmers and ranchers and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Related services to farmers and ranchers and producers or harvesters of aquatic products under title I or II of the Act.

(b) *Farm Credit bank policies.* Each Farm Credit Bank and Agricultural Credit Bank must adopt written policies that direct:

(1) The board of each affiliated direct lender association to establish a program to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). The terms "bona fide farmer or rancher," and "producer or harvester of aquatic products" are defined in § 613.3000 of this chapter;

(2) Each affiliated direct lender association to include in its YBS farmers and ranchers program provisions ensuring coordination with other System institutions in the territory and other governmental and private sources of credit;

(3) Each affiliated direct lender association to provide, annually, a complete and accurate YBS farmers and ranchers operations and achievements report to its funding bank; and

(4) The bank to provide the agency a complete and accurate annual report summarizing the YBS program operations and achievements of its affiliated direct lender associations.

(c) *Direct lender association YBS programs.* The board of directors of each direct lender association must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory. Such a program must include the following minimum components:

(1) A mission statement describing program objectives and specific means for achieving such objectives.

(2) Annual quantitative targets for credit to YBS farmers and ranchers that are based on an understanding of reasonably reliable demographic data for the lending territory. Such targets may include:

(i) Loan volume and loan number goals for "young," "beginning," and "small" farmers and ranchers in the territory;

(ii) Percentage goals representative of the demographics for "young," "beginning," and "small" farmers and ranchers in the territory;

(iii) Percentage goals for loans made to new borrowers qualifying as "young," "beginning," and "small" farmers and ranchers in the territory; or

(iv) Goals for capital committed to loans made to "young," "beginning," and "small" farmers and ranchers in the territory.

(3) Annual qualitative YBS goals that must include efforts to:

(i) Offer related services either directly or in coordination with others that are responsive to the needs of the "young," "beginning," and "small" farmers and ranchers in the territory;

(ii) Take full advantage of opportunities for coordinating credit and services offered with other System institutions in the territory and other governmental and private sources of credit who offer credit and services to

those who qualify as "young," "beginning," and "small" farmers and ranchers; and

(iii) Implement effective outreach programs to attract YBS farmers and ranchers, which may include the use of advertising campaigns and educational credit and services programs beneficial to "young," "beginning," and "small" farmers and ranchers in the territory, as well as an advisory committee comprised of "young," "beginning," and "small" farmers and ranchers to provide views on how the credit and services of the direct lender association could best serve the credit and services needs of YBS farmers and ranchers.

(4) Methods to ensure that credit and services offered to YBS farmers and ranchers are provided in a safe and sound manner and within a direct lender association's risk-bearing capacity. Such methods could include customized loan underwriting standards, loan guarantee programs, fee waiver programs, or other credit enhancement programs.

(d) *Review and approval of YBS programs.* The YBS program of each direct lender association is subject to the review and approval of its funding bank. However, the funding bank's review and approval is limited to a determination that the YBS program contains all required components as set forth in paragraph (c) of this section. Any conclusion by the bank that a YBS program is incomplete must be communicated to the direct lender association in writing.

(e) *YBS program and the operational and strategic business plan.* Targets and goals outlined in paragraphs (c)(2) and (c)(3) of this section must be included in each direct lender association's operational and strategic business plan for at least the succeeding 3 years (as set forth in § 618.8440 of this chapter).

(f) *YBS program internal controls.* Each direct lender association must have internal controls that establish clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly reporting to the association's board of directors.

PART 620—DISCLOSURE TO SHAREHOLDERS

■ 3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart B—Annual Report to Shareholders

■ 4. Amend § 620.5 by adding a new paragraph (n) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(n) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.*

(1) Each direct lender association must describe the YBS demographics in its territory and the source of the demographic data. If there are differences in the methods by which the demographic and YBS data are presented, these differences must be described.

(2) Each direct lender association must provide a description of its YBS program, including a status report on each program component as set forth in § 614.4165(c) of this chapter and the definitions of "young," "beginning," and "small" farmers and ranchers. The discussion must provide such other information necessary for a comprehensive understanding of the direct lender association's YBS program and its results.

(3) Each Farm Credit bank must include a summary report of the quantitative YBS data from its affiliated direct lender associations as described in FCA's instructions for the annual YBS yearend report. The report must include the definitions of "young," "beginning," and "small" farmers and ranchers. A narrative report may be necessary for an ample understanding of the YBS mission results.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

■ 5. The authority citation for part 630 continues to read as follows:

Authority: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

Subpart B—Annual Report to Investors

■ 6. Amend § 630.20 by adding a new paragraph (p) to read as follows:

§ 630.20 Contents of the annual report to investors.

* * * * *

(p) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.* The Farm Credit banks must include a report on consolidated YBS lending data of their affiliated associations. The report must include the definitions of "young," "beginning," and "small" farmers and ranchers. A narrative report may be necessary for an ample understanding of the YBS mission results.

Dated: March 23, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–6967 Filed 3–29–04; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–300–AD; Amendment 39–13542; AD 2004–06–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires repetitive inspections of certain support arms of the ground spoiler assemblies for cracking, and replacement of any ground spoiler assembly having cracking with a new ground spoiler assembly. This amendment would also require certain inspections for discrepancies of the ground spoiler assemblies and the flap of each wing; and corrective actions if necessary. This action is necessary to prevent failure of the support arms due to cracking, which could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations. This action is intended to address the identified unsafe condition.

DATES: Effective May 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW.,

Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on January 27, 2004 (69 FR 3861). That action proposed to require repetitive inspections of certain support arms of the ground spoiler assemblies for cracking, and replacement of any ground spoiler assembly having cracking with a new ground spoiler assembly. That action also proposed to require certain inspections for discrepancies of the ground spoiler assemblies and the flap of each wing; and corrective actions if necessary.

Comments

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

Conclusion

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

Cost Impact

We estimate that 53 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the general visual, contour, and clearance inspections of the ground spoilers, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $6,890, or $130 per airplane.

It will take approximately 4 work hours per airplane to accomplish the inspection of the support arms for the ground spoilers, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $13,780, or $260 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–06–16 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Amendment 39–13542. Docket 2002–NM–300–AD.

Applicability: Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002; and Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the support arms of the ground spoiler assemblies due to cracking, which could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations, accomplish the following:

Visual, Contour, and Clearance Inspections of Ground Spoilers, and Corrective Actions

(a) Within 400 flight cycles after the effective date of this AD: Do the inspections for discrepancies of the ground spoiler assemblies and the wing flaps by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003. Any applicable corrective action must be done before further flight per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspection of Ground Spoiler Support Arms

(b) Within 4 weeks after the effective date of this AD, or prior to the accumulation of 4,000 total flight cycles, whichever is later: Do an eddy current inspection for cracking in the bottom edge of the flange for ground spoiler support arms No. 3 and No. 8, left and right sides of the airplane. Do the inspection by accomplishing all of the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002. Repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

Corrective Action

(c) If any cracking is found during any inspection required by paragraph (b) of this AD, before further flight, replace the affected ground spoiler assembly with a new ground spoiler assembly per the applicable section(s) of chapters 27 or 57 of the Dornier Model 328–100 Airplane Maintenance Manual.

Certain Recommendations in Service Bulletins Not Required

(d) Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002, states to contact Dornier if any crack is found in a support arm for a ground spoiler, and to send

the affected ground spoiler to Dornier, but those actions are not required by this AD. Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003, recommends that inspection results for cracking of support arms be sent to Dornier, but that action is not required by this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Dornier Service Bulletin SB–328–57–435, Revision 1, dated August 7, 2002; and Dornier Service Bulletin SB–328–57–439, Revision 1, dated March 10, 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directives 2002–258, dated September 5, 2002, and 2003–357, dated November 11, 2003.

Effective Date

(g) This amendment becomes effective on May 4, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6683 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–63–AD; Amendment 39–13543; AD 2004–06–17]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires repetitive inspections for damage of the horizontal and vertical stabilizer attachment fittings, and corrective action if necessary. This action is necessary to detect and correct damage of the horizontal and vertical stabilizer attachment fittings, which could result in reduced structural integrity of the horizontal and vertical stabilizers and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on November 18, 2003 (68 FR 65006). That action proposed to require repetitive inspections for damage of the horizontal and vertical stabilizer attachment fittings, and corrective action if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 120 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $444,600, or $7,800 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–06–17 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13543. Docket 2002–NM–63–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the horizontal and vertical stabilizer attachment fittings, which could result in reduced structural integrity of the horizontal and vertical stabilizers and consequent reduced controllability of the airplane, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin" as used in this AD means the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–55–012, dated October 24, 2002.

(2) Although the service bulletin referenced in this AD specifies to report all findings to the manufacturer by completing the Reporting Data Form on Figures 1, 2, 3, and 4 of the service bulletin, this AD does not include such a requirement.

(3) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Service Bulletin J41–55–011, dated January 25, 2002, are acceptable for compliance with the corresponding action required by this AD.

Repetitive Inspections

(b) Within 2 years after the effective date of this AD, perform a detailed inspection for damage of the horizontal and vertical stabilizer attachment fittings by doing all actions in the service bulletin, per the service bulletin. Repeat the inspection at intervals not to exceed 8 years.

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

Repair

(c) If any damage (cracks, corrosion, wear, fretting) is found during any inspection per paragraph (b) of this AD: Do the applicable corrective action specified in the service bulletin at the time specified in the service bulletin per the service bulletin, except as required by paragraph (d) of this AD.

(d) If any damage is found that is outside the limits specified in the service bulletin, and the service bulletin recommends contacting BAE Systems (Operations) Limited for appropriate action: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Note 2: The service bulletin refers to BAE Systems (Operations) Limited Service Bulletin J41–55–002; Revision 1, dated July 25, 1996; as an additional source of service information for accomplishing certain actions.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin J41–55–012, dated October 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–10–2002.

Effective Date

(g) This amendment becomes effective on May 4, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6684 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–232–AD; Amendment 39–13547; AD 2004–07–03]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that requires one-time detailed inspections for structural discrepancies of various fuselage attachments; and corrective actions, if necessary, to restore the structure to the original design specifications. This action is necessary to prevent early fatigue, corrosion, or fretting, which could result in structural failure of major components of the airplane and reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 4, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of May 4, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published in the **Federal Register** on January 22, 2004 (69 FR 3041). That action proposed to require one-time detailed inspections for structural discrepancies of various fuselage attachments; and corrective actions, if necessary, to restore the structure to the original design specifications.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, and that it will take between 5 hours and 123 hours to accomplish each inspection, depending on the operating point(s) that are inspected. The average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $325 and $7,995 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–03 Dassault Aviation: Amendment 39–13547. Docket 2002–NM–232–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, having serial numbers (S/N) 253 through 278 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent early fatigue, corrosion, or fretting, which could result in structural failure of major components, and possible reduced structural integrity of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 78 months after the effective date of this AD, perform one-time detailed inspection(s) for structural discrepancies of the fuselage attachments at all applicable operating points specified in paragraph 2.B. of the Accomplishment Instructions of Dassault Service Bulletin F50–332, dated March 13, 2002. Perform the inspections in accordance with the Accomplishment Instructions of the service bulletin.

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

(b) If any structural discrepancy of the fuselage attachments (*e.g.*, missing rivets, and loose or un-reinforced rivets and screws) is found during the inspections required by paragraph (a) of this AD: Prior to further flight, accomplish all applicable corrective actions (*e.g.*, installing new shims, installing new reinforcement fittings, re-torquing or re-installing screws, and installing missing rivets), as applicable, at the appropriate operating point(s) of the fuselage, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F50–332, dated March 13, 2002.

No Reporting Requirements

(c) Although the service bulletin specifies to submit a reporting card to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) The actions shall be done in accordance with Dassault Service Bulletin F50–332, dated March 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–033–039(B) R1, dated May 15, 2002.

Effective Date

(f) This amendment becomes effective on May 4, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6776 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–43–AD; Amendment 39–13546; AD 2004–07–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Model A318, A319, A320, and A321 series airplanes. This action requires a one-time general visual inspection to determine the part number and serial number of both main landing gear (MLG) sliding tubes, and related investigative and corrective actions if necessary. This action is necessary to detect and correct cracking in a MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective April 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 29, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2004–NM–43-AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A318, A319, A320, and A321 series airplanes. The DGAC advises that during a routine visual inspection of a main landing gear (MLG) sliding tube, a linear crack was found at the intersection of the cylinder and the axle. Investigation revealed that the crack was caused by non-metallic inclusions in the base metal. A specific batch of MLG sliding tubes that may have these inclusions has been identified. Such cracking, if not corrected, could result in failure of the affected MLG sliding tube, loss of one axle, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) 320–32A1273, dated February 5, 2004, which describes procedures for identifying the part number (P/N) and (S/N) of both MLG sliding tubes. The procedures for the P/N and S/N identification include visually inspecting ("checking") and cleaning the part number plate, and reporting the S/N to Airbus. For airplanes on which the S/N is included in the batch of affected S/Ns listed in the AOT, the procedures include:

- Cleaning the visible part of the MLG sliding tube and visually inspecting the part for surface cracking.
- Removing any MLG sliding tube with cracking from the airplane, reporting the cracking to Airbus, and sending the affected part to Messier-Dowty.
- Repeating the inspection for cracking at intervals not exceeding 10 days, until a final fix is found.

The DGAC classified this AOT as mandatory and issued French airworthiness directive F–2004–022, dated February 18, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, 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.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking in a MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane. This AD requires a one-time general visual inspection to determine the P/N and S/N of both MLG sliding tubes, and related investigative and corrective actions if necessary. The related investigative actions include repetitive detailed inspections for cracking of the MLG sliding tubes. The corrective actions include replacement of a cracked part with a new or serviceable part. Installation of a replacement part that does not have a S/N as listed in Airbus AOT A320–32A1273 eliminates the need for the repetitive inspections for only that part.

The actions are required to be accomplished in accordance with the AOT described previously, except as discussed below under "Differences Among the French Airworthiness Directive, Service Information, and This AD."

This AD also includes a reporting requirement. When the unsafe condition addressed by an AD is likely due to a manufacturer's quality control (QC) problem, a reporting requirement is instrumental in ensuring that we can gather as much information as possible regarding the extent and nature of the QC problem or breakdown, especially in cases where such data may not be available through other established means. This information is necessary to ensure that proper corrective action will be taken.

Differences Among the French Airworthiness Directive, Service Information, and This AD

The applicability of the French airworthiness directive does not include Airbus Model A318 series airplanes, but the effectivity of the AOT does include that model. The applicability of this AD includes the Airbus Model A318 series airplanes to ensure that all airplanes that might have an affected MLG sliding tube are inspected and any necessary corrective actions taken.

Also, the applicability of the French airworthiness directive and the effectivity of the AOT include P/Ns and the list of affected S/Ns for the MLG sliding tubes. The applicability of this AD does not include any P/Ns or S/Ns. We find that listing the P/Ns and S/Ns in the applicability is not necessary because paragraph (a) of this AD requires a general visual inspection to determine the P/N and S/N of both MLG sliding tubes.

The AOT specifies to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

Clarification of Inspection Terminology

The Airbus AOT specifies to "visually check" the serial number displayed on the MLG sliding tube. This AD requires a general visual inspection, which is defined in Note 1 of this AD. For certain airplanes, the AOT also specifies to "visually check" the MLG sliding tube for surface cracking. This AD requires a

detailed visual inspection, which is defined in Note 2 of this AD.

Clarification of Corrective Action

The Airbus AOT specifies to remove any cracked MLG sliding tube from the airplane, but does not specify to replace the affected part with another part. This AD requires the replacement of any cracked part with a new or serviceable part.

Interim Action

We consider this AD to be interim action. The manufacturer is currently developing a non-destructive inspection technique to detect non-metallic inclusions in the base metal of the MLG sliding tube, which, along with any necessary corrective actions, will address the unsafe condition identified in this AD. Once this inspection is developed, approved, and available, we may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–43–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–07–02 Airbus: Amendment 39–13546. Docket 2004–NM–43–AD.

Applicability: All Model A318, A319, A320, and A321 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in a main landing gear (MLG) sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane, accomplish the following:

Part Number Identification, Detailed Inspection, and Corrective Action

(a) Within 30 days after the effective date of this AD: Do a one-time general visual inspection to determine the part number (P/N) and serial number (S/N) of both MLG sliding tubes, per Airbus All Operators Telex (AOT) A320–32A1273, dated February 5, 2004.

(1) If both the P/N and S/N of any MLG sliding tube are not listed in the AOT: No further action is required by this paragraph for that MLG sliding tube.

(2) If both the P/N and S/N of any MLG sliding tube are listed in the AOT: Before further flight, do a detailed inspection of the MLG sliding tube for cracking, per the AOT.

(i) If no cracking is found in any MLG sliding tube: Repeat the detailed inspection thereafter at intervals not to exceed 10 days.

(ii) If any cracking is found in any MLG sliding tube: Before further flight, replace the part with a new or serviceable part per a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual is one approved method. Installation of a MLG sliding tube that does not have both a P/N and a S/N listed in Airbus AOT A320–32A1273, dated February 5, 2004, is terminating action for the repetitive inspections required by paragraph (a)(2)(i) of this AD for that MLG sliding tube only.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Submission of Cracked Parts Not Required

(b) The AOT specifies to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

Reporting Requirement

(c) Submit a report of any positive findings of cracking found during any detailed inspection required by paragraph (a)(2)(i) of this AD to Airbus Customer Services, Engineering and Technical Support, Attention: M.Y. Quimiou, SEE33, fax +33+ (0) 5.6193.32.73, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the MLG P/N and S/N, date of inspection, a description of any cracking found, the airplane serial number, and the number of flight cycles on the MLG at the time of inspection. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection is done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(d) As of the effective date of this AD, no person may install a MLG sliding tube having both a P/N and S/N specified in Airbus AOT A320–32A1273, dated February 5, 2004, on any airplane, unless the part has been inspected, and any applicable correction accomplished, per paragraph (a) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus All Operators Telex A320–32A1273, dated February 5, 2004. (The manufacturer, date, and document number of the All Operators Telex only appear on page 1 of the document.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive F–2004–022, dated February 18, 2004.

(g) This amendment becomes effective on April 14, 2004.

Issued in Renton, Washington, on March 19, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–6775 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 031201299–3299–01]

RIN 0694–AC54

Removal of "National Security" Controls From, and Imposition of "Regional Stability" Controls on, Certain Items on the Commerce Control List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Commerce Control List (CCL) to remove "National Security" (NS) controls from, and to impose "Regional Stability" (RS) controls on, certain items in order to conform with section 5(c)(6)(A) of the Export Administration Act (Act), which limits the duration of U.S. unilaterally imposed NS controls. Although the Act has expired, the Bureau of Industry and Security continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 and the International Emergency Economic Powers Act. This rule also revises two references to the "International Munitions List" to read "Wassenaar Munitions List" to reflect the correct current title of that document and amends the language controlling muzzle loading (black powder) firearms to conform with the corresponding language on the Wassenaar Munitions List.

DATES: This rule is effective March 30, 2004.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations (EAR) regulate exports from the United States and reexports of U.S. origin items for a variety of reasons including "National Security." NS controls are generally imposed to implement decisions of the Wassenaar Arrangement, a multilateral export control agreement. This rule amends the EAR to conform the CCL to section 5(c)(6)(A) of the Act, which provides that unilateral NS controls—*i.e.*, those NS controls imposed only by the United States, instead of in furtherance of international agreements, expire six months after enactment of the Act or of the control, whichever is later.

The Act provides authority to renew unilateral NS controls for successive six month periods if the Secretary of Commerce determines, under section 5(f) or (h)(6) of the Act, that there is no foreign availability of the items at issue. The Act provides alternative authority to renew a control for two six-month periods if the President is actively pursuing negotiations to end such foreign availability. No such determinations have been made and no such negotiations are being undertaken with respect to the items in the affected ECCNs.

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under the International Emergency Economic Powers Act. The Bureau of Industry and Security (BIS) continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

This rule amends the CCL to remove NS as a reason for control with respect to those items which the Wassenaar Arrangement has removed from its control lists. However, BIS has decided to continue to control the export and reexport of these items pursuant to foreign policy-based "Regional Stability" (RS) controls because these items have the potential to contribute to military capabilities in a manner that could alter regional military balances contrary to the foreign policy interests of the United States. The affected items are as follows:

- Power controlled searchlights and control units thereof, designed for military use, and equipment mounting such units; and specially designed parts and accessories thereof;

• Bayonets, and the technology for the development, production or use of bayonets; and

• Marine boilers designed to have any of the following characteristics: heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; or ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

This rule also amends the language controlling one item (muzzle loading (black powder) firearms) to conform with the corresponding language on the Munitions List promulgated by the Wassenaar Arrangement. The item is controlled by the United States as a result of its inclusion on the Wassenaar Munitions List for NS reasons.

This rule also revises two references to the "International Munitions List" to read "Wassenaar Munitions List" to reflect the correct current title of that document.

This rule implements these changes by modifying four existing Export Control Classification Numbers (ECCNs) (0A018, 0A988, 0E018 and 8A018), and creating three new ECCNs (0A918, 0E918 and 8A918). It also amends the RS license requirements in section 742 of the EAR to include the three newly created ECCNs.

The RS controls imposed by this rule are new foreign policy controls. As required by the Act, a report on the imposition of these controls was delivered to Congress on March 11, 2004. This rule makes the following specific changes to the EAR.

In § 742.6(a)(2), three newly created ECCNs (0A918, 0E918, and 8A918) are added to the list of ECCNs for which Regional Stability controls apply.

In supplement No. 1 to part 774 (The Commerce Control List), this rule makes the following changes.

In ECCN 0A018, power controlled searchlights and related items, in paragraph .a, and bayonets, in paragraph .d, are moved to a newly created ECCN 0A918, which lists RS as its reason for control. Paragraphs 0A018 .b and .c are redesignated .a and .b, respectively. Paragraphs .e and .f are redesignated .c and .d, respectively. The new paragraph .c (formerly .e) covering muzzle loading firearms is rewritten to conform to the corresponding language in the Wassenaar Munitions List, Category ML1.a. A cross reference to ECCN 0A984 is added to paragraph .c to alert readers to the fact that certain shotguns are controlled by that entry. The phrase "International Munitions List" is replaced with "Wassenaar Munitions List" in the heading of ECCNs 0A018 and 8A018. Two references to the "Office of Defense Trade Controls" are revised to read "Directorate of Defense Trade Controls" to reflect the current name of that organization.

New ECCN 0A918 is created to control power controlled searchlights, related items and bayonets, as described above, to ensure consistency with the structure of the CCL described in section 738.2 of the EAR, *i.e.*, a "0" in the third place of an ECCN signifies a national security reason for control; a "9" in the third place of an ECCN signifies control for regional stability or other foreign policy reasons.

ECCN 0A988 is modified by replacing "0A018.f.1" with "0A018.d.1" in the heading and in the "Controls" paragraph of the "Reason for Control" section to match the paragraph redesignation in ECCN 0A018 noted above.

ECCN 0E018 is modified by changing the phrase "ECCN 0A018.b through 0A018.e" in its heading to "ECCN 0A018.a through ECCN 0A018.c" to match the paragraph redesignation of 0A018 noted above.

A new ECCN 0E918 is created to control technology for the development, production or use of bayonets for RS reasons. Prior to publication of this rule, technology for the development, production, or use of bayonets was controlled for NS reasons under ECCN 0E018, which controls technology related to commodities that are controlled for NS reasons in ECCN 0A018. This new ECCN conforms the reason for control for technology related to bayonets to the reason for control for the bayonets themselves.

The marine boilers described in paragraph b.4 of ECCN 8A018 are removed from that ECCN and listed in a newly created ECCN 8A918, which lists RS as the reason for control.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information subject to the PRA. This collection has been approved by OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to William H. Arvin, Regulatory Policy Division, Bureau of Export Administration, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

List of Subjects in 15 CFR Part 742 and Part 774

Exports, Foreign trade.

■ Accordingly, the Export Administration Regulations (15 CFR Parts 730 through 799) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O.

13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003; Notice of October 29, 2003, 68 FR 62209, October 31, 2003.

■ 2. In § 742.6, paragraph (a)(2) is revised to read as follows:

§ 742.6 Regional stability.

(a) * * *

(1) * * *

(2) As indicated in the CCL and in RS Column 2 of the Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to any destination except countries in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), the Czech Republic, Hungary, Iceland, New Zealand and Poland for items described on the CCL under ECCNs 0A918, 0E918, 2A983, 2D983, 2E983, 8A918, and for military vehicles and certain commodities (specially designed) used to manufacture military equipment, described on the CCL in ECCNs 0A018.c, 1B018.a, 2B018, and 9A018.a and .b.

* * * * *

PART 774—[AMENDED]

■ 3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 68 FR 47833, August 11, 2003.

■ 4. In Supplement No. 1 to part 774, Category 0, Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), Export Control Classification Number 0A018, the heading, the License Exceptions section, and the Unit and Items paragraphs in the List of Items Controlled section is revised to read as follows:

0A018 Items on the Wassenaar Munitions List

* * * * *

License Exceptions

LVS: $5000 for 0A018.a
$3000 for 0A018.b
$1500 for 0A018.c and .d
$0 for Rwanda
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: 0A018.a, and .b in $ value; 0A018.c and .d in number.

Related Controls: * * *

Related Definitions: * * *

Items:

a. Construction equipment built to military specifications, specially designed for airborne transport; and specially designed parts and accessories therefor;

b. Specially designed components and parts for ammunition, except cartridge cases, powder bags, bullets, jackets, cores, shells, projectiles, boosters, fuses and components, primers, and other detonating devices and ammunition belting and linking machines (all of which are subject to the export licensing authority of the U.S. Department of State, Directorate of Defense Trade Controls). (See 22 CFR parts 120 through 130);

c. Muzzle loading (black powder) firearms with a caliber less than 20 mm that were manufactured later than 1937 and that are not reproductions of firearms manufactured earlier than 1890;

Note: 0A018.c does not control weapons used for hunting or sporting purposes that were not specially designed for military use and are not of the fully automatic type, but see ECCN 0984 concerning shotguns.

d. Military helmets, except:

d.1. Conventional steel helmets other than those described by 0A018.d.2 of this entry.

d.2. Helmets, made of any material, equipped with communications hardware, optional sights, slewing devices or mechanisms to protect against thermal flash or lasers.

Note: Helmets described in 0A018.d.1 are controlled by 0A988. Helmets described in 0A018.d.2 are controlled by the U.S. Department of State, Directorate of Defense Trade Controls (See 22 CFR part 121, Category X).

■ 5. In supplement No. 1 to part 774, Category 0, Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), a new export control classification number 0A918 is added immediately following ECCN 0A018 and immediately preceding ECCN 0A978 to read as follows:

0A918 Miscellaneous Military Equipment Not on the Wassenaar Munitions List

License Requirements

Reason for Control: RS, AT, UN.

Controls	Country chart
RS applies to entire entry	RS Column 2.
AT applies to entire entry	At Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000 for 0A918.a
$1500 for 0A918.b
$0 for Rwanda
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: 0A918.a in $ value; 0A918.b in number.

Related Controls: N/A

Related Definitions: N/A

Items:

a. Power controlled searchlights and control units therefor, designed for military use, and equipment mounting such units; and specially designed parts and accessories therefor;

b. Bayonets.

■ 6. In supplement No. 1 to Part 774, Category 0, Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), Export Control Classification Number 0A988, the Heading and the Reason for Control paragraph of the License Requirements section is revised to read as follows:

0A988 Conventional Military Steel Helmets as Described by 0A018.d.1; and Machetes

License Requirements

Reason for Control: UN.

Control(s):

UN applies to entire entry. A license is required for conventional military steel helmets as described by 0A018.d.1 to Rwanda. A license is required for machetes to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

Note: Exports from the U.S. and transhipments to Iran must be licensed by the Department of Treasury, Office of Foreign Assets Control. (See § 746.7 of the EAR for additional information on this requirement.)

* * * * *

■ 7. In supplement No. 1 to part 774, Category 0, Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), Export Control Classification Number 0E018, the heading is revised to read as follows:

0E018 "Technology" for the "Development", "Production", or "Use" of Items Controlled by 0A018.a Through 0A018.c

* * * * *

■ 8. In supplement No. 1 to part 774, Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items), a new Export Control Classification Number 0E918 is added immediately following ECCN 0E018 and immediately preceding ECCN 0E982 as follows:

0E918 "Technology" for the "Development", "Production", or "Use" of Bayonets

License Requirements

Reason for Control: RS, UN, AT.

Control(s)	Country chart
RS applies to entire entry	RS Column 2.
UN applies to entire entry	Rwanda.
AT applies to entire entry	AT Column.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: N/A
Related Controls: N/A
Related Definitions: N/A
Items:
The list of items controlled is contained in the ECCN heading.

■ 9. In supplement 1 to part 774, Category 8, Marine, Export Control Classification Number 8A018, the Items paragraph in the List of Items Controlled section, is revised to read as follows:

8A018 Items on the International Munitions List

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items:
a. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use, and specially designed components for use in the conversion of open-circuit apparatus to military use;
b. Naval equipment, as follows:
b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;
b.2. Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;
b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);
b.4. Submarine and torpedo nets; and
b.5. Components, parts, accessories, and attachments for the above.

■ 10. In supplement 1 to part 774, Category 8, Marine, a new Export Control Classification Number 8A918 is added immediately following ECCN 8A018 and immediately preceding ECCN 8A992 as follows:

8A918 Marine Boilers.

Reason for Control: RS, AT, UN.

Controls	Country chart
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: N/A
Related Definitions: N/A
Items:
a. Marine boilers designed to have any of the following characteristics:
a.1. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; *or*
a.2. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.
b. Components, parts, accessories, and attachments for the above.

Dated: March 23, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–7005 Filed 3–29–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 177

Food Labeling and Indirect Food Additives Regulations; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect the correction of typographical and nonsubstantive errors. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: Effective March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: This document amends FDA's regulations to reflect the correction of typographical and nonsubstantive errors in 21 CFR 101.69(o)(1) and 177.1520(b).

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 177

Food additives, Food packaging.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101 and 177 are amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.69 [Amended]

■ 2. Section 101.69 is amended in paragraph (o)(1) by adding a comma after "Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800)".

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 3. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1520 [Amended]

■ 4. Section 177.1520 is amended in paragraph (b) in the table under the entry for "Methyl methacrylate/butyl * * *" by removing "200 C. St. SW., Washington, DC" and by adding in its place "5100 Paint Branch Pkwy., College Park, MD 20740".

Dated: March 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7040 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 3

RIN 0790–AG97

Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements section 822 of the National Defense Authorization act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1182. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the other transaction (OT) agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the OT agreement for the prototype project

satisfies certain additional conditions of law.

DATES: The final rule is effective March 30, 2004. This final rule will become effective for solicitations issued on March 30, 2004, or those issued 30 days after March 30, 2004. This final rule may be used for new prototype awards that result from solicitations issued prior to March 30, 2004.

FOR FURTHER INFORMATION CONTACT: David Boyd, (703) 697–6710.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1721, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Use of OT authority is authorized by law in the absence of the significant participation of a nontraditional Defense contractor, when at least one-third of the costs of the prototype project are to be provided by non-Federal parties to the agreement. The authority granted by section 822 of the National Defense Authorization Act for Fiscal Year 2002 provides for the authority to continue such prototype projects into production without competition in certain circumstances. The circumstances are identified in this rule. Additionally, a rule will be issued to the Defense Federal Acquisition Regulation Supplement that exempts such production contracts from further competition, notwithstanding the requirements of section 2304 of title 10, United States Code.

In implementing the law, the Department clarifies that the number of production units and target prices proposed for production must be evaluated during the competition for the prototype project. This is consistent with the law's competition requirement and is the basis for being exempted from the need for further competition for the stated production quantity.

A proposed rule was published in the **Federal Register** for public comment on May 20, 2003 (68 FR 27497). No comments were received.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Pub. L. 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional recordkeeping or other significant expense by project participants.

Pub. L. 96–511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 et seq.)

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

Federalism (Executive Order 13132)

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

List of Subjects in 32 CFR Part 3

Government procurement, Transactions for prototype projects.

■ Accordingly, 32 CFR part 3 is amended to read as follows:

PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

■ 1. The authority citation for 32 CFR part 3 contiinues to read as follows:

Authority: Section 845 of Public Law (103–160, 107 Stat. 1721, as amended.

§ 3.4 [Amended]

■ 2. Section 3.4 is amended to add new definitions in aphabetical order to read as follows:

* * * * *

Contracting Officer. A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in Chapter 1 of Title 48, CFR, Federal Acquisition Regulation, Section 2.101(b).

* * * * *

Project Manager. The government manager for the prototype project.

* * * * *

■ 3. New § 3.9 is added to read as follows:

§ 3.9 Follow-on production contracts.

(a) *Authority.* A competitively awarded OT agreement for a prototype project that satisfies the condition set forth in law that requires non-Federal parties to the OT agreement to provide at least one-third of the costs of the prototype project may provide for the award of a follow-on production contract to the awardee of the OT prototype agreement for a specific number of units at specific target prices, without further competition.

(b) *Conditions.* The Agreements Officer must do the following in the award of the prototype project:

(1) Ensure non-Federal parties to the OT prototype agreement offer at least one-third of the costs of the prototype project pursuant to subsection (d)(1)(B)(i), 10 U.S.C. 2371 note.

(2) Use competition to select parties for participation in the OT prototype agreement and evaluate the proposed quantity and target prices for the follow-on production units as part of that competition.

(3) Determine the production quantity that may be procured without further competition, by balancing of the level of the investment made in the project by the non-Federal parties with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

(4) Specify the production quantity and target prices in the OT prototype agreement and stipualte in the agreement that the Contracting Officer for the follow-on contract may award a production contract without further competition if the awardee successfully completes the prototype project and agrees to production quantities and prices that do not exceed those specified in the OT prototype agreement (*see* part 206.001 of the Defense Federal Acquisition Regulation Supplement).

(c) *Limitation.* As a matter of policy, establishing target prices for production units should only be considered when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee.

(d) *Documentation.* (1) The Agreements Officer will need to provide information to the Contracting Officer from the agreement and award file that the conditions set forth in paragraph (b) of this section have been satisfied.

(2) The information shall contain, at a minimum:

(i) The competitive procedures used;

(ii) How the production quantities and target prices were evaluated in the competition;

(iii) The percentage of cost-share; and

(iv) The production quantities and target prices set forth in the OT agreement.

(3) The Project Manager will provide evidence of successful completion of the prototype project to the Contracting Officer.

Dated: March 12, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7044 Filed 3–29–04; 8:45 am]

BILLING CODE 5001–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TX–122–1–7612; FRL–7641–2]

Determination of Nonattainment as of November 15, 1996 and Reclassification of the Beaumont/Port Arthur Ozone Nonattainment Area; State of Texas; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the U.S. Court of Appeals for the Fifth Circuit's (the Court) reversal, the EPA is withdrawing its final action that extended the attainment date to November 15, 2007, and approved the transport demonstration (66 FR 26914) for the Beaumont/Port Arthur 1-hour ozone nonattainment area (the BPA area). The EPA finds that the BPA area has failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Federal Clean Air Act (Act or CAA). As a result, the BPA area is reclassified by operation of law as a serious 1-hour ozone nonattainment area. The new serious area attainment date for the BPA area is as expeditiously as practicable but no later than November 15, 2005. The State of Texas must submit a State Implementation Plan (SIP) revision that meets the serious area 1-hour ozone nonattainment area requirements of the Act on or before one year after the effective date of this final action. We are adjusting the dates by which the area must meet the rate-of-progress (ROP) requirements and adjusting contingency measure requirements as they relate to the ROP requirements. These final actions are in direct response and to comply with the Court's reversal.

In response to the Court's remand, we are withdrawing our final approval of BPA's 2007 attainment demonstration SIP, the Mobile Vehicle Emissions Budget (MVEB), the mid-course review commitment (MCR), and our finding that BPA implemented all Reasonable Available Control Measures (RACM). The required revised SIP must include, among other things, a revised attainment demonstration SIP, a new MVEB, and a re-analysis of RACM that complies with the Court's order.

DATES: This final rule is effective on April 29, 2004.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and, the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Karla Ann Richardson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–8555, e-Mail Address: richardson.karla@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" means EPA. This supplementary information section is organized as listed in the following Table of Contents:

I. What Is the Background for This Action?

The BPA area was classified as a moderate 1-hour ozone nonattainment area and, therefore, was required to attain the 1-hour ozone standard of 0.12 ppm by November 15, 1996. On April 16, 1999, EPA proposed to reclassify the BPA area to a serious ozone nonattainment area, or, in the alternative to extend BPA's attainment date if the State submitted a SIP consistent with the criteria of the Transport Policy. 64 FR 18864. As part of the proposed alternative reclassification of the area to serious, the EPA proposed to find that the BPA area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994–1996 air quality data that showed the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).[1] EPA also proposed that the appropriate reclassification of the area would be from moderate to serious.

Although the area was not eligible for an attainment date extension under

[1] Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) the state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

CAA section 181(a)(5), the April 16, 1999, proposal included a notice of the BPA area's eligibility for an attainment date extension, pursuant to the Transport Policy, which was published in a March 25, 1999, **Federal Register** notice (64 FR 14441). This policy addressed circumstances where pollution from upwind areas interferes with the ability of a downwind area to attain the 1-hour ozone standard by its attainment date. EPA proposed to finalize its action on the determination of nonattainment and reclassification of the BPA area only after the area had received an opportunity to qualify for an attainment date extension under the Transport Policy.

The State of Texas submitted a request for an extension of the attainment date for the BPA area, a transport demonstration, an attainment demonstration SIP and MVEB, an MCR enforceable commitment, and RACM analysis. We proposed on December 27, 2000, to approve the transport demonstration and to extend the attainment date without reclassifying the area, to approve the attainment demonstration SIP and MVEB, to approve the MCR commitment, and to find that BPA was implementing all RACM. (65 FR 81786)

On May 15, 2001, EPA issued a final rule (66 FR 26914) in which EPA approved the transport demonstration and extended the attainment date for the BPA area to November 15, 2007, while retaining the area's classification as "moderate." The rule also approved the attainment demonstration for the BPA area and MVEB, approved the State's enforceable commitment to perform a mid-course review and submit a SIP revision by May 1, 2004, found that the area was implementing all RACM, and took one other non-related action. The attainment demonstration SIP is addressed in the State of Texas submittals dated November 12, 1999, and April 25, 2000. Thus, the area would have had until no later than November 15, 2007, the attainment date for the upwind Houston-Galveston (HG) nonattainment area, to attain the 1-hour ozone standard. The final rule contains EPA's responses to the comments. (We also took one final action not relevant to today's action and the Court's remand: the finding that BPA met the Reasonably Available Control Technology (RACT) requirements for major sources of Volatile Organic Compounds (VOC) emissions.)

A petition for review of the May 15, 2001, rulemaking was filed in the U.S. Court of Appeals for the Fifth Circuit. On December 11, 2002, the Court issued a decision in *Sierra Club* v. *EPA*, 314 F.3d 735 (5th Cir. 2002), reversing the portion of EPA's approval that extended BPA's attainment date to 2007 under the Transport Policy without reclassifying the area.[2] The Court also remanded to EPA the final actions related to the reversal: our approval of the attainment demonstration SIP and MVEB, the MCR commitment, and our finding that the area was implementing all RACM. The Court affirmed the portion of EPA's final action that requires implementation only of control measures that contribute to attainment as expeditiously as practicable and considers implementation costs in rejecting control measures, but remanded EPA's specific determination regarding RACM in the BPA area so that any conclusions about the control measures may be adequately explained.

EPA published a Supplemental Proposed rule dated June 19, 2003 (68 FR 36756). In response to the Court's reversal, EPA proposed to withdraw its final action that extended the attainment date to November 15, 2007, and approved the transport demonstration. We also proposed to issue a finding that BPA failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Act, and to reclassify BPA as a serious 1-hour ozone nonattainment area. EPA also proposed that should we take final action on the reclassification to serious, we would also take one of two alternative options for identifying the appropriate attainment date for the area. Under Option 1, EPA proposed further to find that the area failed to attain the 1-hour ozone standard by November 15, 1999, the attainment date for serious nonattainment areas. If EPA took final action on that finding, the area would be reclassified as a severe 1-hour ozone nonattainment area, with an attainment date of no later than November 15, 2005. Alternatively, under Option 2, if the area were reclassified as a serious 1-hour ozone nonattainment area, EPA proposed that it would retain that classification, but that it would have an attainment date of no later than November 15, 2005. Under either alternative, we proposed that the State of Texas submit the required SIP revision on or before one year after the effective date of a final action on this notice. We further proposed to adjust the dates by which the area must meet the rate-of-progress (ROP) requirements and adjust contingency measure requirements as they relate to the ROP requirements.

In response to the Court's remand, we also proposed to withdraw our final approval of BPA's 2007 attainment demonstration SIP, the MVEB, the mid-course review commitment (MCR), and our finding that BPA implemented all RACM. We also proposed the schedule for Texas to submit a revised SIP, a new MVEB, and a re-analysis of RACM meeting the Court's order.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms called the 1-hour and 8-hour[3] standards. Table 1 summarizes the 1-hour ozone standards.

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[2] Two other United States Circuit Courts of Appeals had previously issued decisions rejecting transport-based attainment date extensions that EPA had granted in other areas. *Sierra Club* v. *EPA*, 294 F.3d 155 (D.C. Cir. 2002) and *Sierra Club* v. *EPA*, 311 F.3d 853 (7th Cir. 2002). In the wake of these decisions, EPA issued final rulemakings reclassifying the Washington, DC ozone nonattainment area, 68 FR 3410 (January 24, 2003), and the St. Louis ozone nonattainment area, 68 FR 4835 (January 30, 2003). (EPA subsequently redesignated the St. Louis area to attainment for the ozone standard 68 FR 25418 and 68 FR 25442 (May 12, 2003).) In addition, in light of the three circuit court decisions, EPA issued final rules withdrawing transport-based attainment date extensions and reclassifying the Baton Rouge and the Atlanta ozone nonattainment areas, (68 FR 20077 (April 24, 2003), and 68 FR 55469 (September 26, 2003), respectively).

[3] The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The standard requires that the average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period, be less than or equal to 0.08 ppm. EPA intends to designate areas under the 8-hour standard by April 15, 2004.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.
8-hour	0.08 ppm	Primary and Secondary	Three year average of the annual fourth highest value at any specific monitor must not exceed the standard.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.) Eventually the 8-hour standard will replace the one hour standard. EPA is currently developing a transition policy from the one hour standard to the eight hour standard that will explain which one hour requirements must remain in place (68 FR 32802).

At this time the 1-hour ozone standard continues to apply to the BPA area, and it is the classification of the BPA area with respect to the 1-hour ozone standard addressed in this document.

IV. What Is a SIP and How Does It Relate to the NAAQS for Ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

V. What Is the Beaumont/Port Arthur Nonattainment Area?

The Beaumont/Port Arthur 1-hour ozone nonattainment area is located in Southeast Texas, and consists of Hardin, Jefferson, and Orange Counties.

VI. What Is the Additional Context for This Rulemaking?

The Transport Policy provided for an extension of an area's attainment date if it was adversely affected by transport, without having to reclassify the affected area. Consequently, when we granted the extension of the attainment date for BPA based upon the transport demonstration, we did not take action to finalize the April 16, 1999, proposed finding that BPA had not attained the 1-hour ozone standard by November 15, 1996. We therefore did not reclassify BPA from "moderate" to "serious." The Court's ruling means that BPA's attainment date extension while retaining the "moderate" classification, using the Transport Policy, is no longer valid.

VII. Application of the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications

A. Serious Classification

Section 181(b)(2) of the Act requires that we determine, based on the area's design value (as of the attainment date), whether an ozone nonattainment area attained the one-hour ozone standard by that date. If we find that the nonattainment area has failed to attain the one-hour ozone standard by the applicable attainment date, the area is reclassified by operation of law to the higher of the next higher classification for the area, or the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice.

We make attainment determinations for ozone nonattainment areas using available quality-assured air quality data. For the BPA ozone nonattainment area, the attainment determination is based on 1994–1996 air quality data. The data show that for 1994–1996, four monitoring sites averaged more than one exceedance day per year. This data calculates to a design value of .157 ppm. Therefore, pursuant to section 181(b) of the CAA, we find that the BPA area did not attain the 1-hour ozone NAAQS by the November 15, 1996, deadline for moderate areas. Additional background for this finding may be found in the April 16, 1999, proposal (64 FR 18864), the December 27, 2000, proposal (65 FR 81786), and the May 15, 2001, final rule (66 FR 26914). A summary and discussion of the air quality monitoring data for the BPA area for 1994 through 1996 can be found in the April 16, 1999, proposal and its technical support document (TSD). We received no adverse comments on our findings regarding these air quality data.

Section 181(b)(2)(A) of the Act requires that, when we find that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time the required notice is published in the **Federal Register**. The classification applicable to BPA's ozone design value at the time of today's notice is "moderate" since the area's 2003 calculated design value, based on quality-assured ozone monitoring data from 2001–2003, is 0.129 ppm. By contrast, the next higher classification for BPA is "serious." Because "serious" is a higher nonattainment classification than "moderate" under the statutory scheme, BPA is reclassified by operation of law as "serious," for failing to attain the standard by the moderate area applicable attainment date of November 15, 1996.

B. Selection of Option 2—Reclassification to Serious

In EPA's Supplemental Proposed rule dated June 19, 2003 (68 FR 36756), we proposed two options for identifying the appropriate attainment date following a final action on the reclassification of the BPA area to serious. Under Option 1, EPA would make an additional determination of whether BPA attained the standard by November 15, 1999. If we made a final determination that the area failed to attain by the 1999 date, the area would be reclassified as severe with an attainment date of no later than November 15, 2005. Under Option 2, if the area were reclassified as a serious area, EPA would retain the serious classification for the area but the attainment date would be no later than November 15, 2005.

We have concluded that Option 2 is the better choice. We therefore have chosen not to finalize the additional determination of whether the BPA area attained the standard by November 15, 1999. We believe it is appropriate in these special BPA circumstances to retain the serious classification but with a prospective attainment date. Through discussions with representatives from the State, Industry, Environmental Groups, and commenting parties it seems that they agree Option 2 is the better choice considering the BPA area's particular circumstances, history, and facts.

VIII. What Is the New Attainment Date for the Beaumont/Port Arthur Area?

The new attainment date for the BPA area is as expeditiously as practicable but no later than November 15, 2005. The as expeditiously as practicable attainment date will be determined as part of the action on the required SIP submittal.

IX. What Is the Date for Submitting a Revised SIP for BPA?

EPA must address the schedule by which Texas is required to submit the SIP revision. We proposed the required SIP revision be submitted as expeditiously as practicable but no later than one year after the effective date of our final action. No adverse comments were received by the EPA on this issue. Today, we are requiring that Texas submit the SIP revision as expeditiously as practicable but no later than one year after the effective date of this final action.

Additionally, the implementation of the failure to attain contingency measures in the current SIP is triggered automatically upon the effective date of this rule. Further, Texas is required to submit a revision to the SIP containing contingency measures under sections 172(c)(9) and 182(c)(9) to meet ROP requirements and for failure to attain.

The State's SIP revision submitted for an attainment date of 2007 contained a commitment to perform and submit a mid-course review (MCR) by May 1, 2004. Due to the new time frame for SIP submittal and the attainment date of November 15, 2005, Texas is not required to submit an MCR for the BPA area.

X. Why Are We Withdrawing the Attainment Demonstration, MCR and MVEB Approvals and the RACM Finding, and What Are the Potential Impacts of the Withdrawals?

We are withdrawing our final approval of BPA's 2007 attainment demonstration and the accompanying Motor Vehicle Emission Budget (MVEB), the MCR enforceable commitment, and the Reasonably Available Control Measures (RACM) finding. Having an attainment date earlier than 2007 requires the submission of a revised attainment demonstration SIP, a new MVEB, and a re-analysis of the RACM determination.

To be consistent with the Court's reversal of the 2007 attainment date extension, and to respond to the remand, we are withdrawing our May 15, 2001, approval of the 2007 attainment demonstration and MVEB, the MCR enforceable commitment, and the finding that the area was implementing all RACM. They are no longer applicable as they were based on a 2007 attainment date. A new attainment demonstration with a new MVEB, and a new RACM analysis, are required to be submitted for the BPA area. All are due on or before one year from the effective date of this Final Rule.

As discussed in the June 19, 2003, supplemental proposal, the Court affirmed the portion of our May 15, 2001, final action that treats as potential RACMs only those measures that would advance the attainment date and considers implementation costs when rejecting certain control measures in its December 11, 2002, decision. However, the Court remanded the analysis and conclusions regarding RACM in the BPA area to the EPA. According to the Court's order, the analysis must: (1) demonstrate an examination of all relevant data; and (2) provide a plausible explanation for the rejection of proposed RACMs including why the measures, individually and in combination, would not advance the BPA area's attainment date.

The State is responsible for performing and submitting a new RACM analysis for EPA use in determining SIP approval. Even though the State is responsible for developing the new analysis, when evaluating the use of RACM in the SIP approval process EPA will only consider as adequate an RACM analysis by the State containing the factors outlined in the Court's December 11, 2002, ruling. The RACM analysis is due on or before the attainment demonstration due date.

Withdrawing approval of the MVEB results in reverting to the previously approved MVEBs for the purposes of transportation conformity. This would be the 1996 budget which was for VOCs only and did not include a NO_X budget. Therefore, there will be no valid NO_X budget in effect until a new NO_X MVEB is submitted and found adequate. In order for transportation projects to proceed in the absence of an adequate NO_X budget, an area must: (1) pass a "build/no-build" emissions test, meaning that projected future regional emissions from the transportation system after making proposed changes must be lower than the projected emissions from the existing transportation system; and (2) demonstrate that the estimated future emissions will not exceed 1990 levels. *See* 40 CFR 93.119(b).

XI. How Does the Recent Release of MOBILE6 Interact With Reclassification?

A. What Is the Relationship Between MOBILE6 and the Attainment Year Motor Vehicle Emissions Budgets?

In addition to the fact that the motor vehicle emissions budgets contained in the State's November 12, 1999, and April 25, 2000, submittals are based on the year 2007, which is no longer an allowable attainment date under the Court's decision, the current MVEB is not based upon the most recent mobile source emission factors model, MOBILE6.

The motor vehicle emissions budgets submitted to fulfill the SIP revision requirements, including those of the attainment demonstration, must be prepared using the latest approved emissions model. See 40 CFR 51.112. EPA approved the MOBILE6 emissions factor model in January 2002. As a result, any new attainment SIP planning must now be based on the MOBILE6 model. The State should refer to applicable guidance and policy, such as "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity" (memorandum from John S. Seitz and Margo Tsirigotis Oge, January 18, 2002) in preparing the budgets. The revised SIP must contain budgets based on MOBILE6 modeling.

B. What Is the Relationship Between MOBILE6 and the Post-1996 Rate-of-Progress Requirement?

The section 182(c)(2)(B) reasonable further progress requirement requires volatile organic compounds (VOC) or nitrogen oxides (NO_X) reductions of 3 percent per year, averaged over a 3-year period, until the attainment date, for serious and above ozone nonattainment areas designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the rate-of-progress (ROP) requirement.

The January 18 MOBILE6 policy indicates, among other things, that the motor vehicle emissions budgets in the post-1996 rate-of-progress plans will have to be developed using MOBILE6. In this policy we said:

> In general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[4]

Texas has not submitted ROP plans other than the original 15% ROP plan

[4] See Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

required for the BPA area as a moderate area, since under the Transport Policy the BPA area was not required to meet the post-1996 ROP requirements. The post-1996 until the attainment date ROP plans will need to be based upon MOBILE6.

The post-1996 rate-of-progress requirement flows from section 182(c)(2)(B) which requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date.[5] Baseline emissions are the total amounts of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under certain Federal programs and Clean Air Act mandates: phase 2 of the Federal gasoline Reid vapor pressure regulations (Phase 2 RVP) promulgated on June 5, 1990 (*see* 55 FR 23666); the Federal motor vehicle control program in place as of January 1, 1990 (1990 FMVCP); and certain changes and corrections to motor vehicle inspection and maintenance (I/M) programs and corrections and reasonably available control technology (RACT) required under section 182(a)(2).[6] We have issued guidance that provides detailed information for implementing the rate-of-progress provisions of section 182.[7] Basically our guidance requires the calculation of a target level of emissions for each rate-of-progress milestone year. The target level for any rate-of-progress milestone year is the 1990 baseline emissions decreased by the amount of baseline emissions that would be reduced by the 1990 FMVCP, the Phase 2 RVP program, and RACT fix-ups [8] by that year and reduced by the amount of the mandated minimum reductions (15 percent VOC by 1996, and an additional nine (9) percent VOC, or VOC and NO_X, by 1999, an additional 9 percent VOC, or VOC and NO_X, by 2002, and an additional 9 percent VOC, or VOC and NO_X, by 2005). Under our guidance, the first rate-of-progress milestone year target level, for example, the 15 percent VOC reduction by 1996, starts with the 1990 base year emissions and then subtracts the effects of the 1990 FMVCP and Phase 2 RVP and RACT fix-ups through 1996 and also subtracts the required 15 percent VOC reduction. The 1999 VOC target level starts with the 1996 target level and subtracts the effects between 1996 and 1999 of the 1990 FMVCP and Phase 2 RVP and RACT fix-ups and subtracts the required 9 percent post-1996 reduction. For each target level, our guidance requires the preparation of a 1990 base year inventory "adjusted" to the milestone year (the "1990 adjusted base year inventory") to account for the effects of the 1990 FMVCP and Phase 2 RVP and RACT fix-ups by the milestone year. The adjusted inventory uses 1990 motor vehicle activity levels but emission factors computed by MOBILE6 for the applicable milestone year. For example, preparation of a rate-of-progress plan for the ROP milestone year of 1999, with NO_X substitution, requires a 1990 base year inventory for both VOC and NO_X, a 1990 base year VOC inventory adjusted to 1996, and 1990 base year VOC and NO_X inventories adjusted to 1999. Preparation of a rate-of-progress plan for 2005 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X plus the following seven "adjusted" inventories: 1996 VOC; 1999 VOC and NO_X; 2002 VOC and NO_X; and 2005 VOC and NO_X.

One consequence of the need to use MOBILE6 emission factors in the post-1996 rate-of-progress plans is that the area must recompute the 1990 baseline emissions using the MOBILE6 emissions factor model to update the 1990 on-road mobile sources' portion of the 1990 base year emission inventory. The area must also calculate post-1996 rate-of-progress target levels by reiterating the target levels for rate-of-progress requirements for the 1996 milestone year.

Thus, in addition to vehicle emissions budgets for any applicable milestone year, the post-1996 rate-of-progress requirement will also require the development of a revision to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_X for 1999, VOC and NO_X for 2002, plus VOC and NO_X for 2005).

XII. What Will Be the Rate-of-Progress and Contingency Measure Schedules?

A. Rate-of-Progress Milestones

Section 182(c)(2)(B) requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date. Under the new attainment date, attainment must be achieved as expeditiously as practicable but no later than November 15, 2005.

Under the schedule for submittal of the new SIP, the rate-of-progress plans for the 1999 and 2002 milestone years will be due well after the November 15, 1999, and November 15, 2002, milestone dates. If sufficient actual reductions occurring by the November 15, 1999, and November 15, 2002, milestone dates do not now exist, then Texas can only get reductions after the two milestone dates because, at this point, the State does not have the ability to require additional reductions for a period that has already passed. The passing of the deadlines does not relieve Texas from the requirement to achieve the 18 percent reduction in emissions, but simply means that the 18 percent reduction must be achieved as expeditiously as practicable but no later than November 15, 2005.

The approved SIP for the BPA area contains measures that generate additional benefits after November 15, 1996. Such measures include reduction requirements on large sources of NO_X.

As discussed elsewhere in this document in the section titled "What is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress," the CAA specifies the emissions "baseline" from which each emission reduction milestone is calculated. Section 182(c)(2)(B) states that the reductions must be achieved "from the baseline emissions described in subsection (b)(1)(B)." This baseline value is termed the "1990 adjusted base year inventory." Section 182(b)(1)(B) defines baseline emissions (for purposes of calculating each milestone VOC/NO_X emission reduction) as "the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment" and excludes from the

[5] As a moderate area, BPA was not required to submit a ROP plan for a nine (9) percent reduction for the 3-year period November 15, 1996, through November 15, 1999. However, the BPA area now is required to submit an ROP plan through November 15, 2005, the new attainment date.

[6] These requirements under section 182(a)(2) are known as I/M and RACT corrections or I/M and RACT "fix-ups." For further explanation of these see 57 FR at 13503–13504, April 16, 1992.

[7] This includes: Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: "post96_2.zip").

[8] The BPA area has no I/M program and so has no I/M fix-ups to consider. A vehicle I/M program would normally be listed as a requirement for a 1-hour ozone moderate or above nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as Beaumont/Port Arthur) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

baseline the emissions that would be eliminated by certain specified Federal programs and certain changes to state I/M and RACT rules.[9] The 1990 adjusted base year inventory must be recalculated relative to each milestone and attainment date because the emission reductions associated with the FMVCP increase each year due to fleet turnover.[10]

Therefore, since there are federal and state rules requiring reductions after November 15, 1996, EPA concludes that the BPA area has already implemented measures creditable toward the 1999 and 2002 rate-of-progress milestones. However, we are not able to conclude that the area has sufficient measures to achieve the required 9 percent reduction by November 15, 1999, and an additional 9 percent reduction by November 15, 2002, in the absence of the rate-of-progress plans for both the 1999 and 2002 milestone years that document the calculations of the 1999 and 2002 target levels of emissions, account for expected growth in emissions related activities, and contain the requisite demonstration that sufficient creditable reductions have or were projected to occur by November 15, 1999, and November 15, 2002, respectively. We have insufficient data concerning what the levels of reductions would have been in the area by 1999 and 2002, since we do not know what the 1990 adjusted base year inventory for 1996, 1999, and 2002 will be or the projected emissions growth for the periods of November 15, 1996, through November 15, 1999 and November 15, 1999, through November 15, 2002. Nor do we have sufficient information to allow us to determine what will be an expeditiously as practicable date for achievement of this post-1996 18 percent rate-of-progress requirement.

EPA finds that the 1999 and 2002 rate-of-progress requirements are that Texas must submit a rate-of-progress plan that demonstrates that the SIP has sufficient measures to achieve the required 18 percent reductions by a date as expeditiously as practicable.[11] This approach was recently upheld by the United States Court of Appeals for the District of Columbia Circuit in *Sierra Club* v. *EPA*, DC. Cir. No. 03–1084 (Feb. 3, 2004), slip opinion at page 22 note 11. Texas must identify sufficient data and show why they meet the "as expeditiously as practicable" requirement. Such SIP revision will have to demonstrate that any date after November 15, 1999, by which the 1999 9 percent ROP reduction is achieved, as well as any date after November 15, 2002, by which the first post-1999 9 percent ROP reduction is achieved, is as expeditious as practicable.

B. 2005 Rate-of-Progress

There is no change to the date by which the 2003–2005 9 percent increment of the rate-of-progress must be achieved. If the currently adopted and approved SIP measures and the current suite of Federal measures will not achieve the required rate-of-progress reductions, we believe the State has sufficient time to adopt and implement measures to achieve the required reductions in the BPA area by November 15, 2005.

C. Contingency For Failure To Achieve Rate-of-Progress by November 15, 1999 and November 15, 2002

The contingency measures' plan must identify specific measures to be undertaken if the area fails to meet any applicable milestone, to make rate-of-progress, or to attain the NAAQS. With respect to the November 15, 1999, and November 15, 2002, milestones, the EPA believes that the contingency plan will need to account for any adjustment to the milestone dates.

With this final action determining that BPA has failed to attain the standard by November 15, 1996, the presently-approved 1996 ROP/attainment contingency plan is automatically invoked. (*See* 63 FR 6659 for the contingency measures.) Therefore, the State is required to "backfill" these contingency measures. Since the BPA area did not attain by the moderate area attainment date, and in order to fulfill the contingency measures' plan requirements of sections 172(c)(9) and 182(c)(9) of the CAA, implementation of the failure-to-attain contingency measures' plan in the current SIP is triggered automatically upon the effective date of this Final rule. Further, Texas is required to submit a revision to the SIP containing additional contingency measures to meet post-1996–2005 ROP requirements and for failure to attain by the 2005 attainment date. See 57 FR 13498, 13511 (1992).

XIII. What Are the Impacts on the Title V Program?

In accordance with a serious classification, the major stationary source threshold will now be lower than it was as a moderate classification. Consequently, the State's Title V operating permits program regulations need to cover existing sources that are now subject to the lower major stationary source threshold of serious (50 tons per year for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X)). Any newly major stationary sources must submit a timely Title V permit application. "A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." See 40 CFR 70.5(a)(1). The 12 month (or an earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of this reclassification action.

XIV. What Comments Were Received on the Supplemental Proposal, and How Has the EPA Responded to Those?

EPA received comments from the public on the Notice of Supplemental Proposed Rulemaking (NPR) published on June 19, 2003 (66 FR 36756). Comments were received from: South East Texas Regional Planning Commission; Clean Air and Water, Inc.; Orange County Judge, Carl K. Thibodeaux; Goodyear Tire and Rubber Company; Nederland Economic Development Corp.; City of Orange; Bridge City Chamber of Commerce; City of Lumberton; City of Vidor; City of Nederland; City of West Orange; Greater Orange Area Chamber of Commerce; City of Bridge City; City of Beaumont; Greater Port Arthur Chamber of Commerce; City of Port Neches; Beaumont Chamber of Commerce; City of Port Arthur; Golden Triangle Business Roundtable; Jefferson County Judge Carl R. Griffith, Jr.; City of Pinehurst; Southeast Texas Plant Managers' Forum; Texas Commission on Environmental Quality; A joint letter from Sierra Club, Clean Air and Water, Inc., and Community InPowerment Development Association; and twelve individuals.

The following discussion summarizes and responds to relevant comments.

A. Comments in Support of Option 1: About Half of Comments From Private Citizens Supported Reclassification to Severe, Including Comment Letters From Two of the Three Litigants in the 5th Circuit Sierra Club v. EPA Court Case

The following summarizes these comments and EPA's responses.

[9] These are the 1990 FMVCP, Phase 2 RVP, and the I/M and RACT fix-ups.

[10] See U.S. EPA, (1994), Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: "post96_2.zip").

[11] EPA believes that such date cannot be any later than November 15, 2005.

Comment 1: Commenters believe that the air must be cleaned up and that the EPA and industry should take the steps necessary to protect the life, health, welfare, safety and environment for citizens. They argued that classification to severe is required by the CAA in this circumstance and is long overdue. More monitoring, better regulations, and specific measures required for BPA will protect the public.

Response 1: The EPA agrees that it is necessary to reclassify the BPA area to ensure that the court ruling regarding our extension of the BPA attainment date based upon the Transport Policy is adequately addressed. We do not, however, agree that it is necessary to reclassify the area as severe to ensure the BPA area attains in the most timely manner. Option 1 or Option 2 both result in attainment as expeditiously as practicable but no later than November 2005. Therefore, as explained in later comments we believe that the choice of Option 2 will yield air quality that complies with the NAAQS for ozone as expeditiously as Option 1.

Comment 2: Some of the commenters voiced skepticism that there is a HG transport problem and believe the pollution problem is created within the BPA area. Others commented that the State must account for and overcome problems caused by intrastate air pollution. Texas has the duty under the Act to ensure that its overall statewide SIP (*i.e.*, the amalgamation of regional and area SIPs) quantifies and compensates, through additional emissions reductions, for the effects of upwind areas' air pollution on downwind areas, as the State explains is one reason compromising the BPA area's ability to demonstrate attainment.

Response 2: The Court's December 11, 2002, decision invalidated the EPA's application of the Transport Policy to the BPA area and Texas' ability to rely on it. As a result, the State will need to take whatever measures are required for the BPA area to attain no later than November 15, 2005. This will include measures to address any transport from the HG area and any measures required to address the local sources in the BPA area. Since the EPA believes that both situations, local emissions or transport from the HG area, can result in exceedances in the BPA area, we will expect the State's attainment modeling demonstration to encompass both types of events.

Comment 3: The BPA area's emissions inventory must be updated to reflect current actual emissions, including incorporation of MOBILE6 emissions factors, consideration of the effect of the failure of the heavy duty diesel engine manufacturers' settlement agreement to accomplish the anticipated levels of diesel engine retrofits (*EMA* v. *EPA*, DC Cir. Nos. 01–1129 and 02–1080), the State's awareness of considerably higher actual emissions from many refineries and chemical plants from malfunctions and other conditions. Moreover, the EPA should identify in this final rulemaking BPA's planning inventory, versus the "overall" emissions inventory described in the Supplemental Proposal notice.

Response 3: The EPA agrees that the required attainment demonstration SIP revision and the revised MVEB, as well as the ROP plans, must incorporate MOBILE6 emissions factors. Further, the State must consider the impact of revised or current information, *e.g.*, the most accurate mobile source emissions estimates (including any variation due to underestimations such as those for the long-haul truck reflashing), present growth predictions, effectiveness of control measures, etc., when developing the revised SIP for BPA. Whatever data is presently available to the State concerning the impact of upset/malfunctions and other conditions on the emissions from refineries and chemical plants must also be addressed.

The motor vehicle emissions budgets submitted by the State with the BPA transport attainment demonstration are no longer valid as they were based on a November 15, 2007, attainment date. Therefore, the budgets submitted for the new SIP must be prepared using the MOBILE6 emissions factor model and the revised SIP must contain budgets based on MOBILE6 modeling. The Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1) require that the inventories and control measures be based on the most current information available when a SIP is developed.

We agree that the planning inventory the State uses in developing the required SIP revision must include all sources of emissions, including biogenic emissions. In our supplemental notice, we did not mean to imply the figures in our supplemental notice were acceptable for SIP planning purposes. Our comment accurate estimates of biogenic emissions generally are not available, and that rough estimates typically relied on can inflate and distort SIP emissions inventories, is not relevant to this rulemaking. Texas will need to incorporate the best available estimate of biogenic emissions in its revised SIP. There will be an opportunity for the public to comment on the State's estimates during the State's comment period. There will also be the opportunity to comment on the EPA's action approving or disapproving the State's Plan including any emissions estimates.

Comment 4: The EPA failed adequately to explain the basis for its RACM conclusion in the rulemaking. The prior RACM analysis is now stale and must be completely revised, both to address changed circumstances (*i.e.*, newly available control measures) and the advanced attainment date and concomitant additional emissions reductions.

Response 4: We agree that the previous RACM analysis must be revised. As a result of the Fifth Circuit's decision, the RACM analysis associated with the State's 2007 attainment date demonstration is no longer applicable since it was based on a 2007 attainment date. A new RACM analysis will be required to be submitted for the BPA area that addresses the 2005 attainment date and any other changed circumstances.

The Court affirmed the portion of our May 15, 2001, final action that treats as potential RACMs only those measures that would advance the attainment date and that considers implementation costs when rejecting certain control. The Court agreed, however, with the commenters that the EPA failed adequately to explain the basis for its RACM conclusion, and remanded it to EPA. According to the Court's order, the EPA's analysis must: (1) demonstrate an examination of all relevant data; and (2) provide a plausible explanation for the rejection of proposed RACMs including why the measures, individually and in combination, would not advance the BPA area's attainment date.

The State is responsible for performing and submitting a new RACM analysis for EPA use in determining SIP approval. EPA will consider as adequate an RACM analysis by the State containing the factors outlined in the Court's December 11, 2002, ruling, when evaluating the use of RACM in the SIP approval process.

Comment 5: A Commenter asserted that Texas must expedite its one hour ozone SIP submittal to accomplish improved air quality as expeditiously as practicable. The commenter contended that if EPA had acted legally, there would already be an approved SIP with implementation of control measures. It appears that rather than expediting revision of the SIP, Texas is prolonging the period of unhealthful air quality by delaying action to identify and adopt necessary further controls to improve the area's air quality to meet the one hour ozone standard.

Response 5: In this final action, the EPA finds a one year deadline is appropriate for the State of Texas to

submit the required revised SIP, a new MVEB, and a re-analysis of RACM. The State has already started efforts for re-analysis using MOBILE6, initiated other emission inventory and modeling activities, and intends to propose the new SIP this Spring, and the EPA believes that on or before one year after the effective date of this rule is as expeditiously as practicable and a reasonable time for submittal. Moreover, many of the more stringent NO_X control measures in the current SIP were implemented in 2003. Therefore, local controls are continuing to be imposed in the area to reduce the ozone concentration levels.

Comment 6: A commenter urged that EPA must not further delay issuing a SIP call for a revised one hour ozone SIP in accordance with the Court's direction. The 8-hour ozone standard will require a separate planning effort.

Response 6: Today's final action serves a function similar to that of a SIP call in that it requires a revised 1-hour ozone SIP that must be submitted within one year of the effective date of this final action. Since we have not yet promulgated a final rule for implementation of the 8-hour ozone standard, we cannot speculate whether a state may combine its 1-hour ozone serious area CAA requirements with an 8-hour ozone planning effort. Please see Section XIV, B, response to comment 5 for further information.

Comment 7: A commenter urges EPA to impose offset sanctions as a result of the inadequacy of the BPA area's submitted SIP.

Response 7: EPA does not believe that discretionary sanctions are appropriate in this instance where the State has made submissions in reliance on EPA policies, and mandatory sanctions would not be imposed unless EPA disapproves a SIP submission. New SIP submission schedules for the requirements imposed as a result of the failure to attain determination for Beaumont, are just now being made. The State should have an opportunity to meet these new obligations before sanctions are imposed.

Comment 8: A commenter argues that Congress provided EPA with authority to require the BPA SIP to "include such additional measures as the Administrator may reasonably prescribe." 42 U.S.C. 7509(d)(2). The commenter asserts that EPA should require, among other things, control of flaring. See, for example, Santa Barbara County Air Pollution Control District Rule 359.

Response 8: As long as the State submits a SIP that demonstrates attainment of the 1-hour ozone standard in the BPA area as expeditiously as practicable but no later than November 15, 2005, and meets all of the Act's requirements, Texas may select whatever mix of control measures it desires. *Union Elec. Co.* v. *EPA*, 427 U.S. 246 (1976). With this rule, it is now the responsibility of the State of Texas to identify and adopt measures to enable attainment as expeditiously as practicable but no later than November 15, 2005, and meet the other requirements of the Act, including the serious area classification requirements, the requirements for the rate of progress, and RACM, contingency measures plan, demonstrating attainment as expeditiously as practicable, etc. EPA does not have the authority to require specific measures for the State at this time. If control of flares from source categories is not required for expeditious attainment or to meet RACT, the State must evaluate whether control of flares from source categories is an RACM. It is the role of the State, not EPA, to be the first to identify specific measures consistent with the BPA area's particular emissions inventory. The EPA will provide assistance and guidance to Texas in this effort.

Comment 9: Commenters question whether Texas has already implemented measures creditable toward the 1999 and 2002 ROP milestones. Texas must make a detailed showing of what control measures are creditable for past ROP obligations, and for exactly what quantity of emissions reductions.

Response 9: EPA agrees that Texas must submit 1999 and 2002 ROP plans that contain specifics and details to demonstrate clearly whether previously implemented control measures meet these ROP obligations. See Section XII for our discussion on these requirements.

B. Comments in Support of Option 2: The Remaining Letters From Private Citizens, and 23 other Letters From BPA Area Cities, Judges, Chambers of Commerce, Business/Industry Groups, Metropolitan Planning Organizations, and the Texas Commission on Environmental Quality (TCEQ) Commented in Opposition to Option 1

These comments are summarized and discussed here.

Comment 1: Many commenters supported Option 2, a reclassification to serious with an attainment date of November 15, 2005. Some of the commenters stated that the area should not be reclassified at all. Commenters argued that extensive emission reduction activities have already been implemented, and that since 1972 there has been a clear downward trend in ambient ozone measurements for the BPA area.

Response 1: The EPA is required by the Fifth Circuit's decision to make a determination as to whether BPA attained by November 15, 1996. Since the BPA area failed to attain by 1996, BPA cannot remain classified as "moderate."

While there has been general improvement in the ozone design values throughout the years, the area has yet to attain the one hour NAAQS. This final rule is making a final determination that the BPA area failed to attain by November 15, 1996, thereby reclassifying by operation of law the BPA area to serious, and is establishing an attainment date of as expeditiously as practicable but no later than November 15, 2005.

Comment 2: EPA is authorized to adopt Option 2 and should do so because it is fair. Commenters contended that because EPA did not timely issue a determination for attainment, it is empowered to extend the attainment date when it reclassifies an area. Commenters also asserted that a second reclassification to severe would unfairly punish an area, whose air quality has improved over the years. A commenter argued that the Clean Air Act contemplates that states will have a prospective opportunity to bring reclassified areas into attainment. A petitioner stated that "where EPA's failure to meet its own deadline impacts the lead time Congress intended to provide states to obtain the standard after reclassification, then EPA may also extend the attainment date."

Response 2: EPA believes that a further determination for failure to attain by November 25, 1999 and reclassification by operation of law to severe is not appropriate in light of the specific history, facts, and circumstances for the BPA area. Option 2 is fair for the unique circumstances presented by the BPA area. From discussions we believe that a unique plan will be developed for the BPA area that will still expeditiously attain the standard yet not unduly "punish" the area.

Comment 3: The BPA area should not be reclassified as severe, as this classification would create unnecessary economic burdens for the BPA area, as well as being unfair to the BPA area.

Response 3: Since the BPA area is not being reclassified to severe, the perceived unnecessary economic burdens will not occur. Nevertheless, under the provisions of the CAA the EPA does not have the authority to consider any potential economic

consequences arising from a reclassification for nonattainment of an NAAQS. Under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and any reclassification is by operation of law. If an area is reclassified, the more stringent requirements apply irrespectively of economic considerations.

It is, however, appropriate for a state to consider specific economic impacts in meeting the new requirements and in developing specific regulatory requirements for specific sources. For example, an entity proposed to be regulated by Texas to meet RACT, may seek a case-specific RACT determination by the State, based on economic or technical hardship. Texas may also consider implementation costs when rejecting certain control measures in its proposed RACM analysis. This consideration for RACM was specifically upheld in the Court's ruling. EPA must approve a SIP revision if it meets the requirements of the Act, even if it is more stringent. *Union Elec. Co.* v. *EPA*, 427 U.S. 246 (1976). Additionally, actions (such as the approval of a SIP revision) that merely approve state law as meeting federal requirements and impose no additional requirements beyond those imposed by state law, are not subject to economic impact analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Such consideration is up to the state under applicable state administrative procedure laws. Details on the State's assessments of financial impact flowing from the required new SIP revision will be found in the Texas proposed SIP documents, and must be made available by Texas to the public when Texas conducts its public participation.

Comment 4: EPA should waive Texas' obligation to submit a 1-hour attainment demonstration SIP for BPA. This would be consistent with options EPA proposed in the June 2, 2003 **Federal Register** for transitioning from the 1-hour to the 8-hour ozone standard and would allow Texas to focus its limited air quality planning resources on the more protective 8-hour standard. If EPA requires Texas to submit a 1-hour attainment demonstration SIP, the SIP should be due no earlier than one year after EPA's final reclassification action.

Response 4: The June 2, 2003 **Federal Register** proposal notice for transitioning from the 1-hour to the 8-hour ozone standard solicits comment on whether to retain the 1-hour ozone attainment demonstration requirement for areas like BPA.

The June 2, 2003 **Federal Register** notice for transitioning from the 1-hour to the 8-hour ozone standard is only a proposal. The EPA presently has no authority to waive the State's obligation to submit a 1-hour SIP and to meet the CAA requirements to attain the 1-hour ozone NAAQS. It is currently the State's responsibility to perform planning and SIP activities and submittals to meet the 1-hour NAAQS for ozone. EPA is in the process of evaluating comments on its June 2 proposal, and will address these issues in its final action.

Comment 5: A number of the commenters state that pollutants transported into Southeast Texas from the HG area, which cannot be locally controlled, are prohibiting the BPA area from attaining. Commenters believe that the BPA area already has sufficient controls in place, or that will take effect shortly (*e.g.*, 44% NO_X controls), and due to transport it is unlikely that any new local control measures would lead to more expeditious attainment. They request the EPA to validate the transport of air from the HG area.

Response 5: While EPA agrees that the BPA area is affected by transport from outside the area by the upwind HG area, the U.S. Court of Appeals for the Fifth Circuit ruled on December 11, 2002 that EPA is precluded from extending the BPA area's attainment date using the Transport Policy. At the time the State's current SIP revision was submitted, the Transport Policy was used to analyze the SIP revisions, and EPA believes that Texas demonstrated that during some exceedances in the BPA area, ozone levels are affected by emissions from the HG area, and that the HG area emissions affect BPA's ability to meet attainment of the 1-hour ozone standard. The Court's ruling, however, invalidated the EPA's interpretation of the Act reflected in the policy by which an attainment date extension based on transport was granted to the BPA area.

XV. EPA Action

EPA is taking the following actions:

- We are withdrawing our final action that extended the attainment date to November 15, 2007, and approved the transport demonstration (66 FR 26914).
- We are withdrawing our final approval of BPA's 2007 attainment demonstration SIP, the Mobile Vehicle Emissions Budget (MVEB), the mid-course review commitment (MCR), and our finding that BPA implemented all Reasonable Available Control Measures (RACM).
- Pursuant to section 181 (b), we find that BPA has failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Act.
- The area is reclassified by operation of law as a serious 1-hour ozone nonattainment area,
- We are establishing an attainment date of as expeditiously as practicable but no later than November 15, 2005.
- The contingency measures plan for failure to attain is triggered upon the effective date of this final action.
- The State of Texas must backfill this contingency measures plan for failure to attain.
- We are adjusting the dates by which the area must meet the 1999 and 2002 rate-of-progress (ROP) requirements and adjusting contingency measure requirements as they relate to the ROP requirements.
- The State of Texas is no longer required to submit an MCR by May 1, 2004.
- The State of Texas is to submit the required revised SIP, a new MVEB, and a re-analysis of RACM, on or before one year after the effective date of this Final action.

XVI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "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."

The Agency has determined that findings of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently

classified areas, and because those requirements are automatically triggered by the resulting classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassifications cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. 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 action to reclassify the BPA area as a serious ozone nonattainment area and to adjust applicable deadlines does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

C. Paperwork Reduction Act

This final action to reclassify the BPA area as a serious ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassifications of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

E. Unfunded Mandates Reform Act

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

EPA believes, as discussed previously in this document, that the findings of nonattainment are a factual determination based upon air quality considerations and that the resulting reclassifications occur by operation of law. Thus, EPA believes that the findings do not constitute a Federal mandate, as defined in section 101 of the UMRA, because they do not impose an enforceable duty on any entity.

F. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, 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 as defined 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. This final action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

G. 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 proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. Determinations of nonattainment and the resulting reclassifications of nonattainment areas by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because such an action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

H. Executive Order 13175, Coordination With Indian Tribal Governments

This final 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).

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

Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), EPA must prepare for those matters identified as significant energy actions. A "Significant energy action" is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that is a significant regulatory action under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Under Executive Order 12866, this action is not a "significant regulatory action." For this reason, findings of nonattainment and the resulting reclassifications of nonattainment areas are also not subject to Executive Order 13211.

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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 1, 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 to reclassify the BPA area as a serious ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: March 18, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

§ 52.2270 [Amended]

■ 2. In § 52.2270(e), the table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by removing the following four entries for the Beaumont/Port Arthur, Texas, area approved by EPA 5/15/01, 66 FR 26939: Attainment Demonstration for the 1-hour Ozone NAAQS; Ozone Attainment Date Extension to 11/15/07; Commitment by Texas to perform a mid-course review and submit a SIP revision by 05/01/04; and Finding that BPA area is implementing all Reasonably Available Control Measures.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.344 the table entitled "Texas—Ozone (1-hour standard)" is amended by revising the entries for the Beaumont/Port Arthur area to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Beaumont/Port Arthur Area:				
Hardin County	11/15/1990	Nonattainment	4/29/2004	Serious.
Jefferson County	11/15/1990	Nonattainment	4/29/2004	Serious.
Orange County	11/15/1990	Nonattainment	4/29/2004	Serious.
* * * *	*	*	*	

[1] This date is October 18, 2000, unless otherwise noted.

[FR Doc. 04–6929 Filed 3–29–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[WC Docket No. 03–228; FCC 04–54]

Section 272(b)(1)'s "Operate Independently" Requirement for Section 272 Affiliates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules eliminating the Commission's Operating, Installation, and Maintenance (OI&M) sharing prohibition. The Commission finds that, in light of the other existing section 272 non-structural requirements, eliminating the OI&M sharing prohibition would neither materially increase Bell operating companies' (BOCs) abilities or incentives to misallocate costs or discriminate against unaffiliated rivals, nor would it diminish the ability of the Commission to monitor and enforce compliance with the Act. The Commission finds that there is sufficient evidence to show that the OI&M sharing prohibition has increased the section 272 affiliates' operating costs, and that the elimination of the OI&M sharing prohibition would likely result in substantial cost savings to the affiliates and enable the affiliates to compete more effectively in the interexchange market. Therefore, the Commission concludes that the OI&M sharing prohibition poses significant adverse consequences that outweigh any potential benefits of enforcing structural separation of OI&M services, given the protections afforded to consumers and competitors by section 272's other non-structural safeguards.

DATES: Effective March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney-Advisor, Wireline Competition Bureau, at (202)418–1686 or via the Internet at *christi.shewman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in WC Docket No. 03–228, FCC 04–54, adopted March 11, 2004 and released March 17, 2004. The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, 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*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the Report and Order

1. *Background.* Sections 271 and 272 of the Communications Act, as amended, establish a comprehensive framework governing BOC provision of "interLATA service." Pursuant to section 271, neither a BOC nor a BOC affiliate may provide in-region, interLATA service prior to receiving section 271(d) authorization from the Commission. Section 272 requires BOCs, once authorized to provide in-region, interLATA services in a state under section 271, to provide those services through a separate affiliate until the section 272 separate affiliate requirement sunsets for that particular state. In addition, section 272 imposes structural and transactional requirements on section 272 separate affiliates, including the requirement to "operate independently" from the BOC.

2. Section 272(b)(1) directs that the separate affiliate required pursuant to section 272(a) "shall operate independently from the [BOC]." In 1996, the Commission adopted rules to implement the "operate independently" requirement that prohibit a BOC and its section 272 affiliate from (1) jointly owning switching and transmission facilities or the land and buildings on which such facilities are located; and (2) providing OI&M services associated with each other's facilities. The Commission's rules prohibit a section 272 affiliate from performing OI&M functions associated with the BOC's facilities. Likewise, they bar a BOC or any BOC affiliate, other than the section 272 affiliate itself, from performing OI&M functions associated with the facilities that its section 272 affiliate owns or leases from a provider other than the BOC with which it is affiliated. On November 3, 2003, the Commission adopted the *Notice of Proposed Rulemaking* (68 FR 65665, November 21, 2003) in this proceeding to seek comment on whether it should modify or eliminate the rules adopted to implement section 272(b)(1)'s "operate independently" requirement, including the OI&M sharing prohibition.

3. *"Operate Independently."* In this Order, the Commission rejects arguments that it must retain both the OI&M sharing prohibition and the joint facilities ownership restriction in order to give meaning to section 272(b)(1)'s "operate independently" language. The Commission reaffirms the conclusion of the previous Commission that section 272(b)(1) is ambiguous. An agency is free to modify its interpretation of an ambiguous statutory provision when other reasonable interpretations may exist, provided that it acknowledges its change of course and provides a rational basis for its shift in policy. In fact, a reexamination of rules is particularly appropriate where, as here, the Commission has gained more experience over time and new ways of achieving regulatory goals have developed. In the instant situation, the Commission has chosen to reexamine the rules adopted to implement section 272(b)(1) in light of its eight years of experience in implementing the 1996 Act (including applicable cost allocation and nondiscrimination rules), its additional experience with monitoring section 272 affiliates, and, more generally, the growth of competition in all telecommunications markets. Thus, the Commission concludes that it should eliminate the OI&M sharing prohibition but retain the joint facilities ownership restriction under section 272(b)(1), consistent with its obligation to implement the statutory directive that the section 272 affiliate and the BOC "operate independently."

4. *Operating, Installation, and Maintenance Services.* The Commission finds that the OI&M prohibition is an overbroad means of preventing anti-competitive conduct and poses significant costs that outweigh any potential benefits. Because the prohibition on OI&M sharing is not directly compelled by section 272(b)(1), the Commission eliminates sections 53.203(a)(2) through (a)(3) of its rules. The Commission concludes that the remaining section 272 requirements, together with its other non-structural safeguards, will continue to serve as effective protections against anticompetitive conduct by BOCs following elimination of the OI&M sharing prohibition. In the context of OI&M functions, the Commission concludes that the existing non-structural safeguards are well-tailored and sufficient to provide effective and efficient protections against cost misallocation and discrimination by BOCs. Based on the record in this proceeding, the Commission does not expect that eliminating the OI&M sharing prohibition will materially increase BOCs' abilities or incentives to misallocate costs or discriminate against unaffiliated rivals in price or performance. Nor will eliminating the

prohibition diminish the ability of the Commission to monitor and enforce compliance with the Act in light of non-structural safeguards. Following elimination of the OI&M sharing prohibition, the Commission will be able to effectively monitor the performance of BOC provision of OI&M functions through application of (1) the other section 272 requirements and (2) the Commission's affiliate transactions and cost allocation rules.

5. *Costs of the OI&M Sharing Prohibition.* The Commission finds that there is sufficient evidence in the record to show that the OI&M sharing prohibition has increased the section 272 affiliates' operating costs, and that the elimination of the OI&M sharing prohibition will likely result in substantial cost savings to the affiliates and enable the affiliates to compete more effectively in the interexchange market. It recognizes that, at the time the OI&M sharing prohibition was adopted, the Commission acknowledged that structural separation may sacrifice economies of scale and scope. The Commission, nonetheless, concluded that the benefits of the OI&M sharing prohibition outweighed these costs. It now finds, however, that, when the historical and projected costs of the OI&M sharing prohibition against protections afforded by our structural and non-structural safeguards are considered, the costs of the rule exceed the likely benefits of maintaining the rule. Moreover, the Commission finds that the likely savings to the section 272 affiliates by elimination of the rule, in conjunction with the BOCs' adherence to our structural and non-structural rules, including the cost allocation rules, supports a finding for the elimination of the OI&M sharing prohibition at this time. The Commission further finds that the evidence supports BOCs' claims that the OI&M sharing prohibition imposes inefficiencies that prevent BOCs from competing more effectively in the interexchange market.

6. *Joint Facilities Ownership.* The joint facilities ownership restriction was adopted concurrently with the OI&M sharing prohibition to implement the "operate independently" requirement of section 272(b)(1). The joint facilities ownership restriction, codified in section 53.203(a)(1) of the Commission's rules, provides that "[a] section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located." In adopting this restriction, the Commission believed that joint ownership of facilities could facilitate cost misallocation and discrimination. Based on the record presented in this proceeding, the Commission continues to believe that, unlike the OI&M sharing prohibition, the costs of maintaining separate ownership of facilities does not outweigh the benefits the rule provides against cost misallocation and discrimination. In making this determination, the Commission is mindful that the record support for eliminating the joint facilities ownership restriction is much more limited and inconclusive than the record that has been presented on the OI&M sharing prohibition. Therefore, the Commission retains the joint facilities ownership restriction to ensure that BOCs and their affiliates continue to operate independently.

Final Regulatory Flexibility Certification

7. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. In the Notice, the Commission sought comment generally on whether we should modify or eliminate the rules adopted to implement the "operate independently" requirement of section 272(b)(1) of the Act. Specifically, it sought comment on whether the OI&M sharing prohibition is an overbroad means of preventing cost misallocation or discrimination by BOCs against unaffiliated rivals. The Commission also sought comment on whether the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located, should be modified or eliminated.

9. The Order eliminates the OI&M sharing prohibition, under sections 53.203(a)(2) through (a)(3) of the Commission's rules, because the Commission finds that it is an overbroad means of preventing cost misallocation or discrimination by BOCs against unaffiliated rivals. Further, the Order retains the prohibition against joint ownership by BOCs and their section 272 affiliates of switching and transmission facilities, or the land and buildings on which such facilities are located, under section 53.203(a)(1) of the Commission's rules.

10. The rules adopted in this Order apply only to BOCs and their section 272 affiliates. Neither the Commission nor the SBA has developed a small business size standard specifically applicable to providers of incumbent local exchange service and interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. This provides that such a carrier is small entity if it employs no more than 1,500 employees. None of the four BOCs that would be affected by amendment of these rules meets this standard. The Commission next turns to whether any of the section 272 affiliates may be deemed a small entity. Under SBA regulation 121.103(a)(4), "SBA counts the * * * employees of the concern whose size is at issue and those of all its domestic and foreign affiliates * * * in determining the concern's size." In that regard, it is noted that, although section 272 affiliates operate independently from their affiliated BOCs, many are 50 percent or more owned by their respective BOCs, and thus would not qualify as small entities under the applicable SBA regulation. Moreover, even if the section 272 affiliates were not "affiliates" of BOCs, as defined by SBA, as many are, the Commission estimates that fewer than fifteen section 272 affiliates would fall below the size threshold of 1,500 employees. Particularly in light of the fact that Commission data indicate that a total of 261 companies have reported that their primary telecommunications service activity is the provision of interexchange services, the fifteen section 272 affiliates that may be small entities do not constitute a "substantial number." Because the rule amendments directly affect only BOCs and section 272 affiliates, based on the foregoing, we conclude that a substantial number of small entities will not be affected by the rules.

11. Therefore, the Commission certifies that the requirements of the Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, in a

report to Congress pursuant to the Congressional Review Act. In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

12. This Report and Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

Ordering Clauses

13. Pursuant to sections 2, 4(i)–(j), 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)–(j), 272, 303(r), the Report and Order *is adopted*.

14. Pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 CFR 1.103(a), 1.427(b), that this Report and Order and Memorandum Opinion and Order *shall be effective* upon publication of the Report and Order in the **Federal Register**.

15. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 53

Telecommunications, Special Provisions concerning Bell operating companies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 53 as follows:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

■ 1. The authority citation for part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

■ 2. In § 53.203, revise paragraph (a)(1) to read as follows:

§ 53.203 Structural and transactional requirements.

(a) * * * (1) A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

* * * * *

[FR Doc. 04–6946 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–655, MM Docket No. 01–54, RM–9918]

Digital Television Broadcast Service; Nampa, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Idaho Independent Television, Inc., substitutes DTV channel 13c for DTV channel 44 at Nampa, Idaho. *See* 66 FR 12752, February 28, 2001. DTV channel 13c can be allotted to Nampa, Idaho, in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 43–45–18 N. and 116–05–52 W. with a power of 17, HAAT of 829 meters and with a DTV service population of 391 thousand. With this action, this proceeding is terminated.

DATES: Effective May 3, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–54, adopted March 9, 2004, and released March 19, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Idaho, is amended by removing DTV channel 44 and adding DTV channel 13c at Nampa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–7103 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–676; MB Docket No. 03–163; RM–10734]

Radio Broadcasting Services; Fortuna Foothills and Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Dana J. Puopolo directed at the *Report and Order* in this proceeding, which dismissed the Petition for Rulemaking requesting the allotment of Channel 240A to Fortuna Foothills, and substituting Channel 248A for vacant Channel 240A at Wellton, Arizona to accommodate the allotment at Fortuna Foothills. *See* 68 FR 61788, published October 30, 2003. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, adopted March 12, 2004, and released March 15, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy 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*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7102 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–609; MB Docket No. 03–192; RM–10763]

Radio Broadcasting Services; Brazil and Spencer, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking*, 68 FR 56810 (October 2, 2003), this document grants a petition for rulemaking filed jointly by Crossroads Investments, Inc., licensee of Station WSDM–FM, Channel 249A, Brazil, Indiana, and Mid-America Radio of Indiana, Inc., licensee of Station WSKT(FM), Channel 224A, Spencer, Indiana. Channel 224A is substituted for Channel 249A at Brazil and the license for Station WSDM–FM is modified accordingly, and Channel 249A is substituted for Channel 224A at Spencer and the license of Station WSKT(FM) is modified accordingly. Channel 249A is allotted to Spencer in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) west of the community at Station WSKT(FM)'s requested site. The coordinates for Channel 249A at Spencer are 39–15–18 NL and 86–51–51 WL. Channel 224A allotted to Brazil with a site restriction of 1.8 kilometers (1.1 miles) southwest of the community at Station WSDM–FM's requested site. The coordinates for Channel 224A at Brazil are 39–30–43 NL and 87–08–19 WL.

DATES: Effective April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–192, adopted March 10, 2004, and released March 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document 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*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended 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 Indiana, is amended by removing Channel 249A and adding Channel 224A at Brazil and by removing Channel 224A and adding Channel 249A at Spencer.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7101 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–610; MB Docket No. 03–35, RM–10646, 10713, 10714]

Radio Broadcasting Services; Florence, Greeleyville and Quinby, SC, Savannah, GA and Wedgefield, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document denies the Petition for Rule Making filed by SSR Communications Incorporated proposing the allotment of Channel 237A at Florence, South Carolina, as that community's second FM commercial service. *See* 68 FR 8728, published February 25, 2003. The document grants the counterproposal filed by Miller Communications, Inc. requesting the allotment of Channel 237A at Quinby, South Carolina, as the community's first local service, and the minor change application for Station WIBZ, Channel 238A, Wedgefield, South Carolina, BPH–20030331AAI. Channel 237A can be allotted to Quinby, South Carolina, consistent with the minimum distance separation requirements of the Commission's Rules, provided there is a site restriction 12.7 kilometers (7.9 miles) southeast of the community. The reference coordinates for Channel 237A at Quinby are 34–10–23 North Latitude and 79–37–11 West Longitude. The new coordinates for Station WIBZ, Channel 238A, Wedgefield, South Carolina are 33–54–16 North Latitude and 80–19–25 West Longitude. In addition, this document denies the counterproposal filed by Bulldog Broadcasting requesting the allotment of Channel 238C3 at Greeleyville, South Carolina, as its first local service, and proposing changes for Station WIBZ, Wedgefield, South Carolina and Station WIXV, Savannah, Georgia to accommodate the allotment at Greeleyville.

DATES: Effective April 26, 2004. A filing window for Channel 237A at Quinby, South Carolina will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

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

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–35, adopted March 10, 2004, and released March 12, 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*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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 South Carolina, is

amended by adding Quinby, Channel 237A.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

[FR Doc. 04–7098 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–611; MM Docket No. 01–33; RM–10060]

Radio Broadcasting Services; Caro and Cass City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration filed by Edward Czelada seeking reconsideration of the *Report and Order* in this proceeding. *See* 66 FR 29237 May 20, 2001. The petition for reconsideration was opposed by Edwards Communications, LC, licensee of Station WIDL(FM) Caro, Michigan.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01–33, adopted March 10, 2004, and released March 12, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy 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 document is not subject to the Congressional Review Act.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7097 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99–87; RM–9332; FCC 03–34]

Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended and Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published July 17, 2003, (68 FR 42296). The Wireless Telecommunications Bureau published final rules in this document revising Commission rules in order to promote spectrum efficient technologies on certain frequencies. This document corrects typographical errors, as detailed below, that the Commission found in the original document.

DATES: Effective March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Associate Division Chief, Public Safety and Critical Infrastructure Division at (202) 418–0838.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections amended the Commission's rules to include a long-term schedule for the migration of Private Land Mobile Radio (PLMR) systems, using frequencies in the 150–174 MHz and 421–512 MHz bands, to narrowband technology.

Need for Correction

As published, the final regulations contain errors which need to be clarified. Therefore, in the FR Doc 03–18054 published in the **Federal Register** on July 17, 2003, (68 FR 42296) make the following corrections.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

■ Accordingly, 47 CFR part 90 is corrected by making the following correcting amendments.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. In § 90.20, paragraph (c)(3) is amended by revising the entry for "42.40" to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * *	*	* *	*
42.40	do	2, 3, 16.	PP
* * *	*	* *	*

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 04–6947 Filed 3–29–04; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 030917233–3304–02; I.D. 082703A]

RIN 0648–AP50

Fisheries of the Gulf of Mexico; Coastal Migratory Pelagic Resources; Stock Status Determination Criteria

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this final rule to incorporate into the FMP biomass-based stock status determination criteria consistent with the requirements of the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Criteria that are incorporated include maximum sustainable yield (MSY), optimum yield (OY), minimum stock size threshold (MSST) and maximum fishing mortality threshold (MFMT) for king and Spanish mackerel and cobia stocks under the jurisdiction of the Gulf of Mexico Fishery Management Council (Council).

DATES: This final rule is effective April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, telephone: 727–570–5796, fax: 727–570–5583, e-mail: *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic (CMP) resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended, and NMFS published a proposed rule (68 FR 59151, October 14, 2003), to establish biomass-based stock status criteria for Gulf migratory groups of king and Spanish mackerel and for a Gulf migratory group of cobia (to be designated via subsequent plan amendment). The most recent scientific evidence indicates that the cobia stock is comprised of separate migratory groups in the Gulf of Mexico and Atlantic. However, the FMP identifies only a single cobia stock. The establishment of separate migratory groups of cobia will require that the FMP be amended. Therefore, implementation of the stock status criteria for a Gulf migratory group of cobia would be deferred pending the development of an amendment to the FMP.

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils: (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing MSY. NMFS' national standard guidelines (NSGs) direct the councils to meet these statutory requirements by incorporating into each FMP estimates of certain biomass-based parameters for each stock, including a designation of the stock biomass that will produce MSY (B_{MSY}).

On November 17, 1999, NMFS notified the Council that it had partially approved the Council's Generic Sustainable Fisheries Act Amendment. In that notification, NMFS approved the designation and definition of an MFMT for CMP fish stocks managed under the jurisdiction of the Council, but disapproved the proposed designations of MSY, OY, and MSST because they were not biomass-based, as recommended by the NSGs. Since that time, NMFS has worked cooperatively with the Council to develop acceptable stock status criteria for the Gulf migratory groups of those CMP stocks.

Accordingly, this final rule establishes biomass-based reference points, as identified in the table below, for MSY, OY, and MSST, and amends the existing designations of MFMT for Gulf migratory group king mackerel, Gulf migratory group Spanish mackerel, and a (to be designated) Gulf migratory group of cobia.

	Gulf group king mackerel	Gulf group Spanish mackerel	Gulf group cobia[1]
MSY[2]	Yield at $F_{30\%SPR}$ (currently 10.7 million lb or 4.85 million kg)	Yield at $F_{30\%SPR}$ (currently 8.7 million lb or 3.95 million kg)	Yield at F_{msy} (currently 1.49 million lb or 0.676 million kg)
OY	Yield at $F_{OY} = 0.85*F_{msy}$ (currently 10.2 million lb or 4.63 million kg)	Yield at $F_{OY} = 0.75*F_{MSY}$ (currently 8.3 million lb or 3.76 million kg)	Yield at $F_{OY} = 0.75*F_{MSY}$ (currently 1.45 million lb or 0.658 million kg)
MFMT	$F_{30\%SPR} = F_{MSY}$	$F_{30\%SPR} = F_{MSY}$	F_{MSY}
MSST[3]	$(1–M)*B_{MSY}$ or 80% of B_{MSY}	$(1–M)*B_{MSY}$ or 70% of B_{MSY}	$(1–M)*B_{MSY}$ or 70% of B_{MSY}
Overfished	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$	50% probability $F_{current} > F_{MSY}$
Overfishing	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$	50% probability $B_{current} < MSST$

[1] Implementation deferred pending formal designation of a Gulf migratory group of cobia through an amendment to the FMP.
[2] F = fishing mortality rate; SPR refers to spawning potential ratio.
[3] M, or natural mortality, is estimated at 0.20 for king mackerel, and 0.30 for both Spanish mackerel and cobia. $B_{current}$ represents the current estimates of stock biomass; B_{MSY} represents the estimated stock biomass required to produce MSY.

While these population parameters are part of the FMP, they will not appear in codified text. The parameters establish the bounds within which the Council and NMFS will operate in managing the stock. The parameters themselves are not of general applicability and legal effect in that they do not bind the general public, but rather guide the Council and NMFS in establishing more specific measures, which are codified in the Code of Federal Regulations and do bind the general public.

On October 14, 2003, NMFS published the proposed rule on which this final rule is based; comments on the proposed rule were requested through November 13, 2003 (68 FR 59151). No comments were received.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No comments were received regarding the certification or the economic impacts of this action. As a result, no regulatory flexibility analysis was prepared.

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

Dated: March 25, 2004.

Rebecca Lent,

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

[FR Doc. 04–7091 Filed 3–29–04; 8:45 am]

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Proposed Rules

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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 927

[Docket No. AO–F&V–927–A1; FV04–927–1 PR]

Winter Pears Grown in Oregon and Washington; Hearing on Proposed Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement and Order No. 927, which regulates the handling of winter pears grown in Oregon and Washington. The amendments are jointly proposed by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee, which are responsible for local administration of orders 927 and 931, respectively. Marketing Agreement and Order No. 931 regulates the handling of fresh Bartlett pears grown in Oregon and Washington. The amendments would combine the winter pear and fresh Bartlett orders into a single program under marketing order 927, and would add authority to assess pears for processing. The Committees also proposed a number of conforming changes. All of the proposals are intended to streamline industry organization and improve the administration, operation, and functioning of the program.

DATES: The hearing dates are:

1. April 13 and 14, 2004, 9 a.m. to 4 p.m., Yakima, Washington.

2. April 16, 2004, 9 a.m. to 4 p.m., Portland, Oregon.

ADDRESSES: The hearing locations are:

1. Doubletree Hotel, 1507 N. 1ST Street, Yakima, Washington, (509) 248–7850.

2. Sheraton Inn—Portland Airport, 8235 NE. Airport Way, Portland, Oregon, (503) 335–2860.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259–7988, Fax: (435) 259–4945.

Small businesses may request information on this proceeding 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: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This 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 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have 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 the proposals.

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. 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 the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

At a joint meeting of the Winter Pear Control Committee and the Northwest Fresh Bartlett Pear Marketing Committee on November 13, 2003, both Committees voted unanimously to recommend amendments to Marketing Order 927. The amendments are intended to streamline industry organization by placing both Marketing Order 927, regulating the handling of winter pears, and Marketing Order 931, regulating the handling of Bartlett pears, under one program: Marketing Order 927. The amendments would also add pears for processing to the order, and update various provisions of the order.

The Committees' request for a hearing was submitted to USDA on November 19, 2003. The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committees' proposed amendments to Marketing Order No. 927 (order) are summarized below.

1. Expand the definition of "pears" to include all varieties of pears classified as summer/fall pears (rather than limiting that class to Bartletts); to add Concorde, Packham, and Taylor's Gold pears to the current list of winter pear varieties; and to add a third category of pears which would include varieties not classified as summer/fall or winter pears. This amendment would extend program coverage to all pears grown in Oregon and Washington.

2. Revise the definition of "size" to include language currently used within the industry.

3. Extend the order's coverage to pears for processing by revising the definition of "handle," and adding definitions of "processor" and "process."

4. Establish districts for pears for processing. This amendment would divide the order's production area into two districts for pears for processing: One being the State of Oregon and the other being the State of Washington.

5. Dissolve the current Winter Pear Control Committee and establish two new administrative committees: The

Fresh Pear Committee and the Processing Pear Committee (Committees). This proposal also includes adding a public member and public alternate member seat to both of the newly established Committees and removing Section 927.36, Public advisors. The Committees would jointly administer Marketing Order 927.

Related changes would be made to order provisions governing nomination and selection of members and their alternates, terms of office, eligibility for membership, and quorum and voting requirements, to reflect the proposed dual committee structure.

6. Authorize changes in the number of Committee members and alternates, and allow reapportionment of committee membership among districts and groups (*i.e.*, growers, handlers, and processors). Such changes would require a Committee recommendation and approval by the Department.

7. Provide that an assessment rate be established for each category of pears, including: summer/fall pears, winter pears, and all other pears. In addition, rates of assessment could be different for fresh pears and pears for processing in each category, and could include supplemental rates on individual varieties.

8. Authorize container marking requirements for fresh pears.

9. Remove the order provision allowing grower exemptions from regulation. This is a tool no longer used by the industry and, thus, is considered obsolete.

10. Amend § 927.70, Reports, to ensure confidentiality in the handling and reporting of information provided to the Committees, and to require handlers to maintain records for at least two years.

11. Allow elimination of inspection requirements (when handling regulations are in effect) if alternative methods to ensure compliance are available.

12. Eliminate the current exemptions for pears for processing and for pears shipped to storage warehouses.

13. Provide that separate continuance referenda be held every 6 years for fresh pears and processing pears.

14. Add authority for the committees to conduct post-harvest research, in addition to production research and promotion (including paid advertising).

15. Update several order provisions to make them more current.

16. Revise order provisions to reflect the two-committee structure being recommended for administration of the program.

These proposals have not received the approval of the Department. The Winter Pear Control Committee and Northwest Fresh Bartlett Marketing Committee believe that the proposed changes would improve the administration, operation, and functioning of the programs in effect for pears grown in Oregon and Washington.

AMS also proposes to allow such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 927

Marketing agreements, Reporting and recordkeeping requirements, Winter pears.

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Winter Pear Control Committee and the Northwest Fresh Bartlett Marketing Committee are as follows:

Proposal No. 1

Revise § 927.4 to read as follows:

§ 927.4 Pears.

(a) *Pears* means and includes any and all varieties or subvarieties of pears classified as: Summer/fall pears including Bartlett and Starkrimson pears; winter pears including Beurre D'Anjou, Beurre Bosc, Doyenne du Comice, Concorde, Forelle, Winter Nelis, Packham, Seckel, and Taylor's Gold pears; and other pears including any or all other varieties or subvarieties of pears not classified as summer/fall or winter pears.

(b) The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may recognize new or delete obsolete varieties or subvarieties for each category.

Revise the heading of 7 CFR part 927 to read as follows:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

Proposal No. 2

Revise § 927.5 to read as follows:

§ 927.5 Size.

Size means the number of pears which can be packed in a 44-pound net weight standard box or container equivalent, or "size" means the greatest transverse diameter of the pear taken at right angles to a line running from the stem to the blossom end, or such other specifications more specifically defined in a regulation issued under this part.

Proposal No. 3

Revise § 927.7 to read as follows:

§ 927.7 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting pears owned by another person) who, as owner, agent, broker, or otherwise, ships or handles pears, or causes pears to be shipped or handled by rail, truck, boat, or any other means whatsoever.

Revise § 927.8 to read as follows:

§ 927.8 Ship or handle.

Ship or handle means to sell, deliver, consign, transport or ship pears within the production area or between the production area and any point outside thereof, including receiving pears for processing: *Provided,* That the term "handle" shall not include the transportation of pear shipments within the production area from the orchard

where grown to a packing facility located within the production area for preparation for market or delivery for processing.

Add a new § 927.14 to read as follows:

§ 927.14 Processor.

Processor means any person who as owner, agent, broker, or otherwise, commercially processes pears in the production area.

Add a new § 927.15 to read as follows:

§ 927.15 Process.

Process means to can, concentrate, freeze, dehydrate, press or puree pears, or in any other way convert pears commercially into a processed product.

Proposal No. 4

Amend § 927.11 by revising the introductory paragraph, and paragraphs (a), (b), and (c), to read as follows:

§ 927.11 District.

District means the applicable one of the following-described subdivisions of the production area covered by the provisions of this subpart:

(a) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for the fresh market, districts shall be defined as follows:

(1) *Medford District* shall include all the counties in the State of Oregon except for Hood River and Wasco Counties.

(2) *Mid-Columbia District* shall include Hood River and Wasco Counties in the State of Oregon, and the counties of Skamania and Klickitat in the State of Washington.

(3) *Wenatchee District* shall include the counties of King, Chelan, Okanogan, Douglas, Grant, Lincoln, and Spokane in the State of Washington, and all other counties in Washington lying north thereof.

(4) *Yakima District* shall include all of the State of Washington not included in the Wenatchee District or in the Mid-Columbia District.

(b) For the purpose of committee representation, administration and application of provisions of this subpart as applicable to pears for processing, districts shall be defined as follows:

(1) The State of Washington.

(2) The State of Oregon.

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee, may reestablish districts within the production area.

* * * * *

Proposal No. 5

Revise § 927.20 to read as follows:

§ 927.20 Establishment and membership.

There are hereby established two committees to administer the terms and provisions of this subpart as specifically provided in §§ 927.20 through 927.35:

(a) A Fresh Pear Committee, consisting of 13 individual persons as its members, is established to administer order provisions relating to the handling of pears for the fresh market. Six members of the Fresh Pear Committee shall be growers, six members shall be handlers, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. Each district shall be represented by one grower member and one handler member, except that the Mid-Columbia District and the Wenatchee District shall be represented by two grower members and two handler members.

(b) A Processed Pear Committee consisting of 10 members is established to administer order provisions relating to the handling of pears for processing. Three members of the Processed Pear Committee shall be growers, three members shall be handlers, three members shall be processors, and one member shall represent the public. For each member there shall be two alternates, designated as the "first alternate" and the "second alternate," respectively. District 1, the State of Washington, shall be represented by two grower members, two handler members and two processor members. District 2, the State of Oregon, shall be represented by one grower member, one handler member and one processor member.

Revise § 927.21 to read as follows:

§ 927.21 Nomination and selection of members and their respective alternates.

Grower members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the growers in such district. Handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district. Processor members and their respective alternates shall be selected by the Secretary from nominees elected by the processors. Public members for each committee shall be nominated by the Fresh Pear Committee and the Processed Pear Committee, respectively, and selected by the Secretary. The Fresh Pear Committee and the Processed Pear Committee may prescribe such additional qualifications, administrative rules and procedures for selection for each candidate as it deems necessary and as the Secretary approves.

Revise § 927.22 to read as follows:

§ 927.22 Meetings for election of nominees.

(a) Nominations for members of the Fresh Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Fresh Pear Committee.

(b) Nominations for grower and handler members of the Processed Pear Committee and their alternates shall be made at meetings of growers and handlers held in each of the districts designated in § 927.11 at such times and places designated by the Processed Pear Committee. Nominations for processor members of the Processed Pear Committee and their alternates shall be made at a meeting of processors at such time and place designated by the Processed Pear Committee.

Revise § 927.23 to read as follows:

§ 927.23 Voting.

Only growers in attendance at meetings for election of nominees shall participate in the nomination of grower members and their alternates, and only handlers in attendance at meetings for election of nominees shall participate in the nomination of handler members and their alternates, and only processors in attendance for election of nominees shall participate in the nomination of processor members and their alternates. A grower may participate only in the election held in the district in which he or she produces pears, and a handler may participate only in the election held in the district or districts in which he or she handles pears. Each person may vote as a grower, handler or processor, but not a combination thereof. Each grower, handler and processor shall be entitled to cast one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be elected.

Revise § 927.24 to read as follows:

§ 927.24 Eligibility for membership.

Each grower member and each of his or her alternates shall be a grower, or an officer or employee of a corporate grower, who grows pears in the district in which and for which he or she is nominated and selected. Each handler member and each of his or her alternates shall be a handler, or an officer or employee of a handler, handling pears in the district in and for which he or she is nominated and selected. Each processor member and each of their alternates shall be a processor, or an officer or employee of a processor, who processes pears in the production area.

Revise § 927.27 to read as follows:

§ 927.27 Term of office.

The term of office of each member and alternate member of the Fresh Pear Committee and the Processed Pear Committee shall be for two years beginning July 1 and ending June 30: *Provided,* That the terms of office of one-half of the initial members and alternates shall end June 30, 2005; and that beginning with the 2005–2006 fiscal period, no member shall serve more than three consecutive two-year terms unless specifically exempted by the Secretary. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each June 30.

Revise § 927.33 to read as follows:

§ 927.33 Procedure.

(a) *Quorum and voting.* A quorum at a meeting of the Fresh Pear Committee or the Processed Pear Committee shall consist of 75 percent of the number of committee members, or alternates then serving in the place of any members, respectively. Except as otherwise provided in § 927.52, all decisions of the Fresh Pear Committee or the Processed Pear Committee at any meeting shall require the concurring vote of at least 75 percent of those members present, including alternates then serving in the place of any members.

(b) *Mail voting.* The Fresh Pear Committee or the Processed Pear Committee may provide for members voting by mail, telecopier or other electronic means, telephone, or telegraph, upon due notice to all members. Promptly after voting by telephone or telegraph, each member thus voting shall confirm in writing, the vote so cast.

Remove § 927.36, Public advisors.

Proposal No. 6

Further amend § 927.20 by adding a new paragraph (c) to read as follows:

§ 927.20 Establishment and membership.

* * * * *

(c) The Secretary, upon recommendation of the Fresh Pear Committee or the Processed Pear Committee may reapportion members among districts, may change the number of members and alternates, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in pear acreage within districts and within the production area during recent years;

(2) The importance of new pear production in its relation to existing districts;

(3) The equitable relationship between membership and districts;

(4) Economies to result for growers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

Proposal No. 7

Revise § 927.41 to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Fresh Pear Committee or the Processed Pear Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Fresh Pear Committee or the Processed Pear Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

(b)(1) Based upon a recommendation of the Fresh Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for the fresh market during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Fresh Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Fresh Pear Committee recommendation or other information that different rates are necessary for fresh pears or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rates shall apply to any or all varieties or subvarieties that are shipped during the fiscal period for fresh market.

(2) Based upon a recommendation of the Processed Pear Committee or other available data, the Secretary shall fix three base rates of assessment for pears that handlers shall pay on pears handled for processing during each fiscal period. Such base rates shall include one rate of assessment for any or all varieties or subvarieties of pears classified as summer/fall; one rate of assessment for any or all varieties or subvarieties of pears classified as winter; and one rate of assessment for any or all varieties or subvarieties of pears classified as other. Upon recommendation of the Processed Pear Committee or other available data, the Secretary may also fix supplemental rates of assessment on individual varieties or subvarieties categorized within the above-defined assessment classifications to secure sufficient funds to provide for projects authorized under § 927.47. At any time during the fiscal period when it is determined on the basis of a Processed Pear Committee recommendation or other information that different rates are necessary for pears for processing or for any varieties or subvarieties, the Secretary may modify those rates of assessment and such new rates shall apply to any or all varieties or subvarieties of pears that are shipped during the fiscal period for processing.

(c) Based on the recommendation of the Fresh Pear Committee, the Processed Pear Committee or other available data, the Secretary may establish additional base rates of assessments, or change or modify the base rate classifications defined in paragraphs (a) and (b) of this section.

(d) The Fresh Pear Committee or the Processed Pear Committee may impose a late payment charge on any handler who fails to pay any assessment within the time prescribed. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, the Fresh Pear Committee or the Processed Pear Committee may impose an additional charge in the form of interest on such outstanding amount. The Fresh Pear Committee or the Processed Pear Committee, with the approval of the Secretary, shall prescribe the amount of such late payment charge and rate of interest.

(e) In order to provide funds to carry out the functions of the Fresh Pear Committee or the Processed Pear Committee prior to commencement of shipments in any season, handlers may make advance payments of assessments,

which advance payments shall be credited to such handlers and the assessments of such handlers shall be adjusted so that such assessments are based upon the quantity of each variety or subvariety of pears handled by such handlers during such season. Further, payment discounts may be authorized by the Fresh Pear Committee or the Processed Pear Committee upon the approval of the Secretary to handlers making such advance assessment payments.

Proposal No. 8

Revise § 927.51 to read as follows:

§ 927.51 Issuance of regulations; and modification, suspension, or termination thereof.

(a) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that regulation, in the manner specified in this section, of the shipment of pears would tend to effectuate the declared policy of the act, he or she shall so limit the shipment of pears during a specified period or periods. Such regulation may:

(1) Limit the total quantity of any grade, size, quality, or combinations thereof, of any variety or subvariety of pears grown in any district and may prescribe different requirements applicable to shipments to different export markets;

(2) Limit, during any period or periods, the shipment of any particular grade, size, quality, or any combination thereof, of any variety or subvariety, of pears grown in any district or districts of the production area; and

(3) Provide a method, through rules and regulation issued pursuant to this part, for fixing markings on the container or containers, which may be used in the packaging or handling of pears, including appropriate logo or other container markings to identify the contents thereof.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pears grown in any district in order to effectuate the declared policy of the act, he or she shall so modify, suspend, or terminate such regulation. If the Secretary finds, from the recommendations and information submitted by the Fresh Pear Committee, or from other available information, that a regulation obstructs or does not tend to effectuate the declared policy of the act, he or she shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

Proposal No. 9

Remove § 927.54.

Proposal No. 10

Revise § 927.70 to read as follows:

§ 927.70 Reports.

(a) Upon the request of the Fresh Pear Committee and the Processed Pear Committee, and subject to the approval of the Secretary, each handler shall furnish to the aforesaid committee, respectively, in such manner and at such times as it prescribes, such information as will enable it to perform its duties under this subpart.

(b) All such reports shall be held under appropriate protective classification and custody by the Fresh Pear Committee and/or the Processed Pear Committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the pears received and of pears disposed of, by such handler as may be necessary to verify reports pursuant to this section.

Proposal No. 11

Amend § 927.60 by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 927.60 Inspection and certification.

(a) Except as hereinafter provided, no handler shall ship any pears not theretofore inspected, and a certificate issued with respect thereto, by a duly authorized representative of the Federal-State Inspection Service: *Provided,* That such inspection and certification of shipments of pears may be performed by such other inspection service as the Fresh Pear Committee, with the approval of the Secretary, may designate. Promptly after shipment of any pears, the handler shall submit, or cause to be submitted, to the Fresh Pear Committee a copy of the inspection certificate issued on such shipment.

* * * * *

(c) The Fresh Pear Committee may, with the approval of the Secretary, prescribe rules and regulations modifying or eliminating the requirement for inspection and certification of shipments if alternative methods are available for ensuring such shipments comply with regulations in effect.

Proposal No. 12

Revise § 927.65 to read as follows:

§ 927.65 Exemption from regulation.

(a) Nothing contained in this subpart shall limit or authorize the limitation of shipment of pears for consumption by charitable institutions or distribution by relief agencies, nor shall any assessment be computed on pears so shipped. The Fresh Pear Committee or the Processed Pear Committee may, with the approval of the Secretary, prescribe regulations to prevent pears shipped for either of such purposes from entering commercial fresh-fruit channels of trade contrary to the provisions of this subpart.

(b) The Fresh Pear Committee or the Processed Pear Committee may, with the approval of the Secretary, prescribe rules and regulations whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

Proposal No. 13

Amend § 927.78 by revising paragraphs (b), (c), and (d) to read as follows:

§ 927.78 Termination.

* * * * *

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he or she finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart applicable to fresh pears for market or pears for processing at the end of any fiscal period whenever the Secretary finds, by referendum or otherwise, that such termination is favored by a majority of growers of fresh pears for market or pears for processing, respectively: *Provided,* That such majority has during such period produced more than 50 percent of the volume of fresh pears for market or pears for processing, respectively, in the production area. Such termination shall be effective only if announced on or before the last day of the then current fiscal period.

(d) The Secretary shall conduct a referendum within every six-year period beginning on the date this section becomes effective, to ascertain whether continuance of the provisions of this subpart applicable to fresh pears for

market or pears for processing are favored by producers of pears for the fresh market and pears for processing, respectively. The Secretary may terminate the provisions of this subpart at the end of any fiscal period in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production of fresh pears for market or pears for processing in the production area: *Provided,* That termination of the order shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * * *

Proposal No. 14

Revise § 927.47 to read as follows:

§ 927.47 Research and development.

The Fresh Pear Committee and/or the Processed Pear Committee, with the approval of the Secretary, may establish or provide for the establishment of production and post-harvest research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety or subvariety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety or subvariety of pears.

Proposal No. 15

Revise § 927.1 to read as follows:

§ 927.1 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or to whom authority may hereafter be delegated, the authority to act for the Secretary.

Revise § 927.3 to read as follows:

§ 927.3 Person.

Person means an individual partnership, corporation, association, or any other business unit.

Revise § 927.6 to read as follows:

§ 927.6 Grower.

Grower is synonymous with producer and means any person engaged in the production of pears, either as owner or as tenant.

Revise § 927.76 to read as follows:

§ 927.76 Agents.

The Secretary may name, by designation in writing, any person, including any officer or employee of the Government or any bureau or division in the Department of Agriculture to act as his agent or representative in connection with any of the provisions of this subpart.

Revise § 927.77 to read as follows:

§ 927.77 Effective time.

The provisions of this subpart and of any amendment thereto shall become effective at such time as the Secretary may declare, and shall continue in force until terminated in one of the ways specified in § 927.78.

Proposal No. 16

Revise in 7 CFR part 927 the undesignated center heading "CONTROL COMMITTEE" to read as follows:

ADMINISTRATIVE BODIES

Revise § 927.9 to read as follows:

§ 927.9 Fiscal period.

Fiscal period means the period beginning July 1 of any year and ending June 30 of the following year or such may be approved by the Secretary pursuant to a joint recommendation by the Fresh Pear Committee and the Processed Pear Committee.

Revise § 927.13 to read as follows:

§ 927.13 Subvariety.

Subvariety means and includes any mutation, sport, or other derivation of any of the varieties covered in § 927.4 which is recognized by the Fresh Pear Committee or the Processed Pear Committee and approved by the Secretary. Recognition of a subvariety shall include classification within a varietal group for the purposes of votes conducted under § 927.52.

Revise § 927.26 to read as follows:

§ 927.26 Qualifications.

Any person prior to or within 15 days after selection as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee shall qualify by filing with the Secretary a written acceptance of the person's willingness to serve.

Revise § 927.28 to read as follows:

§ 927.28 Alternates for members.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that a member of the Fresh Pear Committee or the Processed Pear Committee and both that member's alternates are unable to attend a meeting, the member may designate any other alternate member from the same group (handler, processor, or grower) to serve in that member's place and stead.

Revise § 927.29 to read as follows:

§ 927.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate for a member of the Fresh Pear Committee or the Processed Pear Committee to qualify, or in the event of death, removal, resignation, or disqualification of any qualified member or qualified alternate for a member, a successor for his or her unexpired term shall be nominated and selected in the manner set forth in §§ 927.20 to 927.35. If nominations to fill any such vacancy are not made within 20 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

Revise § 927.30 to read as follows:

§ 927.30 Compensation and expenses.

The members and alternates for members shall serve without compensation, but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

Revise § 927.31 to read as follows:

§ 927.31 Powers.

The Fresh Pear Committee and the Processed Pear Committee shall have the following powers:

(a) To administer, as specifically provided in §§ 927.20 to 927.35, the terms and provisions of this subpart:

(b) To make administrative rules and regulations in accordance with, and to effectuate, the terms and provisions of this subpart; and

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart.

Revise § 927.32 to read as follows:

§ 927.32 Duties.

The duties of the Fresh Pear Committee and the Processed Pear Committee shall be as follows:

(a) To act as intermediary between the Secretary and any grower, handler or processor;

(b) To keep minutes, books, and records which will reflect clearly all of

the acts and transactions. The minutes, books, and records shall be subject at any time to examination by the Secretary or by such person as may be designated by the Secretary;

(c) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions relative to pears, and to furnish to the Secretary such available information as may be requested;

(d) To cause the books to be audited by one or more competent accountants at the end of each fiscal year and at such other times as the Fresh Pear Committee and the Processed Pear Committee may deem necessary or as the Secretary may request, and to file with the Secretary copies of any and all audit reports made;

(e) To appoint such employees agents, and representatives as it may deem necessary, and to determine the compensation and define the duties of each;

(f) To give the Secretary, or the designated agent of the Secretary, the same notice of meetings as is given to the members of the Fresh Pear Committee and the Processed Pear Committee;

(g) To select a chairman of the Fresh Pear Committee and the Processed Pear Committee and, from time to time, such other officers as it may deem advisable and to define the duties of each; and

(h) To submit to the Secretary as soon as practicable after the beginning of each fiscal period, a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period.

Revise § 927.34 to read as follows:

§ 927.34 Right of the Secretary.

The members and alternates for members and any agent or employee appointed or employed by the Fresh Pear Committee or the Processed Pear Committee shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and, upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

Revise § 927.35 to read as follows:

§ 927.35 Funds and other property.

(a) All funds received pursuant to any of the provisions of this subpart shall be used solely for the purposes specified in this subpart, and the Secretary may require the Fresh Pear Committee or the Processed Pear Committee and its members to account for all receipts and disbursements.

(b) Upon the death, resignation, removal, disqualification, or expiration of the term of office of any member or employee, all books, records, funds, and other property in his or her possession belonging to the Fresh Pear Committee or the Processed Pear Committee shall be delivered to his or her successor in office or to the Fresh Pear Committee or Processed Pear Committee, and such assignments and other instruments shall be executed as may be necessary to vest in such successor or in the Fresh Pear Committee or Processed Pear Committee full title to all the books, records, funds, and other property in the possession or under the control of such member or employee pursuant to this subpart.

Revise § 927.40 to read as follows:

§ 927.40 Expenses.

The Fresh Pear Committee and the Processed Pear Committee are authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions under this subpart. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 927.41.

Revise § 927.42 to read as follows:

§ 927.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Fresh Pear Committee or the Processed Pear Committee may carryover such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not exceed approximately one fiscal period's expenses. Such reserve may be used to cover any expense authorized under this part and to cover necessary expenses of liquidation in the event of termination of this part. Any such excess not retained in a reserve or applied to any outstanding obligation of the person from whom it was collected shall be refunded proportionately to the persons from whom it was collected. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Fresh Pear Committee and/or the Processed Pear Committee and its members to account for all receipts and disbursements.

Revise § 927.43 to read as follows:

§ 927.43 Use of funds.

From the funds acquired pursuant to § 927.41 the Fresh Pear Committee and the Processed Pear Committee shall pay the salaries of its employees, if any, and pay the expenses necessarily incurred in the performance of the duties of the Fresh Pear Committee and the Processed Pear Committee.

Remove § 927.44.

Revise § 927.45 to read as follows:

§ 927.45 Contributions.

The Fresh Pear Committee or the Processed Pear Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Fresh Pear Committee or the Processed Pear Committee shall retain complete control of their use.

Revise § 927.50 to read as follows:

§ 927.50 Marketing policy.

(a) It shall be the duty of the Fresh Pear Committee to investigate, from time to time, supply and demand conditions relative to pears and each grade, size, and quality of each variety or subvariety thereof. Such investigations shall be with respect to the following:

(1) Estimated production of each variety or subvariety of pears and of each grade, size, and quality thereof;

(2) Prospective supplies and prices of pears and other fruits, both in fresh and processed form, which are competitive to the marketing of pears;

(3) Prospective exports of pears and imports of pears from other producing areas;

(4) Probable harvesting period for each variety or subvariety of pears;

(5) The trend and level of consumer income;

(6) General economic conditions; and

(7) Other relevant factors.

(b) On or before August 1 of each year, the Fresh Pear Committee shall recommend regulations to the Secretary if it finds, on the basis of the foregoing investigations, that such regulation as is provided in § 927.51 will tend to effectuate the declared policy of the act.

(c) In the event the Fresh Pear Committee at any time finds that by reason of changed conditions any regulation issued pursuant to § 927.51

should be modified, suspended, or terminated, it shall so recommend to the Secretary.

Revise § 927.52 to read as follows:

§ 927.52 Prerequisites to recommendations.

(a) Decisions of the Fresh Pear Committee or the Processed Pear Committee with respect to any recommendations to the Secretary pursuant to the establishment or modification of a supplemental rate of assessment for an individual variety or subvariety of pears shall be made by affirmative vote of not less than 75 percent of the applicable total number of votes, computed in the manner hereinafter described in this section, of all members. Decisions of the Fresh Pear Committee pursuant to the provisions of § 927.50 shall be made by an affirmative vote of not less than 80 percent of the applicable total number of votes, computed in the manner hereinafter prescribed in this section, of all members.

(b) With respect to regulation of a particular variety or subvariety of pears, the applicable total number of votes shall be the aggregate of the votes allotted to the members in accordance with the following: Each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by such member; and such district vote shall be computed as soon as practical after the beginning of each fiscal period on either:

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for varieties or subvarieties with less than 200,000 standard boxes or container equivalents) of the average quantity of such variety or subvariety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

(2) Such other basis as the Fresh Pear Committee or the Processed Pear Committee may recommend and the Secretary may approve. The votes so allotted to a member may be cast by such member on each recommendation relative to the variety or subvariety of pears on which such votes were computed.

Revise § 927.53 to read as follows:

§ 927.53 Notification.

(a) The Fresh Pear Committee shall give prompt notice to growers and handlers of each recommendation to the Secretary pursuant to the provisions of § 927.50.

(b) The Secretary shall immediately notify the Fresh Pear Committee of the issuance of each regulation and of each modification, suspension, or termination of a regulation and the Fresh Pear Committee shall give prompt notice thereof to growers and handlers.

Revise § 927.75 to read as follows:

§ 927.75 Liability.

No member or alternate for a member of the Fresh Pear Committee and/or the Processed Pear Committee, nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any party under this subpart or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate for a member, agent or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

Revise § 927.79 to read as follows:

§ 927.79 Proceedings after termination.

(a) Upon the termination of this subpart, the members of the Fresh Pear Committee and/or the Processed Pear Committee then functioning shall continue as joint trustees for the purpose of liquidating all funds and property then in the possession or under the control of the Fresh Pear Committee and/or the Processed Pear Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The joint trustees shall continue in such capacity until discharged by the Secretary; from time to time account for all receipts and disbursements; deliver all funds and property on hand, together with all books and records of the Fresh Pear Committee and/or the Processed Pear Committee and of the joint trustees, to such person as the Secretary shall direct; and, upon the request of the Secretary, execute such assignments or other instruments necessary and appropriate to vest in such person full title and right to all of the funds, property, or claims vested in the Fresh Pear Committee and/or the Processed Pear Committee or in said joint trustees.

(c) Any funds collected pursuant to this subpart and held by such joint trustees or such person over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the joint trustees or such other person in the performance of their duties under this subpart, as soon as practicable after the termination hereof, shall be returned to the handlers pro rata in proportion to their contributions thereto.

(d) Any person to whom funds, property, or claims have been transferred or delivered by the Fresh Pear Committee and/or the Processed Pear Committee or its members, upon direction of the Secretary, as provided in this section, shall be subject to the same obligations and duties with respect to said funds, property, or claims as are imposed upon the members or upon said joint trustees.

Revise § 927.80 to read as follows:

§ 927.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Fresh Pear Committee and/or the Processed Pear Committee or by the Secretary.

USDA proposes the following:

Proposal No. 17

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 24, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–7002 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[Docket No. DA–04–02]

National Fluid Milk Processor Promotion Program; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of regulatory review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service's (AMS) review of the National Fluid Milk Processor Promotion Program (conducted under the Fluid Milk Promotion Order), using the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this document must be received by June 1, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review to David R. Jamison, Chief, Promotion and Research Branch, USDA/AMS/Dairy Programs, STOP 0233—Room 2958–S, 1400 Independence Avenue SW., Washington, DC 20250–0233. You may send your comments by using the electronic process available at the Federal rulemaking portal at *http://www.regulations.gov*. All comments,

which should reference the docket number and the date and page number of this issue of the **Federal Register**, will be made available for public inspection at the location provided above during regular business hours.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue SW., Washington, DC 20250–0233, (202) 720–6909, *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: The Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. Section 6401, *et seq.*) authorized the Fluid Milk Promotion Order (Order) (7 CFR part 1160), a national processor program for fluid milk promotion and education. The program's objective is to educate Americans about the benefits of milk, increase fluid milk consumption, and maintain and expand markets and uses for fluid milk products in the contiguous 48 States and the District of Columbia.

The program became effective on December 10, 1993, when the Order was issued. Processors marketing more than 3,000,000 pounds of fluid milk per month, excluding those fluid milk products delivered to the residence of a consumer, fund this program through a 20-cent per hundredweight assessment on fluid milk processed and marketed in consumer-type packages in the contiguous 48 States and the District of Columbia.

The Order provides for the establishment of the Fluid Milk Board, which is composed of 20 members appointed by the Secretary of Agriculture. Fifteen members are fluid milk processors who each represent a separate geographical region, and five are at-large members. Of the five at-large members, at least three must be fluid milk processors and at least one must be from the general public. The members of the Fluid Milk Board serve 3-year terms and are eligible to be appointed to two consecutive terms.

AMS published in the **Federal Register** its plan (64 FR 8014, February 18, 1999), and later its updated plan (68 FR 48574, August 14, 2003), to review certain regulations using criteria contained in Section 610 of the RFA (5 U.S.C. 601–612). Given that many AMS regulations impact small entities, AMS decided as a matter of policy to review certain regulations which, although they may not meet the threshold requirement under Section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the National Fluid Milk Processor Promotion Program (conducted under the Fluid Milk Promotion Order).

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize any significant economic impact of rules upon a substantial number of small entities. AMS will consider the continued need for the Order; the nature of complaints or comments received from the public concerning the Order; the complexity of the Order; the extent to which the Order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local government rules; and the length of time since the Order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Order.

Written comments, views, opinions, and other information regarding the Order's impact on small businesses are invited.

Dated: March 24, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–7003 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106590–00, REG–138499–02]

RIN 1545–AX95; RIN 1545–BB05

Depreciation of MACRS Property That Is Acquired in a Like-Kind Exchange or as a Result of an Involuntary Conversion; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations.

SUMMARY: This document corrects a notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations (REG–106590–00, REG–138499–02) that were published in the **Federal Register** on Monday, March 1, 2004 (69 FR 9560) relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property).

FOR FURTHER INFORMATION CONTACT: Charles J. Magee, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations (REG–106590–00, REG–138499–02) that is the subject of this correction are under section 168 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations (REG–106590–00, REG–138499–02) contains errors that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing; and partial withdrawal of proposed regulations (REG–106590–00, REG–138499–02), is corrected as follows:

1. On page 9560, column 3, in the preamble, under the caption **SUMMARY**, line 10, the language "(REG–139499–02) published July 21," is corrected to read "(REG–138499–02) published July 21,".

§ 1.168(i)–1 [Corrected]

2. On page 9562, column 1, § 1.168(i)–1, paragraph (e)(3)(iii)(B)(4), lines 1 through 4, the language "(4) (The text of the proposed amendment to § 1.168(i)–1(e)(3)(iii)(B)(4) is the same as the text of § 1.168(i)–1T(e)(3)(iii)(B)(*4*) published" is corrected to read "(4) (The text of the proposed amendment to § 1.168(i)–1(e)(3)(iii)(B)(*4*) is the same as the text of § 1.168(i)–1T(e)(3)(iii)(B)(*4*) published".

1.168(k)–1 [Corrected]

3. On page 9562, column 2, § 1.168(k)–1, paragraph (g), line 3, the language "1(g)(1) is the same as

§ 1.168(g)–'' is corrected to read ''1(g)(1) is the same as § 1.168(k)–''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–6961 Filed 3–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126459–03]

RIN 1545–BC18

Changes in Computing Depreciation; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on a notice of proposed rulemaking under sections 446(e) and 1016(a)(2) of the Internal Revenue Code relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa).

DATES: The public hearing originally scheduled for April 7, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking; Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing that appeared in the **Federal Register** on Friday, January 2, 2004, (69 FR 42), announced that a public hearing was scheduled for April 7, 2004, at 10 a.m., in the auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under sections 446(e) and 1016(a) of the Internal Revenue Code.

The public comment period for these regulations expired on March 17, 2004. The notice of proposed rulemaking instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, March 24, 2004, no one has requested to speak. Therefore, the public hearing scheduled for April 7, 2004, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–6960 Filed 3–29–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H–049C]

RIN 1218–AA05

Assigned Protection Factors

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Extension of the deadlines for submitting post-hearing comments and briefs

SUMMARY: OSHA is extending the deadline for receipt of post-hearing public comments and briefs on its proposed ''Assigned Protection Factors'' rule to April 29 and May 29, 2004, respectively. This action is in response to interested parties who have requested the additional time.

DATES: Post-hearing comments must be submitted by April 29, 2004; briefs must be submitted by May 29, 2004. Comments and briefs submitted by mail must be postmarked no later than April 29 and May 29, 2004, respectively.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service.* You must submit three copies of your comments and briefs, including attachments, to the OSHA Docket Office, Docket No. H–049C, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2350. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office and Department of Labor are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your post-hearing comments and briefs, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. In doing so, you must include the docket number (*i.e.*, H–049C) in your comments and briefs. You do not have to send OSHA a hard copy of faxed documents.

Electronic: You may submit post-hearing comments and briefs, but not attachments, through OSHA's Web site at *http://ecomments.osha.gov*. You must submit attachments, such as studies and journal articles, in triplicate hard copy to the OSHA Docket Office at the address above. These materials must clearly identify your name, date, subject, and docket number so we can attach them to your comments.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Mr. John E. Steelnack, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2289 or fax (202) 693–1678. For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210 (telephone (202) 693–1888). Electronic copies of this **Federal Register** document, as well as news releases and other relevant documents, are available at OSHA's Web site on the Internet at *http://www.osha.gov/*.

SUPPLEMENTARY INFORMATION: OSHA held a public hearing on its proposed Assigned Protection Factor rulemaking from January 28 to 30, 2004. After this hearing, the presiding administrative law judge established a 60–day post-hearing comment period and a 90–day period for submitting post-hearing briefs, to end March 30 and April 29, 2004, respectively. Subsequently, several participants, including the AFL–CIO, Mr. Ching Bien, and Mr. Mark Haskew, requested an extension of the deadline for submitting post-hearing comments based on their need to review and respond to the hearing transcript, which was not available to the public until March 13. To give all participants adequate time to review and respond to the information in the transcript, OSHA is granting these requests and extending the deadlines for submitting post-hearing comments to April 29, 2004, and post-hearing briefs to May 29, 2004.

Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice under the authority granted by: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655,657); section 107 of the Contract Work Hours and

Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC, on March 24, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–7074 Filed 3–29–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–244–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are reopening the public comment period on a proposed amendment to the Kentucky regulatory program (the "Kentucky program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky has submitted additional information in the form of an actuarial report. The report is an actuarial analysis of the Kentucky Bond Pool Fund performed by the Madison Consulting Group.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t., April 14, 2004.

ADDRESSES: You should mail or hand deliver written comments to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, the actuarial report, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400, Fax: (859) 260–8410.

Department for Natural Resources, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated May 22, 2003, Kentucky sent us a proposed amendment to its program ([KY–244], Administrative Record No. KY–1580) under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted a portion of House Bill 269, the executive branch budget bill, promulgated by the 2003 Kentucky General Assembly.

Specifically, Kentucky proposes to transfer $3,000,000 from the Bond Pool Fund (the Fund) established in Kentucky Revised Statute 350.700 to the Commonwealth's General Fund for the 2002–2003 fiscal year. The transfer appears on page 225, line 21 and is listed under Part V, Section J, item 5 of House Bill 269. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

We announced receipt of the proposed amendment in the July 16, 2003, **Federal Register** (68 FR 41980), and in the same document invited public comment and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on August 15, 2003. Please refer to the July 16, 2003, **Federal Register,** for additional background information.

By letter dated July 10, 2003, we requested additional information from Kentucky in the form of a financial analysis (Administrative Record No. KY–1584). We asked that the analysis specifically demonstrate that the transfer of funds would not adversely impact the Fund's ability to complete the reclamation plan for any area which may be in default at any time as required by 30 CFR 800.11(e). By letter dated August 14, 2003, Kentucky responded by stating the Madison Consulting Group would perform an actuarial review of the Fund (Administrative Record No. KY–1599). By letter dated March 3, 2004, the Department for Natural Resources (formerly the Department for Surface Mining Reclamation and Enforcement) transmitted the Kentucky Bond Pool Actuarial Report to us (Administrative Record No. KY–1615). The actuarial review covers the time period July 1, 2000, through June 30, 2003. The full text is available for you to read at the locations listed above at **ADDRESSES.** The key findings of the report are summarized here. The report concluded that the Fund:

1. Should be able to "reasonably withstand the failure of any two of its member companies" to be actuarially sound and viable on a long-term basis (p. 7);
2. is "currently not able to reasonably provide for the 'two failure' funding scenario up to a 75 percent confidence level" (p. 8);
3. needs to increase its assets "so as to provide for potential liabilities and future growth" (p. 8); and
4. is in a less favorable financial situation than the last analysis completed for the period ending June 30, 2000 (p. 8).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not

necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 10, 2004.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 04–6985 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–548; MM Docket No. 01–105; RM–10104]

Radio Broadcasting Services; Shiner, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the petition for rulemaking filed by Stargazer Broadcasting, Inc., proposing the allotment of Channel 232A at Shiner, Texas. We find that the proposal conflicts with a prior-filed counterproposal requesting the allotment of Channel 232A at Flatonia, Texas. Moreover, the petition is untimely filed to be considered as a counterproposal in the context of that proceeding (MM Docket No. 00–148).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–105, adopted March 10, 2004, and released March 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7100 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–675; MB Docket No. 04–69; RM–10859]

Radio Broadcasting Services; Dexter, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Broadcast Equities Corp. ("Petitioner") to add a Class A FM channel to Dexter, Georgia. This proposal would provide Dexter with its first local aural transmission service. Although Petitioner originally proposed to allot Channel 300A to Dexter, that proposal was returned as unacceptable for consideration because it was short spaced to a licensed FM station. Petitioner filed a petition for reconsideration of that dismissal, which this document dismisses as moot in light of the fact that the Commission has found another Class A FM channel, Channel 276A, which complies with the Commission's technical requirements and can be allotted to Dexter, Georgia. The coordinates for that allotment are 32–25–59 NL and 83–01–33 WL, with a site restriction of 3.3 kilometers (2.1 miles) east of Dexter.

DATES: Comments must be filed on or before May 6, 2004, and reply comments on or before May 21, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dan J. Alpert, Esq, The Law Office of Dan J. Alpert; 2120 N. 21st Road; Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–69, adopted March 12, 2004, and released March 15, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, 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 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* contacts.

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 Georgia, is amended by adding Dexter, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–7096 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 61
Tuesday, March 30, 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

Office of the Secretary

Privacy Act: Revision of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of an existing system of records.

SUMMARY: The U.S. Department of Agriculture is giving notice of a revision to its Privacy Act System of Records entitled Claims Against Food Stamp Recipients—USDA/FNS–3.

DATES: This revision will become effective on May 14, 2004, unless modified by a subsequent notice to incorporate comments received from the public. To be assured of consideration, comments must be received by the contact person listed below on or before April 29, 2004.

ADDRESSES: Comments should be addressed to Barbara Hallman, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 820, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Sara Bradshaw, Food and Nutrition Service (FNS) Privacy Act Officer, Room 322, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone (703) 305–2244.

SUPPLEMENTARY INFORMATION: The Privacy Act requires FNS to publish this Privacy Act systems of records of notice to inform the public that certain changes are being made to a system of records containing information on individuals against whom fiscal claims have been established under the Food Stamp Program and to request public comment.

Monetary claims are established against food stamp recipients and former recipients who owe debts due to certain errors or infractions of Food Stamp Program rules. State and Federal government offices seek collections for these debts through recoupment of benefits for recipients still receiving benefits, direct billing to non-recipients, offset of eligible Federal payments, and other means. Debt collection and tracking systems were established to accomplish these collections, and the establishment of and certain changes to such systems require notification to the public under the Privacy Act.

The Treasury Offset Program (TOP).is a mandatory governmentwide delinquent debt matching and payment offset system, centralized in the Department of the Treasury. The Debt Collection Act of 1982, as amended (Pub. L. 97–365), provides statutory authority for Federal agencies to collect debts through administrative offset.

The Debt Collection Improvement Act of 1996 (Pub. L. 104–134) expands the statutory authority for TOP by requiring agencies to transfer delinquent non-tax debt to Treasury for the purpose of offsetting Federal payments to collect delinquent debts owed to the Federal Government. TOP operates in accordance with statutory and regulatory authorities, including those contained in 31 U.S.C. 3716, 3720A, 3701, and 26 U.S.C. 6402(d).

This Notice modifies the system of records entitled Claims Against Food Stamp Recipients—USDA/FNS—3 so that FNS can fully comply with Treasury requirements for various debt collection actions. This notice modifies the systems of records as follows:

Changes to the current use consist of:

- Deleting the referral to Treasury designated collection centers as Food Stamp Program recipient claims are exempt from cross servicing;
- Expanding the use of Federal payroll servicing agencies as match sources in the area of salary offset; and
- No longer submitting debt directly to the United States Postal Service (USPS) for salary offset.

New uses included in this notice are:

- Using the Federal payroll servicing agencies to identify Federal employees and collect debts;
- Referring debtor information to information brokers for locating debtors; and
- Collecting data from Social Security Administration death records.

Data will continue to be shared with the following entities; the Department of the Treasury for the purpose of complying with Treasury requirements for various debt collection actions; State agencies for such purpose as updating claims files, collecting claims, and fiscal reporting; and Congressional offices in response to an inquiry from the Congressional office made at the request of the individual against whom the claim has been established.

FNS has included some technical changes that do not affect the operation of the system. The notice is modified to reflect a change in room number for FNS Grants Management Division. In addition the system of records is modified to retain records for a longer period, 5 years, as required by the Department of the Treasury. Records will now be retrievable by case number or debt number now that the format for submission to TOP requires that data.

Dated: March 23, 2004.

Ann M. Veneman,

Secretary of Agriculture.

SYSTEM NAME:

Claims Against Food Stamp Recipients—USDA/FNS–3

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Grants Management Division, Food and Nutrition Service (FNS), United States Department of Agriculture, 3101 Park Center Drive, Room 744, Alexandria, Virginia 22302, and FNS Regional Offices located in: Atlanta, Georgia, which covers the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Boston, Massachusetts, which covers the States of Connecticut, Massachusetts, Maine, New Hampshire, New York, Rhode Island, and Vermont; Chicago, Illinois, which covers the States of Illinois, Michigan, Minnesota, Ohio, and Wisconsin; Dallas Texas, which covers the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Denver, Colorado, which covers the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming; Trenton, New Jersey, which covers the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia; and San Francisco, California, which covers the States of Alaska, Arizona, California, Guam,

Hawaii, Idaho, Nevada, Oregon, American Samoa, Trust Territories of the Pacific, and Washington. The address of each regional office is listed in the telephone directory of the respective cities listed above under the heading of "United States Government, Department of Agriculture, Food and Nutrition Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received food stamp benefits to which they are not entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of individuals' names, addresses, social security numbers and amounts of claims and amounts of any collections. The information in the system also includes identification of individuals' as Federal employees and Federal payments offset. The system includes limited information about claims such as age, reasons for the overissuance of benefits, and State agency collection efforts. The system may also include information from the Social Security Administration death records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2011–2031.

PURPOSE:

The purpose of this system of records is to facilitate the collection of delinquent food stamp recipient debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the Department of the Treasury (Treasury) for debt collection actions. (2) Referral to the Federal payroll servicing agencies for identification and collection of overpayments. (3) Referral may be made to State agencies for such purposes as updating claims files, collecting claims, and for fiscal reporting. (4) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of the individual. (5) Referral to private information brokers to obtain current addresses for due process notification purposes and deceased records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained by automated data storage methods such as CD–ROM, magnetic tape and disk. Some records may also be maintained on paper.

RETRIEVABILITY:

Records are retrievable by name and social security number. In addition, records may be retrieved by a State assigned case number or debt number.

SAFEGUARDS:

Access to records is limited to those persons who process the records for the specific routine uses stated above. Records in such forms as magnetic tape or CD–ROM are kept in physically secured rooms and/or cabinets. Various methods of computer security limit access to records in automated databases. Paper records that contain taxpayer information will be segregated and physically secured in locked cabinets.

RETENTION AND DISPOSAL:

The FNS retains for no longer than 5 years. All records are either returned to State agencies or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Director of the Grants Management Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 744, Alexandria, Virginia 22302.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified in the preceding paragraph information regarding this system of records or whether the system contains records pertaining to them. Individuals requesting such information must provide their name, address and social security number.

RECORD ACCESS PROCEDURES:

Individuals may obtain information about records in the system that pertain to them by written or oral requests to the system manager. To assure confidentiality and prompt routing, written requests should be marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct requests to the system manager, state the reasons for contesting the information and provide any available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system comes from State agency files concerning food stamp recipient claims, and Internal Revenue Service files of addresses of individuals who have filed income tax returns. Address information and Social Security Administration death records come from a private information broker. Information in the system also comes from the Federal payroll servicing agencies files of individuals who are currently employed by or who are receiving salaries, pensions and other payments from Federal agencies and the USPS, and from all other sources of Federal payments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–6888 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV04–902–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision to a currently approved generic information collection for marketing orders covering fruit crops.

DATES: Comments on this notice must be received by June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, room 2525–S., Washington, DC 20250–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: *moab.docketclerk@usda.gov* or *http://www.regulations.gov*.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave. SW., STOP 0237, room 2525–S, Washington, DC 20250–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: Title: Marketing Orders for Fruit Crops.

OMB Number: 0581–0189.

Expiration Date of Approval: July 31, 2004.

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

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. This notice covers the following marketing order program citations 7 CFR parts 905, 906, 915, 916, 917, 920, 922, 923, 924, 925, 927, 929, and 931. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: Production and marketing research, including paid advertising; volume regulations; reserves, including pools and producer allotments; container regulations; and quality control. Assessments are levied on handlers regulated under the marketing orders.

Several forms are required to be filed by USDA to enable its administration of each program. These include forms covering the selection process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing order programs.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Nominees are selected by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If an order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended order.

Some forms are required to be filed with the committee or board. The orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders rules and regulations.

The information collected is used only by authorized employees of the committees and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee or board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .22 hours per response.

Respondents: Producers, handlers and processors.

Estimated Number of Respondents: 19,576.

Estimated Number of Responses: 38,058.

Estimated Number of Responses per Respondent: 1.96.

Estimated Total Annual Burden on Respondents: 8,579 hours.

Once this information collection is approved, OMB Control No. 0581–0177 Tart Cherries, will be merged into the Fruit Crops information collection package.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave. S.W., STOP 0237, room 2525-S, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: *moab.docketclerk@usda.gov* or *http://www.regulations.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 1400 Independence Ave. SW., STOP 0237, Washington, DC, room 2525–S, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

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

Dated: March 25, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–7039 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–016–1]

Notice of Request for Reinstatement of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an information collection in support of the domestic pseudorabies accelerated eradication program.

DATES: We will consider all comments that we receive on or before June 1, 2004.

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

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–016–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–016–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–016–1" on the subject line.

• Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the domestic pseudorabies accelerated eradication program, contact Dr. Adam Grow, National Surveillance Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–3752. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Pseudorabies Accelerated Eradication Program; Payment of Indemnity.

OMB Number: 0579–0137.

Type of Request: Reinstatement of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing the interstate spread of pests and diseases of livestock within the United States and for conducting eradication programs. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS), USDA, established an accelerated pseudorabies eradication program, including the payment of indemnity, to further pseudorabies eradication efforts in cooperation with States and industry and to protect swine not infected with pseudorabies from the disease.

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus, and is known to cause reproductive problems, including abortion and stillborn death, and death in neonatal pigs, and occasional death losses in breeding and finishing hogs.

The regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies. These regulations authorize the payment of indemnity to herd owners for the depopulation of swine known to be infected with pseudorabies and require the collection of information that includes an appraisal and agreement form, a movement permit, and a report of net salvage proceeds. Additionally, the swine must be moved to slaughter in a means of conveyance sealed with an official seal.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

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

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

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

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

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

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1954918 hours per response.

Respondents: Swine herd owners, State animal health authorities, and accredited veterinarians.

Estimated annual number of respondents: 1,600.

Estimated annual number of responses per respondent: 7.625.

Estimated annual number of responses: 12,200.

Estimated total annual burden on respondents: 2,385 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC this 25th day of March, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–7009 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–017–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations for tuberculosis eradication under which owners of dairy cattle in El Paso, Texas, can receive payments for their animals and other property and the cessation of operations.

DATES: We will consider all comments that we receive on or before June 1, 2004.

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

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies)

to Docket No. 04–017–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–017–1.

• *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–017–1" on the subject line.

• *Agency Web site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: For information on the tuberculosis eradication regulations and payments to owners of dairy cattle in El Paso, Texas, contact Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis Payments to Owners of Dairy Cattle in El Paso, Texas.

OMB Number: 0579–0193.

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

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing the interstate spread of pests and diseases of livestock within the United States and for conducting eradication programs. In connection with this mission, USDA's Animal and Plant Health Inspection Service (APHIS) participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States.

Federal regulations implementing this program are contained in 9 CFR part 77. Additionally, the regulations in 9 CFR part 50 provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease. In part 50, payments are also authorized to owners of dairy cattle in El Paso, Texas, for their animals and other property, the cessation of operations, and relocation of a dairy plant's equipment.

The payment program for owners in El Paso, TX, requires the use of a number of information collection activities, including an agreement to cease operations, the use of metal eartags, movement permits, salvage reports, salvage and disposal affidavits, and payment claim forms.

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

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

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

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

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

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

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.483 hours per response.

Respondents: Owners of dairy operations in the El Paso, TX, area; owner/operators of livestock markets and slaughtering plants in the El Paso, TX, area; cattle purchasers and selling agents; State animal health authorities; and accredited veterinarians.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 6.210526.

Estimated annual number of responses: 590.

Estimated total annual burden on respondents: 875 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 25th day of March 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–7010 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of resource advisory committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, April 19, 2004. The Madera Resource Advisory Committee will meet at the USDA Forest Service Office, North Fork, CA. The purpose of the meeting is: New RAC proposal review and voting, review Holistic Goal & Evaluation Criteria, and Review Sierra Business Council book.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, April 19, 2004. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the USDA Forest Service Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003 Road 225, North Fork, CA, 93643 (559)

877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) New RAC proposal review and voting, (2) review Holistic Goal & Evaluation Criteria, and (3) review of Sierra Business Council book. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: March 23, 2004.

David W. Martin,

District Ranger, Bass Lake Ranger District.

[FR Doc. 04–7024 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet April 16, 2004, (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Processes, (4) Forest Service Projects and other potential projects, (5) Multiple Use—discussion, (6) General Discussion, (7) Next agenda and meeting date.

DATES: The meeting will be held on April 16, 2004, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; E-mail *rhurt@fs.fed.us*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by April 1, 2004. Public comment will have the opportunity to address the committee at the meeting.

Dated: March 24, 2004.

Blaine Baker,

Designated Federal Official.

[FR Doc. 04–7038 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces Rural Development's intention to request an extension for a currently approved information collection in support of the Value-Added Producer Grant (VAPG) Program.

DATES: Comments on this notice must be received by June 1, 2004.

FOR FURTHER INFORMATION, CONTACT: Marc Warman, Program Leader, Funded Programs, Cooperative Services, Rural Business and Cooperative Programs, U.S. Department of Agriculture, STOP 3250, 1400 Independence Avenue, SW., Washington, DC 20252–3250, Telephone Number (202) 690–1431.

SUPPLEMENTARY INFORMATION:

Title: Value-Added Producer Grants.

OMB Number: 0570–0039.

Expiration Date of Approval: October 30, 2004.

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

Abstract: The primary purpose of the Value-Added Producer Grant (VAPG) Program is to enable producers of agricultural commodities to participate in the economic returns to be found in the value-added market. Grants can be used for planning purposes such as feasibility studies, marketing plans, and business plans. Grants can also be used to establish working capital accounts to pay salaries, utilities, and other operating expenses for a new venture to help achieve a positive cash flow. Grants will be awarded on a competitive basis to eligible applicants based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 43 hours per grant application.

Respondents: Independent agricultural producers, farmer and rancher cooperatives, agricultural producer groups, and majority-controlled producer-based groups.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 800.

Estimated Total Annual Burden on Respondents: 34,040 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Division, at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Rural Development functions, including whether the information will have a practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 23, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–7036 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2004

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2004. The maximum dollar award on zero-interest loans for FY 2004 is $450,000. The maximum dollar award on grants for FY 2004 is $300,000. The maximum loan and grant awards stated in this notice are effective for loans and

grants made during the fiscal year beginning October 1, 2003, and ending September 30, 2004. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Diane Berger, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–2383 FAX: (202) 720–2213.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Business-Cooperative Service, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

Alabama

USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705.

Arizona

USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903.

Delaware-Maryland

USDA Rural Development State Office, P.O. Box 400, 4607 South DuPont Highway, Camden, DE 19934–0400, (302) 697–4300.

Florida/Virgin Islands

USDA Rural Development State Office, P.O. Box 147010, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309–2196, (515) 284–4663.

Kansas

USDA Rural Development State Office, Suite 100, 1303 SW First American Place, Topeka, KS 66604, (785) 271–2700.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920.

Maine

USDA Rural Development State Office, P.O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9106.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100.

Minnesota

USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976.

Montana

USDA Rural Development State Office, P.O. Box 850, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59717, (406) 585–2580.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222.

New Jersey

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000.

North Dakota

USDA Rural Development State Office, P.O. Box 1737, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2037.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2500.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000.

Oregon

USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299.

Puerto Rico

USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Building, Suite 601, San Juan, Puerto Rico 00918–6106, (787) 766–5095.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9700.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6010.

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229–5014, (804) 287–1550.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7610.

Wyoming

USDA Rural Development State Office, Federal Building, Room 1005, 100 East B Street, P.O. Box 820, Casper, WY 82602, (307) 261–6300.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2004 for zero-interest loans is $14,914,000, and the projected program level for grants is $10,000,000. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount higher than $200,000. Therefore, the maximum grant award for FY 2004 will be $300,000. This notice will be amended should an appropriation in excess of projected levels be received.

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) (Departmental Regulation 4300–3), prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer."

Dated: March 1, 2004.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 04–7035 Filed 3–29–04; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–2004]

Foreign-Trade Zone 78—Nashville, Tennessee, Application for Subzone, Sanford LP (Pencil Manufacturing and Writing and Art Products Distribution); Shelbyville and Lewisburg, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Government of Nashville & Davidson County, grantee of FTZ 78, requesting special-purpose subzone status for the pencil manufacturing and writing and art products warehousing/distribution facility of Sanford LP (Sanford), in Shelbyville and Lewisburg, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 18, 2004.

The Sanford facilities are comprised of three sites: *Site 1* (3 buildings, 465,000 sq. ft. on 40 acres)—writing instrument repackaging and marker assembly plant, located at One Pencil Street, Shelbyville (Bedford County); *Site 2* (1 building, 490,000 sq. ft. on 21 acres)—pencil manufacturing and art product assembly plant, located at 551 Spring Place Road, Lewisburg (Marshall County); and, *Site 3* (1 building, 574,000 sq. ft. on 55 acres)—main distribution center, located at 1660 Railroad Avenue, Shelbyville (Bedford County). The facility (800 employees) is used for manufacturing of pencils and pencil components and for the assembly, warehousing, inspection, packaging and distribution of writing and art products. However, manufacturing authority is not being requested at this time. About 7 percent of production is currently exported. Certain pencils (HTSUS 9609.10.00) from China are subject to anti-dumping/countervailing (AD/CVD) duties.

Zone procedures would exempt Sanford from Customs duty payments (including AD/CVD) on foreign products that are re-exported. On domestic sales, the company would be able to defer payments (including AD/CVD) until merchandise is shipped from the plant. FTZ designation would further allow Sanford to utilize certain Customs procedures resulting in increased efficiencies for its logistics and distribution operations. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is June 1, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted

during the subsequent 15-day period (to June 14, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 211 Commerce Street, Suite 100, Nashville, TN 37201–1802.

Dated: March 19, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–7095 Filed 3–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Notice of Rescission, in Part, of Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products From Canada

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

SUMMARY: On September 30, 2003, the Department published the initiation of administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada, covering the period August 1, 2002, through July 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation and Deferral of Administrative Reviews* (68 FR 56262) (*Initiation*). This administrative review was initiated on the following exporters: Continuous Color Coat, Ltd. (CCC), Dofasco Inc. (Dofasco), Ideal Roofing Company, Ltd. (Ideal Roofing), Impact Steel Canada, Ltd. (Impact Steel), Russel Metals Export (Russel Metals), Sorevco and Company, Ltd. (Sorevco), and Stelco Inc. (Stelco). For the reasons discussed below, we are rescinding the administrative review of Russel Metals.

EFFECTIVE DATE: March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Addilyn Chams-Eddine or Dana Mermelstein at (202) 482–0648 and (202) 482–1391, 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

On September 30, 2003, the Department published the initiation of administrative review of CCC, Dofasco, Ideal Roofing, Impact Steel, Russel Metals, Sorevco, and Stelco, covering the period August 1, 2002, through July 31, 2003. *See Initiation*. On December 19, 2003 we rescinded the review of CCC, Ideal Roofing and Impact Steel. *See* 68 FR 70764. On December 24, 2003, Russel Metals timely withdrew its request for an administrative review. The request was the only request for an administrative review of Russel Metals. *See Memorandum For the File from Dana S. Mermelstein: Corrosion Resistant Carbon Steel Flat Products from Canada: Russel Metals Withdrawal of Request for Review,* dated January 12, 2004, and on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Rescission, in Part, of the Administrative Review

Pursuant to the Department's regulations, the Department will 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." *See* 19 CFR 351.213(d)(1). Since Russel Metals submitted a timely withdrawal of its request for review, and since this was the only request for a review of Russel Metals, the Department is rescinding its antidumping administrative review of Russel Metals in accordance with 19 CFR 351.213(d)(1). Based on this rescission, the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada covering the period August 1, 2002, through July 31, 2003, now covers the following companies: Dofasco, Sorevco, and Stelco.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–7094 Filed 3–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–833, A–580–854, A–570–897]

Notice of Initiation of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe From Mexico, The Republic of Korea, and the People's Republic of China

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

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: March 30, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Kramer at 202–482–0405 or John Drury at 202–482–0195, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petition

On March 3, 2004, the Department of Commerce ("Department") received an Antidumping Duty Petition filed in proper form by American Steel Pipe Division of American Cast Iron Pipe Company, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation ("Petitioners"). On March 15 and 19, 2004, Petitioners submitted clarifications of the Petition. Petitioners are domestic producers of circular welded carbon quality line pipe ("Line Pipe"). In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleges imports of Line Pipe from Mexico, the Republic of Korea ("Korea") and the People's Republic of China ("China") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioners filed their Petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and they have demonstrated sufficient industry support with respect to the investigations they are presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigations

These investigations cover circular welded carbon quality steel pipe of a

kind used for oil and gas pipelines, not more that 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at heading 7306 and subheadings 7306.10.10.10, 730610.10.50, 7306.10.50.10, and 7306.10.50.50. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of the investigation is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988) ("the ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV").

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

With regard to the domestic like product, Petitioners' definition of the like product is all welded line pipe under 16 inches in diameter. *See* March 15, 2004, amended petition at 2. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, Line Pipe, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product.

In determining whether the domestic petitioner has standing, we considered the industry support data contained in the Petition with reference to the domestic like product as defined above in the "Scope of the Investigations" section. To establish standing, Petitioners first provided production data for the industry for the years 2000 through 2002, obtained from the ITC. Petitioners also provided their own production data during the period 2000 through 2002. However, while Petitioners had their own production data for 2003, Petitioners did not have production data for the entire U.S. industry for the year 2003. Therefore, Petitioners provided their shipments of the domestic like product for the year 2003, and compared them to shipments of the domestic like product for the industry. Petitioners obtained domestic industry shipments from the American Iron and Steel Institute ("AISI") for all line pipe not over 16" in diameter and made adjustments for shipments of seamless line pipe. See Petition at Exhibit I–3 describing how this production data was obtained. In their March 15, 2004, amended petition, Petitioners demonstrated the correlation between shipments and production. *See* Exhibit A–8. Based on the fact that complete production data for year 2003 is unavailable, and that Petitioners have established a close correlation between shipment and production data, we have relied upon shipment data for purposes of measuring industry support.

The Department considered it unreasonable to exclude all seamless line pipe from the shipments data because seamless line pipe can exceed 16" in diameter. Therefore the Department included seamless line pipe in the AISI data for line pipe not over 16" in diameter, but determined that the Petitioners' share of total estimated U.S. shipments of the subject Line Pipe in year 2003 nevertheless represented over 50 percent of total domestic shipments. Therefore, the Department finds the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. For more information on our analysis and the data upon which we relied, see Antidumping Duty

Investigation Initiation Checklist ("Initiation Checklist"), dated March 23, 2004, Appendix II - Industry Support. Therefore, we find that Petitioners have met the requirements of section 732(c)(4)(A) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded treatment as business proprietary information. Petitioners' sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our Initiation Checklist. We corrected certain information contained in the Petition's margin calculations; these corrections are set forth in detail in the Initiation Checklist.

Periods of Investigation

The period of investigation ("POI") for Mexico and Korea will be January 1, 2003, through December 31, 2003, the four most–recently completed fiscal quarters as of the month preceding the month in which the Petition was filed. See 19 CFR 351.204(b). The POI for China will be July 1, 2003, through December 31, 2003, the two most–recently completed fiscal quarters as of the month preceding the month in which the Petition was filed. See 19 CFR 351.204(b).

Mexico

Export Price

To calculate export price ("EP"), Petitioners used average unit values ("AUVs") of U.S. imports for consumption of the subject merchandise and a U.S.-based price quote for Mexican imports of subject merchandise.

For the calculation of EP using AUV, Petitioners calculated the AUVs for two sizes of subject merchandise, *i.e.*, the AUV for sizes up to and including 4.5 inches outside diameter ("OD"), and the AUV for sizes above 4.5 inches OD but not greater than 16 inches OD. *See* Petition at Volume II, Exhibit II–7. The reported AUVs provide a value of subject imports based on free–alongside-ship ("FAS"), packed for delivery. Petitioners calculated net U.S. price by deducting foreign inland freight from a Mexican producer's factory to the Mexican/U.S. border, thus establishing an *ex–factory* price. *See* Petition at Exhibit II–5. The per mile freight charge, exclusive of VAT, is based on a price quote from the same Mexican producer, dated January 6, 2004. See Petition at Exhibit II–3. Petitioners converted Mexican pesos to U.S. dollars using the average exchange rate for the POI. *See* amended petition dated March 15, 2004, at page 1 and Exhibit A–3. The AUVs were reported in U.S. dollars per short ton ($/ST), and converted to metric tons for purposes of the margin calculation.

To calculate EP using the quoted U.S. price, Petitioners obtained a price quote on subject merchandise sold by a U.S. distributor of Line Pipe produced in Mexico. The price information was for Line Pipe with a 4 inch nominal (4.5 inch OD) by 0.224 inch wall thickness ("WT") (the product for which Petitioners obtained a home market price quote), among other products. *See* Petition at Exhibit II–8. The quoted price includes freight to the United States on an FOB basis. The date of the price offering is contemporaneous with the POI.

Petitioners converted the price to U.S. dollars per metric ton using the average exchange rate for the POI. Petitioners then deducted the inland freight and a distributor markup of three percent, applicable to the seller as a U.S. distributor of Mexican–produced subject merchandise. Petitioners reasonably based the distributor markup on one of the Petitioners' experience. *See* Petition at page II–4 and Exhibit A–6 of the amended petition dated March 15, 2004. No other deductions were made from U.S. price.

Normal Value

To calculate home market normal value ("NV"), Petitioners used price quotes obtained for two sizes of Line Pipe offered for sale in Mexico by a major Mexican producer. *See* Petition at Exhibit II–3. Petitioners calculated NV separately for each size of Line Pipe based on the price offering obtained from the Mexican producer. The quote did not include delivery charges. *See* Petition at page II–2 and Exhibit II–5. No adjustments were made for packing costs in the home market.

Petitioners converted Mexican home market prices from pesos per meter to pesos per metric ton and then to U.S. dollars per metric ton using the average exchange rate in effect during the POI. *See* amended petition dated March 15, 2004, at Exhibit A–3.

The price–to-price margin calculation is between 24.16 percent and 31.34. The price–to-AUV margin calculations range between 8.47 percent and 22.44 percent. *See* amended petition dated March 19, 2004, at Exhibit A2–2.

Petitioners included COP and CV calculations in their Petition. However, Petitioners did not allege that the sales of certain circular welded carbon quality line pipe products in the Mexican home market were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act. Therefore, we are not initiating a cost investigation with respect to imports from Mexico at this time. Furthermore, section 773(a)(1) of the Act lays out a specific hierarchy for determining NV. Because petitioners obtained representative home market prices, we have not relied on the CV calculation for purposes of initiation. Accordingly, we are not including in the range of dumping margins any CV comparisons.

Korea

Export Price

To calculate EP, Petitioners used two different prices: AUV of imports of subject merchandise from Korea, and a price offering of Korean imports based on an affidavit from the Vice President of Line Pipe Sales at Lone Star Steel Company describing a lost sale.

For the calculation of EP using AUVs, Petitioners calculated AUVs for two sizes of subject merchandise, the AUV for sizes up to and including 4.5 inches OD, and the AUV for sizes above 4.5 inches OD but not greater than 16 inches OD. Petitioners calculated net U.S. price by deducting international freight from the price. *See* Exhibit II–6 of the petition and Exhibit A–4 of the amended petition dated March 15, 2004. Petitioners estimated ocean freight by subtracting the average unit FAS value of subject imports imported during the POI from the average unit cost, insurance and freight ("CIF") value of subject imports imported during the POI, using the Bureau of the Census IM145 import statistics. *See* page II–4 and Exhibit II–6 of the Petition and page 13 and Exhibits A–4 and A–22 of the amended petition dated March 15, 2004.

Petitioners converted the price to U.S. dollars per metric ton. Petitioners then deducted the estimated ocean freight in the same manner as used in the calculation using AUVs. No other deductions were made from U.S. price.

Normal Value

To calculate home market NV, Petitioners used price quotes obtained by a consultant for two sizes of Line Pipe from two different Korean producers. See pages II–1 II–2 and Exhibit II–3 of the Petition. For the first producer, Petitioners calculated NV separately for each size of Line Pipe.

Petitioners converted the ex–VAT per unit price to a Korean won price per metric ton, then deducted a distributor markup of three percent and converted the resulting net price to U.S. dollars using the average exchange rate for the POI. No adjustment was made for home market inland freight or for packing. Petitioners reasonably based the distributor markup on an affidavit from one of the petitioning Line Pipe manufacturers, which states that distributor markups are commonly at least three to five percent. *See* page II–3 and Exhibit II–2 of the petition and Exhibit A–6 of the amended petition dated March 15, 2004.

For the second Korean producer, Petitioners converted the ex–VAT per unit price to a U.S. dollar price per metric ton for each of two sizes of Line Pipe. To convert to U.S. dollars, Petitioners used the average exchange rate for the POI. Petitioners then deducted credit expenses from the price at a rate of 6.2 percent, based on the International Monetary Fund's *International Financial Statistics* published lending rate during December 2003, the month of the price quote. Petitioners reasonably based the credit expense deduction on the terms listed in the price quote. *See* page II–3 and Exhibit II–2 of the Petition and pages 1 and 14 and Exhibits A–1 and A–24 of the amended petition dated March 15, 2004, and Exhibit A2–4 of the amended petition dated March 19, 2004. No adjustment was made for home market inland freight or for packing.

The price–to-price margin calculations range between 24.55 percent and 28.69 percent.

The price–to-AUV margin calculations range between 36.60 percent and 42.26 percent.

Petitioners stated that they had reason to believe that Line Pipe was sold in Korea at prices less than the COP. *See* Petition at page II–1. To value hot rolled steel purchases in their calculation of COP, Petitioners used a price of 405,000 won per metric ton, the price listed by POSCO, a major Korean supplier of hot–rolled steel, in *Metal Bulletin*. *See* petition at Exhibit II–9. The Department determined that the price of 405,000 won per metric ton was not contemporaneous to the POI, and therefore requested that Petitioners recalculate COP based on the price of hot rolled steel in effect during the POI of 355,000 won per metric ton, a price also listed by POSCO in *Metal Bulletin*. *See* Second Supplemental Questionnaire to the Petition, dated March 18, 2004, at page 2. Petitioners recalculated COP based on this revised price and noted in the amended petition dated March 19, 2004, at page 4, that there are no longer any home market prices below COP. Consequently, we are not initiating a cost investigation with respect to imports from Korea at this time. Furthermore, section 773(a)(1) of the Act lays out a specific hierarchy for determining NV. Because petitioners obtained representative home market prices, we have not relied on the CV calculation for purposes of initiation. Accordingly, we are not including in the range of dumping margins any CV comparisons.

China

Export Price

Petitioners identified the following four companies as producers and/or exporters of subject line pipe from China: Baoji OCTG Plant, Fanyu Zhujiang Steel Pipe Co., Ltd., Jiling Jiyuan Steel Pipe Co., Ltd., and Shengli Petroleum Administrative Bureau Steel Pipe Plant. To calculate EP, Petitioners used AUVs from the Bureau of the Census IM145 import statistics. Petitioners calculated AUVs for two sizes of subject merchandise, up to and including 4.5 inches OD, and above 4.5 inches OD but not greater than 16 inches OD. *See* Petition at pages II–5 to II–6 and Exhibits II–2 and II–13. Petitioners deducted U.S. customs duty to arrive at a price net of customs duty. See amended petition dated March 15, 2004, at A–6 to A–7 and Exhibits A–12 and A–13. Petitioners claim the reported AUVs provide an FAS value of subject imports, already packed and ready for delivery at the foreign port. *See* Petition at pages II–5 to II–6 and Exhibits II–2 and II–13, and amended petition dated March 15, 2004, at pages A–8 to A–9 and Exhibit A–18. Petitioners made no other adjustments or deductions to EP.

Normal Value

Petitioners assert that the Department considers China to be a non–market economy ("NME") country , and therefore constructed NV based on the factors of production ("FOP") methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that China is an NME country. *See, e.g., Notice of Final Determination Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 29, 2002). In accordance with section 771(18)(c)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of China has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on FOP valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of China's NME status and the granting of separate rates to individual exporters.

As required by 19 CFR. section 351.202(b)(7)(i)(C), Petitioners provided dumping margin calculations for two types of merchandise within the proposed scope using the Department's NME methodology described in 19 CFR section 351.408. For the NV calculation, Petitioners based the quantities of FOP, as defined by section 773(c)(3) of the Act (raw materials, labor, energy and packing), for Line Pipe from China on usage rates for an Indian producer of subject merchandise, Surya Roshni, Ltd. ("Surya Roshni") and one of the petitioning parties, and used publicly available surrogate values from India to calculate the respective factor costs. Petitioners assert that information regarding the Chinese producers' usage rates is not reasonably available, and have therefore assumed, for purposes of the Petition, that producers in China use the same inputs in the same quantities as Surya Roshni and the petitioning Line Pipe manufacturer. However, because Surya Roshni's financial statements did not contain sufficient information on the consumption of steel inputs and labor, Petitioners used the steel input data from one of the petitioning Line Pipe manufacturers in the United States. Likewise, Petitioners used the same U.S. manufacturer's labor data for the quantity of labor used in producing a ton of finished Line Pipe. *See* amended petition dated March 15, 2004, at pages A–9 to A–10. Based on the information provided by Petitioners, we believe that Petitioners' FOP methodology represents information reasonably available to Petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Tariff Act, the Petitioners assert that India is the most appropriate surrogate country for China, claiming India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to China in terms of per capita gross national income (GNI). The Department's regulation states it will place primary emphasis on per capita GNI in determining whether a given

market economy is at a level of economic development comparable to the NME country (*see* 19 CFR 351.408(b)). In recent antidumping cases involving China, the Department identified a group of countries at a level of economic development comparable to China based primarily on per capita GNI. This group includes India, Indonesia, Sri Lanka, the Philippines, and Pakistan. Petitioners assert that India is the most appropriate surrogate. Based on the information provided by the Petitioners, we believe that the Petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Tariff Act, Petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials were valued based on the financial statements of Surya Roshni. *See* pages II–4 to II–5 and Exhibits II–7 and II–12 at page 33, and the amended petition dated March 15, 2004, at Exhibits A–13 and A–19. With regard to steel inputs, Petitioners used the per–metric ton price paid by Surya Roshni for the coil and strip used to produce subject merchandise. *See.* amended petition dated March 15, 2004, at pages A–9 to A–10. Surya Roshni's financial statements identified the quantities and prices of electricity, furnace oil, and natural gas used in producing the subject merchandise. The updated labor rate was taken from the Department's web site. Surrogate values were not adjusted for inflation. Depreciation, overhead, SG&A, interest expense, packing, and profit ratios all came from Surya Roshni's financial statement. *See* Petition at pages II–4 to II–5 and Exhibits II–2, II–9, II–10, and II–12, and amended petition dated March 15, 2004, at pages A–9 to A–10 and Exhibit A–2.

The Department accepts Petitioners' calculation of NV based on the above arguments, which resulted in an estimated dumping margin of 67.24 percent for API 5LB, 12" OD, 0.280 Wall line pipe, and 43.53 percent for API 5LB, 4" OD, 0.280 Wall line pipe.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe imports of Line Pipe from Mexico, Korea and China are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

With respect to Mexico, Korea and China, Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.The Petition contains information on the evolution of the volume and prices of the allegedly dumped imports over the period beginning with 2001 and ending in 2003. See Petition at page I–16 and Exhibits I–12 and I–13. The Petition also contains evidence showing the effect of these import volumes and prices on the shipments and production of the domestic like product and of the consequent impact on the domestic industry. *See* Petition at pages I–15 to I–19 and Exhibits I–9, I–10, I–11, I–17, I–18, I–19, I–20, I–21, and I–23. This evidence shows lower AUVs of subject Line Pipe and price suppression of the domestic like product, resulting in declining value of sales, declining market share and lost sales. For a full discussion of the allegations and evidence of material injury, see Initiation Checklist at Attachment IV.

Initiation of Antidumping Investigations

Based on our examination of the Petition covering Line Pipe, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of Line Pipe from Mexico, Korea and China are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Mexico, Korea and China. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

International Trade Commission Notification

The ITC will preliminarily determine no later than April 19, 2004, whether there is reasonable indication that imports of Line Pipe from Mexico, Korea and China are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 23, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–7093 Filed 3–29–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

The New York Structural Biology Center, Inc., et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW, Washington, DC.

Docket Number: 04–001. *Applicant:* The New York Structural Biology Center, Inc., New York, NY 10027. *Instrument:* Electron Microscope, Model Tecnai G² F20 Twin Cryo. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 69 FR 9301, February 27, 2004. *Order Date:* October 7, 2003.

Docket Number: 04–004. *Applicant:* University of California, Santa Barbara 93106–5050 . *Instrument:* Electron Microscope, Model Tecnai G² F30 U–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 69 FR 9301, February 27, 2004. *Order Date:* December 3, 2002.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being

manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–7092 Filed 3–29–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032204G]

Marine Fisheries Advisory Committee; Charter Renewal

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

ACTION: Notice of renewal.

SUMMARY: Notice is hereby given of the renewal of the charter of the Marine Fisheries Advisory Committee (MAFAC) for 2 years.

DATES: The term of the existing Charter is from March 8, 2004 to March 8, 2006.

ADDRESSES: A copy of the Charter is available from the Office of Constituent Services, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, or online at *www.nmfs.noaa.gov/mafac/htm.*

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Outreach and Education Coordinator; telephone: (301) 713–2379.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App.2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Secretary of Commerce (Secretary) has determined that the renewal of the MAFAC Charter is in the public interest in connection with the performance of duties imposed on the Department by law.

History

MAFAC was first established in February 1971 to advise the Secretary on all living marine resource matters to ensure that the Nation's living marine resource policies and programs meet the needs of commercial and recreational fishermen and environmental, state, consumer, academic, and other national interests. The Secretary continues to rely on the expertise of MAFAC for the development of national fisheries policy and program initiatives. This advice is essential to meet the needs of the fisheries and of those concerned with the fisheries.

Membership

MAFAC will consist of at least 15, but not more that 21 members to be appointed by the Secretary to assure a balanced representation among commercial and recreational fishermen and environmental, state, consumer, academic, and other national interests.

Function

MAFAC will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. Copies of MAFAC's revised charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

Dated: March 23, 2004.

Rebecca Lent,

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

[FR Doc. 04–7085 Filed 3–29–04; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of multi-purpose lighters. Multi-purpose lighters are hand-held flame-producing products that operate on fuel and have an ignition mechanism. They typically are used to light devices such as charcoal and gas grills and fireplaces. Devices intended primarily for igniting smoking materials are excluded from the multi-purpose lighter category.

This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Multi-Purpose Lighters. 16 CFR part 1212. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than June 1, 2004.

ADDRESSES: Written comments should be captioned "Multi-Purpose Lighters" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about this proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1212, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1999, the Commission issued the Safety Standard for Multi-Purpose Lighters (16 CFR part 1212) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2084) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with these lighters. The standard contains performance requirements for multi-purpose lighters that are intended to make lighters subject to the standard resist operation by children younger than five years of age.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the

standard for multi-purpose lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter into commerce. These regulations also require manufacturers, importers, and private labelers of multi-purpose lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR part 1212, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of multi-purpose lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if multipurpose lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations for multi-purpose lighters under control number 3041–0130. OMB's approval will expire on July 31, 2004. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The cost of the rule's testing, reporting, recordkeeping, and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain and submit records to CPSC. There are an estimated 100 firms involved. Currently the Commission believes that there may be as many as 200 different models of multi-purpose lighters on the market. With a few exceptions, most manufacturers and importers have more than one model. Each manufacturer would spend approximately 50 hours per model. Therefore, the total annual amount of time that will be required for complying with the testing, recordkeeping, and reporting requirements of the rule is approximately 10,000 hours. (100 firms × two models × 50 hours = 10,000 hours.) The annualized cost to industry for the 10,000 hour burden for collection of information is $244,800 based on an estimated hourly wage of $24.48/hr for the testing and recordkeeping required by the regulation.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 25, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–7086 Filed 3–29–04; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

National Senior Service Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP) of the Corporation for National and Community Service, published in 68 FR 8491, February 21, 2003.

DATES: These guidelines are effective as of March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, Peter L. Boynton, Senior Program Officer, National Senior Service Corps, 1201 New York Avenue, NW., Washington, DC 20525, by telephone at (202) 606–5000, ext. 554, or e-mail: *seniorfeedback@cns.gov.*

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 69 FR 7336–7338, February 13, 2004. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels (See attached list of High Cost Areas). The level of eligibility is rounded to the next higher multiple of $5.00.

In determining income eligibility, consideration should be given to the following, as set forth in 45 CFR 2551–2553 dated October 1, 1999, as amended per the **Federal Register**, Vol. 67, No. 188, Friday, September 27, 2002.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party, and must not exceed 15 percent of the applicable Corporation income guideline.

Annual income is counted for the past 12 months, for serving SCP and FGP volunteers, and is projected for the subsequent 12 months, for applicants to become SCP and FGP volunteers, and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors must count the value of shelter, food, and clothing, if provided at no cost the applicant, enrollee or spouse. Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs:

2004 FGP/SCP INCOME ELIGIBILITY LEVELS

[Based on 125 Percent of DHHS Poverty Guidelines]

States	Family units of			
	One	Two	Three	Four
All, except High Cost Areas, Alaska & Hawaii.	$11,640	$15,615	$19,590	$23,565

For family units with more than four members, add $3,975 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

2004 FGP/SCP INCOME ELIGIBILITY LEVELS FOR HIGH COST AREAS

[Based on 135 Percent of DHHS Poverty Guidelines]

States	Family units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$12,570	$16,865	$21,155	$25,450
Alaska	15,705	21,075	26,450	31,820
Hawaii	14,445	19,390	24,330	29,270

For family units with more than four members, add: $4,295 for all areas, $5,375 for Alaska, and $4,945 for Hawaii, for each additional member.

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas:

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget)

Alaska:

(All Locations)

California:

Los Angeles/Compton/San Gabriel/Long Beach/Hawthorne (Los Angeles County)

Santa Barbara/Santa Maria/Lompoc (Santa Barbara County)

Santa Cruz/Watsonville (Santa Cruz County)

Santa Rosa/Petaluma (Sonoma County)

San Diego/El Cajon (San Diego County)

San Jose/Los Gatos (Santa Clara County)

San Francisco/San Rafael (Marin County)

San Francisco/Redwood City (San Mateo County)

San Francisco (San Francisco County)

Oakland/Berkeley (Alameda County)

Oakland/Martinez (Contra Costa County)

Anaheim/Santa Ana (Orange County)

Oxnard/Ventura (Ventura County)

Connecticut:

Stamford (Fairfield)

District of Columbia/Maryland/Virginia:

District of Columbia and surrounding Counties in Maryland and Virginia.

MD Counties: Anne Arundel, Calvert, Charles, Cecil, Frederick, Howard, Montgomery, Prince George's, and Queen Anne's Counties.

VA Counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

Hawaii:

(All Locations)

Illinois:

Chicago/Des Plaines/Oak Park/Wheaton/Woodstock (Cook, DuPage and McHenry Counties)

Massachusetts:

Barnstable (Barnstable)

Edgartown (Dukes)

Boston/Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties)

Worcester (Worcester City)

Brockton/Wellesley/Braintree/Boston (Norfolk County)

Dorchester/Boston (Suffolk County)

Worcester (City) (Worcester County)

New Jersey:

Bergen/Passaic/Patterson (Bergen and Passaic Counties)

Jersey City (Hudson)

Middlesex/Somerset/Hunterdon (Hunterdon, Middlesex and Somerset Counties)

Monmouth/Ocean/Spring Lake (Monmouth and Ocean Counties)

Newark/East Orange (Essex, Morris, Sussex and Union Counties)

Trenton (Mercer County)

New York:

Nassau/Suffolk/Long Beach/Huntington (Suffolk and Nassau Counties)

New York/Bronx/Brooklyn (Bronx, King, New York, Putnam, Queens, Richmond and Rockland Counties)

Westchester/White Plains/Yonkers/Valhalla (Westchester County)

Ohio:

Medina/Lorain/Elyria (Medina/Lorain County)

Pennsylvania:

Philadelphia/Doylestown/West Chester/Media/Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties)

Washington:

Seattle (King County)

Wyoming:

(All Locations)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

2004 DHHS POVERTY GUIDELINES FOR ALL STATES

States	Family Units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$9,310	$12,490	$15,670	$18,850
Alaska	11,630	15,610	19,590	23,570
Hawaii	10,700	14,360	18,020	21,680

For family units with more than four members, add: $3,180 for all areas, $3,980 for Alaska, and $3,660 for Hawaii, for each additional member.

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: March 24, 2004.

Angela Roberts,

Senior Program Officer, National Senior Service Corps.

[FR Doc. 04–7081 Filed 3–29–04; 8:45 am]

BILLING CODE 6050–$$–P

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 by April 29, 2004.

Title, Form, and OMB Number: Department of Defense Public and Community Service Registry (PACS) Programs; DD Forms 2581 and 2581–1; OMB Number 0704–0324.

Type of Request: Revision.

Number of Respondents: 350.

Responses per Respondent: 1.

Annual Responses: 350.

Average Burden per Response: 14 minutes.

Annual Burden Hours: 82.

Needs and Uses: In accordance with 10 U.S.C. 1143(c), the Public and Community Service (PACS) Registry provides registered PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization. The 800 phone resume request line associated with this information collection, as well as the following two forms: DD Form 2581, *Operation Transition Employer Registration*; DD Form 2581–1, *Public and Community Service Organization Validation*; are used in support of the Department of Defense Programs for public service employment assistance.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal government; State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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 Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–6979 Filed 3–29–04; 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).

DATES: Consideration will be given to all comments received by April 29, 2004.

Title, Form, and OMB Number: Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and Related Clauses at 252.225; DD Form 2139; OMB Number 0704–0229.

Type of Request: Extension.

Number of Respondents: 22,415.

Responses Per Respondent: 7 (approximate).

Annual Responses: 165,134.

Average Burden Per Response: 0.32 hours.

Annual Burden Hours: 352,380.

Needs and Uses: DoD needs this information to ensure compliance with restrictions on the acquisition of foreign products imposed by statute or policy to protect the industrial base; to ensure compliance with U.S. trade agreements and memoranda of understanding that promote reciprocal trade with U.S. allies; and to prepare reports for submission to the Department of Commerce on the Balance of Payments. Summaries of the related clauses were published on November 26, 2003, at 68 FR 66403.

Affected Public: Business or Other For Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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 Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7045 Filed 3–29–04; 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 by April 29, 2004.

Title, Form, and OMB Number: Facilities Available for the Construction or Repair of Ships; SF Form 17; OMB Number 0703–0006.

Type of Request: Reinstatement.

Number of Respondents: 130.

Responses per Respondent: 1.

Annual Responses: 130.

Average Burden per Response: 4 hours.

Annual Burden Hours: 520.

Needs and Uses: This collection of information provides NAVSEASYSCOM and the Maritime Administration with a list of facilities available for the construction or repair of ships.

The information is utilized in a database for assessing the production capacity of the individual shipyards. Respondents are businesses involved in shipbuilding and/or repair.

Affected Public: Business or Other For Profit.

Frequency: Annually.

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 Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7046 Filed 3–29–04; 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 by April 29, 2004.

Title, Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability CHAMPUS; DD Form 2527; OMB Number 0720–0003.

Type of Request: Reinstatement.

Number of Respondents: 133,000.

Responses Per Respondent: 1.

Annual Responses: 133,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 33,250.

Needs and Uses: This information collection is completed by CHAMPUS beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD Health Affairs, 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 Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 24, 2004.

L.M. Bynum,

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

[FR Doc. 04–7047 Filed 3–29–04; 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 by April 29, 2004.

Title, Form, and OMB Number: Professional Qualifications, Medical and Peer Reviews; CHAMPUS Form 780; OMB Number 0720–0005.

Type of Request: Reinstatement.

Number of Respondents: 60.

Responses Per Respondents: 60.

Responses Per Respondent: 1.

Annual Responses: 60.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 15.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within CHAMPUS. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file. Respondents are medical professionals who provide medical and peer review of cases appealed to the Office of Appeals, Hearings and Claims Collection Division, TRICARE Management Activity.

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

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD Health Affairs, 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 Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–7048 Filed 3–29–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Implementation of the TRICARE Home Health Agency Prospective Payment System

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Notice of implementation of Home Health Agency Prospective Payment System.

SUMMARY: This notice is to advise interested parties of the phased-in implementation of the Home Health Agency Prospective Payment System (HHA PPS). Public notification of HHA PPS implementation was required under a previous interim final rule (67 FR 40597) published in the **Federal Register** on June 13, 2002, if TRICARE was unable to effectively and efficiently implement the HHA PPS within the specified statutory effective date of August 12, 2002.

The HHA PPS will be implemented with the start health care delivery date of the following regional groupings of states under each of the TRICARE Next Generation of Contracts (T-Nex); *e.g.*, as of June 1, 2004, home health agency services in the state of Washington will be processed and paid under the HHA PPS as part of the West T-Nex regional contract.

T-Nex region/contractor	States	Start healthcare delivery
North (Health Net Federal Services, Inc.).	Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin, West Virginia, Virginia (except the Northern Virginia/National Capital Area), North Carolina, Eastern Iowa, Rock Island, IL, Fort Campbell catchment area of Tennessee.	July 1, 2004.
	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Northern Virginia, West Virginia (portion).	September 1, 2004.
South (Humana Military Healthcare Services).	Oklahoma, Arkansas and major portions of Texas and Louisiana	November 1, 2004.
	Alabama, Florida, Georgia, Mississippi, Eastern Louisiana, South Carolina, Tennessee, small area of Arkansas, New Orleans area.	August 1, 2004.
West (TriWest Healthcare Alliance Corp.).	Washington, Oregon, Northern Idaho	June 1, 2004.
	California, Hawaii, Alaska	July 1, 2004.
	Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, western portion of Texas, Wyoming.	October 1, 2004.

FOR FURTHER INFORMATION CONTACT: David Bennett, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3494.

Dated: March 23, 2004.

L.M. Bynum,

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

[FR Doc. 04–6978 Filed 3–29–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

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

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 and is available for licensing by the Department of the Navy.

U.S. Patent number 6,615,919 entitled "Well Pipe Extraction Apparatus."

ADDRESSES: Requests for copies of the patent application cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA 93043–4370, and must include the U.S. Patent number.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA 93043–4370, telephone (805) 982–4897.

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

Dated: March 17, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–7004 Filed 3–29–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovative Research Program (SBIR); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

DATES: Applications Available: March 31, 2004.

Deadline for Notice of Intent to Apply: April 30, 2004.

Deadline for Transmittal of Applications: June 1, 2004.

Eligible Applicants: Small business concerns as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are

permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a SBIR award until the SBA makes a determination.

Estimated Available Funds: $1,125,000 for new Phase I awards.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, less prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months. The Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Note: Maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally funded research for economic and social benefits to the Nation.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The goals of the SBIR program are in concert with NIDRR's 1999–2003 Long-Range Plan (Plan). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Background

The Small Business Reauthorization Act (Act) of 2000 was enacted on December 21, 2000. The Act requires certain agencies, including the Department, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or research and development (R/R&D) through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I is to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be prerequisite to further Department support in Phase II.

Phase II: Phase II is to expand on the results of and to further pursue the development of Phase I projects. Phase II is the principal R/R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods of up to 2 years in amounts up to $500,000.

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

Priorities: SBIR projects are encouraged to look to the future by exploring uses of technology to ensure equal access to education, employment, and community environments and information. Under this competition we are particularly interested in applications that address one of the following priorities.

Invitational Priorities: For FY 2004 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications. The invitational priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families.

These priorities are:

(1) Development of technology to support access, promote integration, or foster independence of individuals with disabilities in the community, workplace, or educational setting.

(2) Development of technology to enhance sensory or motor function of individuals with disabilities.

(3) Development of technology to support transition into post-secondary educational or employment settings for individuals with disabilities.

(4) Development of technology that promotes access to information in educational, employment and community settings.

Each applicant should describe the approaches they expect to use to collect empirical evidence that demonstrates the effectiveness of the technology they are proposing in an effort to assess the efficacy and usefulness of the technology.

Note: New technologies must adhere to universal design principles and Guidelines for More Accessible Design. Universal design is defined as "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design" (The Center for Universal Design, 1997. The Principles of Universal Design, Version 2.0. Raleigh, NC: North Carolina State University. Web: *http://www.design.ncsu.edu*). Accessible design of consumer products will seek to minimize or alleviate barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products (For more information see—*http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*).

Program Authority: The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638) and title II of the Rehabilitation Act of 1973, as amended, Pub. L. 105–220 (29 U.S.C. 760–764).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 97, 98 and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,125,000 for new Phase I awards.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation

for OSERS, less prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months. The Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: Maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months for Phase I.

III. Eligibility Information

1. *Eligible Applicants:* Small business concerns as defined by the SBA at the time of the award. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain an application package from ED Pubs, write or call the following: ED Pubs P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133S–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: Due to the open nature of the SBIR competition, and to assist with the selection of reviewers for this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). While the submission is mandatory, the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application. We will notify only those potential applicants who have failed to submit an LOI that meets the following requirements.

Each LOI should be limited to a maximum of four pages and include the following information: (1) the title of the proposed project, which invitational priority will be addressed, the name of the company, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of a LOI is a prerequisite for eligibility to submit an application.

NIDRR will accept a LOI via surface mail, e-mail, or facsimile by April 30, 2004. If a LOI is submitted via e-mail or facsimile, the applicant must also provide NIDRR with the original signed LOI within seven days after the date the e-mail or facsimile is submitted. The LOI must be sent to: Surface mail: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, Switzer Building, Washington, DC 20202–2645; or fax (202) 205–8515; or e-mail: *carol.cohen@ed.gov*.

For further information regarding the LOI requirement contact Carol Cohen at (202) 205–5666.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable, and required forms, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). Standard black type should be used to permit photocopying.
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The page limit does not apply to the budget section, including the narrative budget justification; the one-page abstract; the resumes; the bibliography; the letters of support; certifications; statements; related application(s) or award(s); or documentation of multiple Phase II awards, if applicable.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (ED Standard Form 424); budget requirements (ED Form 524) and other required forms; an abstract, certifications, and statements; a technical content project narrative (subject to the 25-page limit); and related application(s) or award(s) and documentation of multiple Phase II awards, if applicable.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Content Restrictions:* If an applicant chooses to respond to the invitational priorities and an application is relevant to more than one priority, the applicant must decide which priority is most relevant to the application and submit the application under that priority only. There is no limitation on the number of different applications that an applicant

may submit under this competition. An applicant may submit separate applications on different topics, or different applications on the same priority. However, each application must respond to only one priority.

4. *Submission Dates and Times:*

Applications Available: March 31, 2004.

Deadline for Notice of Intent To Apply: April 30, 2004.

Deadline for Transmittal of Applications: June 1, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants under the Small Business Innovative Research Program—CFDA Number 84.133S–1 be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

If you are unable to submit an application through the e-GRANTS system, you may submit a written request for a waiver of the electronic submission requirement. In your request, you should explain the reason or reasons that prevent you from using the Internet to submit your application. Address your request to: Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, Switzer Building, Washington, DC 20202–2704. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, you are unable to submit an application electronically, you must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented you from using the Internet to submit your application.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Small Business Innovative Research Program—CFDA Number 84.133S–1 is one of the programs included in the pilot project. If you are an applicant under the Small Business Innovative Research Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of e-Application. If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. The data you enter online will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- 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 must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements and content restrictions described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Small Business Innovative Research Program at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field;
- The number of new or improved tools, instruments, protocols, and technologies developed and published by grantees that are deemed to improve the measurement of disability and rehabilitation-related concepts and to contribute to changes or improvements in policy, practice, and outcomes for individuals with disabilities and their families; and
- The number of new or improved assistive and universally designed technologies, devices, and systems developed by grantees that are deemed to improve rehabilitation services and outcomes and enhance opportunities for participation by, and are successfully transferred to industry for potential commercialization.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kristi E. Wilson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3433, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 260–0988 or by e-mail: *kristi.wilson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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.*

Dated: March 24, 2004.

Troy R. Justesen,

Acting Deputy Assistant, Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–7083 Filed 3–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 2003 through December 31, 2003.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507 (press 3).

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 a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2003 through December 31, 2003.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals

involved, personally identifiable information has been deleted, as appropriate.

Part B

Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; use of Funds; Authorization of Appropriations

Topic Addressed: Use of Funds.

• Letter dated November 18, 2003 to Florida Department of Education Director of Special Education Shan Goff, clarifying that under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees to the parents of a child with a disability who is a prevailing party in a due process hearing, but the IDEA does not provide a reciprocal right for a local educational agency (LEA) or State educational agency (SEA) (although it may be permissible for an LEA or SEA to recover fees under other applicable federal or State laws).

Section 612—State Eligibility

Topic Addressed: Condition of Assistance.

• Letter dated December 24, 2003 to Attorney Leigh M. Manasevit, regarding the requirement that North Carolina revise its State Plan because a public agency may not use the due process procedures to override a parent's refusal to consent to the initial provision of special education and related services.

Topic Addressed: Procedural Safeguards.

• Letter dated December 10, 2003 to individuals (personally identifiable information redacted), regarding options available to parents to resolve disputes relating to the requirements of Part B of the IDEA and clarifying that the Part B regulations do not include a provision for review by the Office of Special Education Programs of a State's complaint decision.

• Letter dated October 27, 2003 to California State Director of Special Education Alice Parker, clarifying that the Part B regulations require a State to resolve signed, written complaints regarding State eligibility requirements.

Topic Addressed: Confidentiality of Education Records.

• Letter dated October 31, 2003 to individual (personally identifiable information redacted), from Family Policy Compliance Office Director LeRoy S. Rooker, clarifying that under the Family Educational Rights and Privacy Act (FERPA) and the IDEA, a school system may not release to the parents of a student, for whom a due process hearing has been filed, the names and personally identifiable information of other students (without consent from their parents) that are contained in the student's record.

Topic Addressed: Least Restrictive Environment.

• Letter dated November 4, 2003 to New Jersey Department of Education Director of Special Education Barbara Gantwerk, regarding the least restrictive environment provisions of the IDEA and the placement of children with disabilities in segregated settings, with parental approval.

Topic Addressed: State Educational Agency General Supervisory Authority.

• Letters dated October 24, 2003 to New Jersey Statewide Parent Advocacy Network Executive Director Diana MTK Autin and to New Jersey Commissioner of Education William L. Librera, clarifying that the IDEA does not prohibit a State or school district from entering into an agreement with another entity to provide special education and related services, but the State and school district remain responsible for ensuring the provision of a free appropriate public education to the child, and the parents cannot be denied the opportunity to pursue complaints against the State and school district.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter Schools.

• Letter dated December 18, 2003 to Texas Education Agency Associate Commissioner Susan Barnes, clarifying that the IDEA statute and its corresponding regulations do not make any exceptions to the requirements under 20 U.S.C. 1412(a)(1) and 20 U.S.C. 1412(a)(3)–(6) when a student is provided an education through information and communication technologies (*e.g.*, via the Internet, teleconferencing, or tele-video conferencing).

• Letter dated November 10, 2003 to Harmony Community School Executive Director David Nordyke, clarifying that issues regarding a State's public school funding formula, including State funding of special education and related services, are matters to be resolved at the State level, as long as the provisions of the IDEA are met.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs.

• Letter dated October 2, 2003 to Daniel W. Morse, Esq., clarifying that a Section 504 plan that does not meet the specific individualized education program (IEP) requirements of Part B of the IDEA may not be used to substitute for an IEP.

Section 615—Procedural Safeguards

Topic Addressed: Due Process Hearings.

• Letter dated December 10, 2003 to individual (personally identifiable information redacted), clarifying that a party aggrieved by a decision in a hearing (in a one-tier due process hearing system) does not have a right to an appeal to the SEA merely because the State transfers responsibility for conducting due process hearings to the State's Office of Administrative Hearings, and clarifying that the State is not automatically a proper party to an administrative or judicial proceeding merely because the State operates a one-tier system.

Part C

Infants and Toddlers With Disabilities

Section 634—Eligibility

Topic Addressed: Evaluations.

• Letter dated November 6, 2003 to Connecticut Part C Coordinator Linda Goodman, clarifying whether audiological evaluations must be provided to an infant or toddler referred to Part C, who is suspected of having a communication delay, whose hearing has not been tested, and for whom an audiology evaluation is determined to be needed.

Section 635—Requirements for Statewide System

Topic Addressed: Eligibility Criteria.

• Letter dated October 24, 2003 to Connecticut Part C Coordinator Linda Goodman, regarding the State's obligation to evaluate and assess infants or toddlers who are suspected of having a disability and whether the State can deny services to families who refuse to pay or repeatedly fail to keep appointments.

Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: Procedural Safeguards.

• Letter dated October 17, 2003 to U.S. Congressman Ruben Hinojosa clarifying that the provisions of the Safe and Drug-Free Schools and Communities Act (Title IV of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) do not prohibit the presence of a student's prescription drugs, or related equipment, at school.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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 published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 23, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–7032 Filed 3–29–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–213–B]

Application To Export Electric Energy; Coral Power, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: Coral Power, L.L.C. (Coral) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 29, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 11, 1999, FE issued Order No. EA–213 authorizing Coral to transmit electric energy from the United States to Canada using the international electric transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Authority, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, Vermont Electric Transmission Company. That two-year authorization expired on August 11, 2001. On August 13, 2001, FE issued Order No. EA–213–A renewing Coral's export authorization. That authorization expired on August 13, 2003.

On March 13, 2004, Coral filed an application with FE for renewal of the export authority contained in Order No. EA–213–A. Coral has requested that any Order that may be issued in this proceeding be effective for a period of five years.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Canada should be clearly marked with Docket EA–213–B. Additional copies are to be filed directly with Robert Reilley, Vice President, Regulatory Affairs, Coral Power, L.L.P., 909 Fannin, Suite 700, Houston, TX 77010.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy home page, select "Electricity Regulation", then "Pending Procedures" from the options menus.

Issued in Washington, DC, on March 25, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–7087 Filed 3–29–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–262–A]

Application to Export Electric Energy; TransCanada Power Marketing Ltd.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: TransCanada Power Marketing Ltd. (TCPM) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 29, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4608 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On June 4, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–262 authorizing TCPM to transmit electric energy from the United States to Canada as a power marketer. That two-year authorization expires on June 4, 2004.

On March 4, 2004, FE received an application from TCPM to renew its authorization contained in Order No. EA–262. TCPM is incorporated in the State of Delaware, with its principal place of business in Westborough, Massachusetts. TCPM does not own generation or transmission assets and does not have a franchised electric power service area. TCPM operates as a wholesale and retail marketer of electric power.

TCPM proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Company, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by TCPM, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the TCPM application to export electric energy to Canada should be clearly marked with Docket EA–262–A. Additional copies are to be filed directly with Angela Avery, Associate General Counsel, TransCanada Power Marketing Ltd., 450—1st Street, SW., Calgary, Alberta, T2P 5H1.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on March 25, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–7084 Filed 3–29–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–78–000, et al.]

Mesquite Investors, L.L.C., et al.; Electric Rate and Corporate Filings

March 23, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mesquite Investors, L.L.C.; Dartmouth Power Holding Company, L.L.C.; Mesquite Colorado Holdco, L.L.C.; Vandolah Holding Company, L.L.C.; and Northern Star Generation LLC

[Docket No. EC04–78–000]

Take notice that on March 19, 2004, Mesquite Investors, L.L.C., Dartmouth Power Holding Company, L.L.C., Mesquite Colorado Holdco, L.L.C., Vandolah Holding Company, L.L.C. and Northern Star Generation LLC (jointly, Applicants) filed with the Commission an application pursuant to Section 203 of the Federal Power Act for authorization to effectuate an indirect change of control over the facilities owned by Dartmouth Power Associates Limited Partnership, Front Range Power Company, L.L.C. and Vandolah Power Company, L.L.C. that are subject to the Commission's jurisdiction under the Federal Power Act. Applicants also requested authorization for an internal reorganization. Applicants also requested expedited consideration of the Application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: April 9, 2004.

2. Williams Energy Marketing & Trading Company; California Independent System Operator, et al. v. Cabrillo Power I LLC, et al.

[Docket Nos. ER02–91–001; ER02–303–001; and EL02–15–001]

Take notice that on March 19, 2004, Williams Energy Marketing & Trading Company, submitted a Compliance Refund Report, in response to the Commission's Order issued October 31, 2003 in Docket Nos. ER02–91–000, ER02–303–000, and EL02–15–000, 105 FERC ¶ 61,165 (2003).

Comment Date: April 9, 2004.

3. Public Service Company of Colorado

[Docket No. ER03–971–003]

Take notice that on March 18, 2004, Public Service Company of Colorado (PS Colorado) submitted a compliance filing pursuant to the order issued February 27, 2004, in Docket Nos. ER03–971–000, 001 and 002, 106 FERC ¶ 61,189 (2004).

PS Colorado states that a copy of this filing has been served on each person designated on the official service list in Docket No. ER03–971–000.

Comment Date: April 8, 2004.

4. Duke Energy Corporation

[Docket Nos. ER04–455–001 and ER04–506–001]

Take notice that on March 19, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing revised Network Integration Service Agreements (NITSAs) with (1) North Carolina Electric Membership Corporation and (2) Western Carolina Energy, LLC, as agent for Energy United Electric Membership Corporation, Piedmont Electric Membership Corporation, Blue Ridge Electric Membership Corporation, and Rutherford Electric Membership. Duke seeks an effective date for the revised NITSAs of January 1, 2004.

Comment Date: April 9, 2004.

6. Lowell Power LLC

[Docket No. ER04–557–001]

Take notice that on March 19, 2004, Lowell Power LLC (Seller) submitted to the Commission a revised electric rate schedule reflecting its name change from UAE Lowell Power LLC to Lowell Power LLC.

Comment Date: April 9, 2004.

7. California Independent System Operator Corporation

[Docket No. ER04–609–001]

Take notice that on March 19, 2004, the California Independent System Operator Corporation (ISO) submitted an errata filing concerning Amendment No. 58 to the ISO Tariff, which the ISO filed for acceptance by the Commission on March 2, 2004, in the Docket No. ER04–609–001.

The ISO states that the filing has been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, all parties in the Amendment No. 54 proceeding (Docket

No. ER03–1046), and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: April 9, 2004.

8. Reliant Energy Aurora, LP

[Docket No. ER04–662–000]

Take notice that on March 18, 2004, Reliant Energy Aurora, LP (Aurora) submitted for filing its FERC Rate Schedule No. 1, pursuant to which Aurora will provide black start service to Commonwealth Edison Company. Aurora requests an effective date of May 19, 2004.

Comment Date: April 8, 2004.

9. Alabama Power Company

[Docket No. ER04–664–000]

Take notice that on March 19, 2004, Alabama Power Company (APCo) filed an amendment to the Amended and Restated Agreement for Partial Requirements and Complementary Services Between APCo and the Alabama Municipal Electric Authority (AMEA). The amendment sets forth APCo's and AMEA's agreement regarding the connection and parallel operation of an AMEA resource to APCo's electric system. An effective date of February 19, 2004 is requested.

Comment Date: April 9, 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. E4–700 Filed 3–29–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fifth meeting of the Technological Advisory Council ("Council") under its charter renewed as of November 25, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: April 23, 2004 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this fifth meeting under the Council's new charter, the Council will discuss the Broadband Wireless and Spam.

Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the searing available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–7099 Filed 3–29–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the

proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 1, 2004.

ADDRESSES: Comments should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Please consider submitting your comments through the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm;* by e-mail to *regs.comments@federalreserve.gov;* or by fax to the Office of the Secretary at 202/452–3819 or 202/452–3102. Rules proposed by the Board and other federal agencies may also be viewed and commented on at *http://www.regulations.gov.* All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (C and 20th Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

Report title: Survey of Financial Management Behaviors of Military Personnel.

Agency form number: FR 1375.

OMB control number: OMB No. 7100- to be assigned.

Frequency: Semi-annually.

Reporters: Two groups of military personnel: (1) Those completing a financial education course as part of their advanced training and (2) those not completing a financial education course.

Annual reporting hours: 2,640.

Estimated average hours per response: 20 minutes.

Number of respondents: 4,000.

General description of report: This information collection is voluntary. The statutory basis for collecting this information is section 2A of the Federal Reserve Act [12 U.S.C. 225a]; the Bank Merger Act [12 U.S.C. 1828(c)]; and sections 3 and 4 of the Bank Holding Company Act [12 U.S.C. 1842 and 1843 and 12 U.S.C. 353 and 461]. No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents will not be reported to the Board.

Abstract: This survey would gather data from two groups of military personnel: (1) Those completing a financial education course as part of their advanced training and (2) those not completing a financial education course. These two groups would be surveyed on their financial management behaviors and changes in their financial situations over time. Data from the survey would help to determine the effectiveness of financial education for young adults in the military and the durability of the effects as measured by financial status of those receiving financial education early in their military careers.

Board of Governors of the Federal Reserve System, March 24, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–7068 Filed 3–29–04; 8:45 am]

BILLING CODE 6210–01–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 April 23, 2004.

A. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Huntington Bancshares Inc., Columbus, Ohio; to merge with Unizan Financial Corp., Canton, Ohio, and thereby indirectly acquire Unizan Bank, N.A., Canton, Ohio.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Third Century Bancorp, Franklin, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Mutual Savings Bank, Franklin, Indiana.

Board of Governors of the Federal Reserve System, March 24, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–6991 Filed 3–29–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 27–28, 2004

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 27–28, 2004.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, March 23, 2004.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 04–6992 Field 3–29–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 p.m., Monday, April 5, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 26, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–7278 Filed 3–26–04; 3:58 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date: 9 a.m. to 5 p.m., March 30, 2004. 8:30 a.m. to 3 p.m., March 31, 2004.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 505A, Washington, DC 20201.

Status: Open.

Purpose: The entire day on March 30 will be devoted to invited experts providing the Subcommittee with an overview of e-prescribing, including a general picture of the state of the industry, related standards, requirements for the Center for Medicare and Medicaid Services (CMS) under the recent Medicare reform legislation, and the experience of major Federal agencies. March 31 will include an update of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementation, a presentation by the Workgroup for Electronic Data Interchange (WEDI) on recommendations developed at its recent annual meeting, and the annual report from the Designated Standards Maintenance Organizations (DSMO). Time will also be reserved for other issues that may be pending and for Subcommittee discussion.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS Home page of the HHS Web Site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: March 16, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–7067 Filed 3–29–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Acting Assistant Secretary for Health have taken final action in the following case:

Vickie L. Hanneken, R.N., Decatur Memorial Hospital: Based on the report of an investigation conducted by Decatur Memorial Hospital (DMH) and additional analysis conducted by the Office of Research Integrity in its oversight review, the U.S. Public Health Service (PHS) found that Vickie L. Hanneken, R.N., former Clinical Research Associate, DMH, engaged in scientific misconduct in research that was part of a Southwest Oncology Group prostate cancer prevention clinical trial supported by a National Cancer Institute (NCI), National Institutes of Health (NIH), cooperative agreement U10 CA45807 under the Central Illinois Clinical Community Oncology Program.

PHS found that the Respondent engaged in scientific misconduct by falsifying or fabricating data in the clinical/study records of 35 participants in the Selenium and Vitamin E Cancer Prevention Trial (SELECT) at Decatur Memorial Hospital, with a total of 60 separate acts, which included:

- Falsification of the laboratory reports on PSA concentration for 12 participants;
- Fabrication of the laboratory reports on PSA concentration for 2 participants;
- Falsification of the physician's and nurse's records for 10 participants;
- Fabrication of the nurse's records for 2 participants;
- Falsification of data on patients' history and physical forms for 21 participants; and

[1] Copies of the Minutes of the Federal Open Market Committee meeting on January 27–28, 2004, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

• Entry of falsified data into the SWOG computerized data base for 13 participants.

Ms. Hanneken has entered into a Voluntary Exclusion Agreement (Agreement) in which she has voluntarily agreed for a period of three (3) years, beginning on March 15, 2004:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility or involvement in nonprocurement programs of the United States Government as defined in the debarment regulations at 45 CFR Part 76; and

(2) To exclude herself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 04–7041 Filed 3–29–04; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancing Cancer Prevention and Control Programs for American Indian/Alaska Native Women

Announcement Type: New.

Funding Opportunity Number: PA 04144.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: April 20, 2004.

Application Deadline: May 14, 2004.

I. Funding Opportunity Description Authority

This program is authorized under sections 301(a), 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended.

Purpose: The purpose of the program is to enhance the capacity of tribal and state National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and/or National Comprehensive Cancer Control Program (CCC) grantees to serve the largest possible number of eligible American Indian/Alaska Native (AI/AN) women. The successful applicant should be able to identify culturally appropriate approaches and implementation strategies to address the national scope of this program announcement. This program addresses the "Healthy People 2010" focus area of cancer.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): (1) Increase early detection of breast and cervical cancer by building nationwide programs in breast and cervical cancer prevention especially among high risk, underserved women; (2) Expand community-based breast and cervical cancer screening and diagnostic services to low income, medically underserved women; (3) Assure access to treatment services for women diagnosed with cancer or pre-cancer.

Activities

Awardee activities related to this program are as follows:

• Identify culturally appropriate approaches that tribal NBCCEDP grantees can use to increase screening to underserved rarely, or never screened, AI/AN women through the following means:

—Identify approaches and implementation strategies that tribal Program Directors can use to increase culturally appropriate health care delivery and cultural sensitivity for all cooperative agreement grantees through annual trainings, workshops, and conferences.

—Identify approaches and implementation strategies for tribal Program Directors to integrate Cancer Programs into the tribal health care system.

—Provide culturally appropriate management and leadership skills training to tribal program staff.

—Identify and implement national communication strategies among tribal grantees.

—Identify effective culturally appropriate mentoring strategies that can be used by tribal grantees to improve program performance.

—Identify and disseminate effective intervention strategies to other Breast and Cervical tribal grantees.

—In collaboration with CDC staff, participate in a bi-annual training, as needed, on Tribal Outreach Strategies.

—Identify program implementation strategies that can be used by tribal CCC grantees to develop coalitions to strengthen their comprehensive control plans.

• Identify approaches and implementation strategies for state NBCCEDP grantees to increase screening to underserved, rarely or never screened AI/AN women through the following means:

—Assist state Program Directors to develop effective and appropriate partnerships with tribes.

—Identify opportunities to conduct combined meetings with states and tribes/tribal organizations within those states to develop realistic and culturally sensitive approaches for screening women.

—Identify opportunities to develop partnerships between Urban Indian Health Clinics and state Breast and Cervical Cancer Early Detection Programs in collaboration with CDC staff.

—Disseminate information and best practices through annual meetings, workshops and appropriate venues for all cooperative agreement grantees.

—Identify training opportunities for states to develop outreach strategies to reach AI/AN women for breast and cervical cancer screening.

—Identify strategies to engage AI/AN people in the development of state coalitions CCC plans.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Assist in developing and planning annual trainings, workshops, and conferences designed to disseminate information and increase culturally appropriate health care delivery and cultural sensitivity for all cooperative agreement grantees.

• Assist in the development of and review all cancer training materials to ensure that the materials are based on AI/AN learning styles and are science based.

• Assist in identifying and setting priorities for Leadership Training curriculum for tribal grantees.

• Develop strategies and methods to assist the grantee in evaluating the impact of the grantee's activities.

• Assist in annual dissemination of information through annual workshops, meetings, and other appropriate venues designed to increase culturally appropriate health care delivery and cultural sensitivity for all cooperative agreement grantees.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $400,000.

Approximate Number of Awards: 1.

Approximate Average Award: $400,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $400,000.

Anticipated Award Date: September 30, 2004.

Budget Period Length: 12 months.

Project Period Length: 3 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Faith-based organizations

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicants should have extensive experience assisting AI/AN tribes, tribal organizations, health departments and populations with the management of women health care programs, including breast and cervical cancer early detection program activities. Therefore, eligible organizations should:

- Have staff in key positions with 5 or more years of relevant experience.
- Provide proof of nonprofit status; see AR–15 for additional detail.
- Demonstrate extensive experience with unique health service delivery issues for American Indian/Alaska Native women, and experience in working with IHS, tribes, tribal organizations, and state staff to identify effective strategies to deliver culturally competent breast and cervical cancer screening services to this population.
- Demonstrate success in providing technical assistance to states to increase their cancer screening of AI/AN women.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code (Title 26) that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: 2.
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Name of organization
- Contact information

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Double spaced
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Executive Summary

The applicant should provide a clear, concise 1–2 page written summary to include:

- Rationale for this approach to technical assistance versus another approach.
- Priority areas for technical assistance.
- Activities and the experience of the staff to provide culturally sensitive training and technical assistance.
- Identification of the major activities proposed to develop or implement a technical assistance/ training program.
- Requested amount of Federal funding.
- Applicant's capability to conduct the activities.

2. Background

The applicant should describe:

- The unique technical assistance needs of urban/rural population needing screening.
- The unique technical assistance needs of States with large breast and cervical cancer unscreened populations.
- Relevant experiences in development and implementation of tribal/state health department screening programs.
- Relevant experiences in coordination and collaboration between and among existing programs.
- Existing initiatives, capacity, and infrastructure within which AI/AN screening will occur.

3. Management Plan

- Submit a management plan that includes a description of proposed management structure, organizational chart, internal and external communication systems and a system for sound fiscal management.
- Provide a description of the proposed or existing linkages with IHS, state health departments and national AI/AN organizations.
- Provide (in the appendices) curriculum vitae and job descriptions of all staff funded through this announcement.
- Provide a detailed work plan that describes how the activities will be carried out. It should include the following:

—Goals and objectives for Year 01
—Activities planned to achieve objectives
—Data that will be used to assess program activities
—Time line for assessing progress
—The person or persons responsible for activities and overall measures of effectiveness. These measures must be objective/quantitative and must measure the intended outcome.

4. Itemized Budget and Justification

- A detailed budget with supporting justification must be provided and should be related to objectives that are stated in the applicant's work plan.

Additional information may be included in the application appendices.

The appendices will not be counted toward the narrative page limit. This additional information includes:

- Organizational Charts
- Letters of Support

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1 (866) 705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 20, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: May 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Awards will not allow reimbursement of pre-award costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Annie Voigt, Program Consultant, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, Program Services Branch.

For mail service:

4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724.

For delivery service:

2858 Woodcock Blvd, Davidson Building, Room 2059, Chamblee, GA 30341, telephone (770) 488–4707, fax (770) 488–3230, e-mail: *anv1@cdc.gov*.

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to:

Technical Information Management—PA# 04144, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Work Plan (40 Points)

Is the plan adequate to carry out the proposed activities, including how the applicant plans to work collaboratively with other organizations and individuals who may have an impact on breast and cervical cancer prevention and control objectives? Are the goal(s) clear, objectives specific, measurable, achievable, realistic and time-phased? Are the activities clear and specific?

2. Management Plan (30 Points)

Does the organization have the organizational capacity and program management skills and experience to develop and manage the program? Are proposed staff qualified and do they possess capacity to perform the technical assistance described? Does staff have expertise working with AI/AN populations in the management of women's health care programs, including breast and cervical cancer early detection program activities?

3. Evaluation Plan (20 Points)

Will the evaluation plan monitor both the progress toward meeting project objectives and their impact?

4. Background (10 Points)

Does the application identify the: (1) Limitations of access in both urban and rural populations, (2) need for culturally appropriate technical assistance and training for tribal grantees, and (3) difficulty for states to reach AI/AN women for cancer screening and to find AI/AN women to serve on coalitions and planning committees?

5. Budget

Is each line-item budget and narrative justification reasonable and consistent

with the purpose and objectives of the program? (Not weighted)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCCDPHP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

In addition, the following factors may affect funding the funding decision:

Demonstrated success in securing AI/AN staff, (including consultants) who are from, or have worked in and are familiar with, each of the 12 Indian Health Service Areas and who have served key roles in the health care systems and activities of tribal health departments, Indian Health Boards, Inter-tribal Councils and/or Indian Health Service.

V.3. Anticipated Announcement and Award Dates

September 30, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application. Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements may apply to this project:

- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact:

Annie Voigt, Program Consultant, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, Program Services Branch.

For mail service:

4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, *Telephone:* (770) 488–4707, *Fax:* (770) 488–3230, *E-mail: anv1@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Glynnis Taylor, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, *Telephone:* 770–488–2752, *E-mail: gld1@cdc.gov.*

Dated: March 24, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7026 Filed 3–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Planning Effective Approaches to the Delivery of Adolescent Immunization Services

Announcement Type: New.

Funding Opportunity Number: 04088.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

SPOC Notification Deadline: April 29, 2004. For more information, see section "IV.4. Intergovernmental Review of Applications."

I. Funding Opportunity Description

Authority: Public Health Services Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to support the development of effective approaches to the delivery of immunization services to adolescents in preparation for the wave of new adolescent vaccines that are either currently in development or that are being planned for development in the near future.

New vaccines for adolescents are likely to be recommended within the next several years. These include vaccines for pertussis, meningococcal disease, herpes simplex virus, and human papilloma virus. There are other vaccines which are currently recommended (hepatitis A, hepatitis B) but remain underutilized in the adolescent population. Overall, published reports show that experience with adolescent immunization is limited and that special challenges exist if protective coverage levels are to be attained in this population.

This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the

performance goal for the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous cases of vaccine-preventable diseases.

Research Objectives:

Applicants should address the following research objectives:

1. Characterize and evaluate providers' knowledge, attitudes, and practices as they relate to the following adolescent immunization issues:

a. acceptability of adolescent vaccinations

b. optimal age for administering

c. ease or comfort in discussing vaccines specifically designed to prevent sexually transmitted diseases

d. who has primary responsibility for administering adolescent vaccines

e. best settings for achieving high coverage rates (compare, for example, physicians' practices with school-based, teen, and STD clinics)

2. Characterize and evaluate the knowledge, attitudes, and practices of adolescents and parents about:

a. adolescent vaccinations in general

b. acceptability of receipt of vaccinations at various sites including physician's office, school-based clinic, teen & STD clinics

3. Characterize and evaluate current patterns of health care utilization in adolescents grouped by gender and appropriate age categories.

Ascertain the percent distribution seen by pediatricians, family practice physicians, and obstetricians/gynecologists at each age group. Ascertain the percentage that have no usual source of primary care, and develop a profile of adolescents who have no usual source of care in terms of their age group, gender, family composition, health insurance status, and relevant demographic characteristics.

4. Develop a model to generate information about the optimum age for vaccination of specific vaccines, including potential coverage rates and incident cases of disease prevented as a function of specific variables such as age at vaccination, vaccination site, provider attitudes and practices, and characteristics of the adolescent population such as urban/rural residence, school dropout rates, usual source of health care, etc.

5. Establish a national workgroup on adolescent immunizations and preventive health care services consisting of experts representing a variety of national organizations, non-governmental organizations (NGO), academia, clinical medicine, and public health.

Activities:

Awardee activities for this program are as follows:

1. Collaborate with CDC to characterize and evaluate provider attitudes, beliefs, and practices toward adolescent vaccination. This would include information on barriers to vaccinating adolescents, provider acceptability in discussing specific vaccines, and general adolescent issues in preventive care.

2. Collaborate with CDC to characterize and evaluate adolescent and parent attitudes toward vaccinations, usual sites for receipt of preventive health care service, acceptability of receipt of vaccines at alternative sites.

3. Collaborate with CDC to review existing national surveys and other data resources such as Medical Expenditure Panel Survey (MEPS), and National Ambulatory Medical Care (NAMCS)/National Hospital Ambulatory Medical Care Survey (NHAMCS), and insurance claims to characterize adolescent health care utilization patterns by age and gender groups.

4. Collaborate with CDC to develop a model to determine optimum age for vaccination for specific vaccines, as described in Research Objective 4, above.

5. Make recommendations for and coordinate the development of a national workgroup on adolescent immunizations and preventive health services, as described in Research Objective 5, above.

6. Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between award recipient and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $200,000.

Approximate Number of Awards: One.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Research institutions.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application

did not meet the submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with his/her institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI):

A LOI is required and must be written in the following format:

- Maximum number of pages: Three.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in complete sentences, in plain language, avoiding the use of jargon.

Your LOI must contain the following information:

- Descriptive title of the proposed research.
- Name, address, E-mail address, telephone number, and fax number of the Principal Investigator.
- Names of other key personnel.
- Participating institutions.
- Number and title of this Program Announcement (PA).
- Summary of proposed activities and description of study design, methods, and analyses.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone 301–435–0714, E-mail: *GrantsInfo@nih.gov.*

The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be double spaced and be no more than 25 pages.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract.* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should be included.

3. *Program Participants.* Provide a justification and description of the specific population of adolescents, parents, and providers targeted. In addition, the proposal should provide evidence that the recipient has the capacity necessary to recruit participants. Describe how the study sample(s) is (are) defined. A description of how recruitment, retention and referral of participants will be handled should also be included.

4. *Methods.* Describe study design, including topic areas and potential questions to be examined among adolescents, parents, and providers. If any materials are not extant, the methods and timeframe for development, and pilot testing should be given. Describe proposed methods and data sources for characterizing adolescent health care utilization. Describe proposed methods to develop model regarding optimum age for vaccination and how the robustness of the model will be assured. Describe proposed methods and potential candidates for development of a national workgroup.

5. *Project Management.* Provide evidence of the expertise, capacity, and support necessary to successfully implement the project. Each existing or proposed staff position for the project should be described by job title, function, general duties, level of effort, and allocation of time. Management operation principles, structure, and organization should also be noted.

6. *Collaborative Efforts.* List and describe any current and proposed collaborations with government, health, or youth agencies or other researchers that will impact this project. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

7. *Data Sharing and release:* Describe plans for the sharing and release of data.

8. *Budget.* Applications must be submitted in a modular grant format. The modular grant format simplifies the preparation of the budget in these applications by limiting the level of budgetary detail. Applicants request direct costs in $25,000 modules. Section C of the research grant application instructions for the PHS 398 (rev. 5/2001) is available at: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* This includes step-by-step guidance for preparing modular grants. Additional information on modular grants is available at: *http://grants.nih.gov/grants/funding/modular/modular.htm.*

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2.

Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 29, 2004.

A letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding restrictions

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, Fax: 404–639–0108, E-mail: *BGardner@CDC.GOV.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04088, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Access to providers necessary to ensure success of study as demonstrated by letters of support or by previous clinic-based research.
- Experience with immunization-related research as demonstrated by related peer-reviewed publications.

Protection of Human Subjects From Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic

minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by National Immunization Program in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level programmatic review by a NIP panel.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Announcement and Award Dates

Anticipated Application Deadline Date: May 2004.

Anticipated Award Date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1, Human Subjects Requirements
- AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7, Executive Order 12372 Review
- AR–10, Smoke-Free Workplace Requirements
- AR–11, Healthy People 2010
- AR–12, Lobbying Restrictions
- AR–15, Proof of Non-Profit Status (If applicable)
- AR–22, Research Integrity
- AR–24, Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Mr. Gary Edgar, Project Officer, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, Phone: 404–639–8787, E-mail: *GWE1@CDC.GOV.*

For questions about peer review, contact: Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, Email: *BGardner@CDC.GOV.*

For financial, grants management, or budget assistance, contact: Jesse L. Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2747, E-mail: *JTR4@cdc.gov.*

VIII. Other Information

National Immunization Program, Centers for Disease Control and Prevention, Internet address: *http://www.cdc.gov/nip.*

Dated: March 24, 2004.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7016 Filed 3–25–04; 1:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delivering Environmental Health Services

Announcement Type: New.

Funding Opportunity Number: 04113.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

I. Funding Opportunity Description

Authority: Section 301 and 317 of the Public Health Service Act, [42 U.S.C., section 241 and 247(b)], as amended.

Purpose: This program announcement is for state and local public health departments, and tribal health agencies to implement or expand, and evaluate their environmental public health activities built on a framework that is based on the *Ten Essential Public Health Services, the Ten Essential Environmental Services, Core Competencies of Effective Practice of Environmental Health* (See Addendum), and CDC's *A National Strategy to Revitalize Environmental Public Health Services,* published September, 2003. (See: *http://www.cdc.gov/nceh/ehs/Docs/NationalStrategy2003.pdf)* This program addresses the "Healthy People 2010" focus area of environmental health, public health infrastructure, and education and community-based programs.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the capacity of state, local, tribal and territorial health departments to deliver environmental health services to their communities.

Activities:

Awardees activities for this program are as follows:

- Implement a comprehensive environmental health services program built on the framework of the *Ten Essential Public Health Services,* the *Ten Essential Environmental Services, Core Competencies of Effective Practice of Environmental Health,* and CDC's *A National Strategy to Revitalize Environmental Public Health Services;*
- Implement interventions to address environmental issues related to delivering an environmental health service (*i.e.* air, water, waste management, integrated pest management/vector control, and food). Interventions for up to two of the five environmental health service areas may be addressed in the proposal.
- Demonstrate the ability to improve the environmental health of the community through the development, reorganization, or expansion of the delivery of environmental health services utilizing a systems-based problem solving approach to disease outbreaks and/or exposure investigation.
- Integrate and/or coordinate the delivery of environmental health services with other health department units (*e.g.*, epidemiology, chronic disease, laboratory, etc.), state agencies, governmental agencies, and community-based organizations.
- Develop and implement an evaluation program to measure capacity building outcomes and demonstrate the effectiveness of interventions developed to enhance the delivery of environmental health services.
- Develop partnerships with academic institutions such as accredited environmental health programs or schools of public health to assist and support environmental research or program evaluation, if necessary.
- Utilize resources available through the CDC's Environmental Health Services Program to assist in fulfilling the requirements of this cooperative agreement.
- Analyze, document and disseminate findings.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance and consultation to the award recipient to refine the project plan, data and information collection, and analysis instruments.
- Support systems-approach planning.
- Review the use of data and information collection resources and analysis instruments.
- Assist awardees with background information and in forming collaborative interactions.
- Assist awardees with preparation, review and clearance of manuscripts.
- Evaluate effectiveness and quality of environmental health services related to awardees activities.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $1,400,000.

Approximate Number of Awards: 7–14.

Approximate Average Award: $100,000—$200,000.

(This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by governments and their agencies, such as:

- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

This announcement is for submission of proposals that are not research. If your application contains research, it will be considered non-responsive to the announcement.

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI)

Your LOI must be written in the following format:

- Maximum number of pages: One page.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Name, address, and telephone number for key contact.
- Brief description of the proposed project.

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 25

If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

- Font size: 12 point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Describe the applicant's agency and its position within the governmental structure.
- Describe how the project will be administered, including job descriptions for all projects positions.
- Describe the project's operational plan to address an environmental health services issue(s) and simultaneously implement activities necessary to enhance the overall capacity of the environmental health services program. The operational plan should include the following components: (1) Description of an identified environmental health issue(s) "*i.e.* water quality, air quality, food safety, vector control, etc; or the current state of the environment health services program in the community; (2) description of assessment activities used to determine or identify the environmental issue or current state of the program; (3) description of the proposed intervention to address the environmental health issue or activities to enhance the capacity of the environmental health program; (4) description of the use or integration of the ten essential environmental health services and core competencies to address the issue(s); (5) integration of intra and interdepartmental state and local partnerships with accredited academic institutions and/or other environmental health programs for assistance and support, if necessary; (6) long and short range objectives, timelines and schedules for completion, and expected long and short range measurable outcomes; and (7) description of the methodology for sustainability efforts of the activities or interventions supported by this cooperative agreement beyond the funded three year period.
- Describe the project's evaluation plan to measure the process and outcomes. The evaluation plan should address measures for both short-term or intermediate outcomes, and long term outcomes. Short-term or intermediate outcomes may relate to specific activities and/or processes. Long term outcomes should focus on the (1) reduction of environmentally related risk factors known to contribute to disease, and/or (2) the impact on incidence and prevalence of environmentally induced illness and disease; and (3) a decrease in morbidity and mortality related to environmental causes or incidents.
- Budget Justifications.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Up to 30 pages of appendices may be included in the application. This may include: Curriculum Vitaes, Resumes, Organizational Charts, Letters of Support, etc.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 29, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4:00 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a

question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions, which must be taken into account while writing your budget, are as follows: None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Daneen Farrow-Collier, CDC/NCEH, 4770 Buford Highway, F–28, Atlanta, GA 30341, Telephone: 770–488–4945, Fax: 770–488–7310, E-mail: *farrow-collier@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA #04113, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Understanding of the Problem (25 Points)

Does the applicant understand the public health, social and economic consequences of the inadequate environmental health service in their community based upon health and demographic indicators? Are the needs based on disease burden by age, gender and racial/ethnic groups, mortality rates, incidence, program experience, existing capacity, and infrastructure?

2. Objectives and Methods (25 points)

a. Has the applicant developed sound, feasible objectives that are consistent with the activities described in this announcement, and are specific, measurable and time-framed?

b. Does the applicant describe the specific activities and methods to achieve each objective?

c. Are the proposed timeline and schedules feasible? The timeline should include a tentative work plan for the duration of the project.

d. Can the proposed activities or the project be sustained beyond the funded period?

e. Can the intent and desired outcomes for the proposed activities be succinctly stated?

3. Program Evaluation (20 points)

a. The evaluation plan should describe useful and appropriate strategies and approaches to monitor and improve the quality, effectiveness, and efficiency of the project.

b. Does the applicant propose to measure the process and the overall impact of the project in terms of its contribution to improving the delivery of environmental health services? This may be evidenced by the reduction of environmentally related risk factors known to contribute to disease; decrease in morbidity and mortality; and/or the impact on incidence and prevalence of environmentally induced illness and disease.

4. Implementation of CDC's Strategy To Revitalize Environmental Public Health Services (10 points)

Has the applicant's operation plan incorporated components of CDC's Strategy to Revitalize Environmental Public Health Services into developing an intervention or enhancing capacity? Specifically, does the plan implement all ten of the essential environmental health services into the project?

5. Coordination and Collaboration (10 points)

Has the applicant involved collaborators as a resource in the implementation of the project? This includes describing its relationship with other health department components and governmental agencies, academia, and community-based organizations as evidenced by letters of support, memoranda of agreement, and other documented evidence. The applicants may include up to ten letters of commitment (dated within the last three months) from key partners, participants, and community leaders that detail their participation in and support of the proposed activities.

6. Project Management and Staffing (10 points)

Does the applicant document skills, abilities, and experiences of key health department staff who will be responsible for developing, implementing, and carrying out the requirements of the project? Specifically, the applicant should describe health department staff roles in the development and implementation of the project, their specific responsibilities, and their level of effort and time commitment. Applicants should provide assurances that those positions to be filled by the applicant's personnel system will be done within a reasonable time after receiving funds.

7. Budget Justification (Not Scored)

Is the budget clearly explained, adequately justified, and reasonable and consistent with the stated objectives and planned activities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by NCEH. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement Award Date

September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants

Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–20 Conference Support
- AR–21 Small, Minority, and Women-Owned Business
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact:

Daneen Farrow-Collier, Project Officer, CDC/NCEH, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–4945, Fax: 770–488–7310, E-mail: *dfarrow-collier@cdc.gov.*

For budget assistance, contact: Mildred Garner, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2745, E-mail: *mgarner@cdc.gov.*

Dated: March 24, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7023 Filed 3–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Integrating HIV and Other Prevention Services Into Reproductive Health and Community Settings

Announcement Type: New.
Funding Opportunity Number: 04073.
Catalog of Federal Domestic Assistance Number: 93.946.
Key Dates:
Application Deadline: May 14, 2004.

Executive Summary: Table of Contents

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 317(k)(2) [42 U.S.C. 241(a) and 247b(k)(2)] of the Public Health Service Act, as amended.

Purpose: The overall purpose of this cooperative agreement is to support HIV and other prevention services in reproductive health and community settings to reach beyond their current efforts to prevent STD and HIV transmission, and unintended and teen pregnancies.

This program announcement provides funding for two related but distinct components. All applicants are *required* to apply for the HIV Prevention Integration (Part A) component while the Adolescent Reproductive Health (Part B) component is optional for Part A applicants.

The purpose of Part A is to support the integration of HIV prevention services into reproductive health settings. (See Appendix A: HIV Prevention Integration Background Information and Appendix B: HIV Prevention Integration Logic Models.) The purpose of Part B is to build capacity within communities to prevent teen pregnancy, STDs and HIV, and promote adolescent reproductive health using a range of strategies, including abstinence. (*See* Appendix C: Adolescent Reproductive Health Background Information.)

Collectively, both programs address the "Healthy People 2010" focus areas of Family Planning and Sexual Health, HIV, Sexually Transmitted Disease (STD), and Education and Community-Based Programs.

Measurable outcomes for both programs will be in alignment with one

or more of the performance goal(s) for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) and the National Center for HIV, STD and Tuberculosis Prevention (NCHSTP):

Part A: HIV Prevention Integration

For the HIV Prevention Integration component, the performance goal(s) for the program are to:

- Reduce the number of new HIV infections.
- Decrease the number of persons at high-risk for acquiring or transmitting HIV infection.
- Increase the proportion of HIV-infected people who know they are infected.
- Increase the proportion of HIV-infected people who are linked to appropriate prevention, care, and treatment services.
- Strengthen the capacity regionwide to monitor the epidemic, develop and implement effective HIV prevention interventions, and evaluate prevention programs.
- Increase the number of reproductive health settings that integrate HIV counseling and testing services
- Increase the number of staff working in reproductive health settings who counsel clients using client-centered counseling skills.

Part B: Adolescent Reproductive Health

For the Adolescent Reproductive Health component, the performance goal(s) for the program are to:

- Increase the proportion of adolescents who abstain from sexual intercourse or use condoms if currently sexually active.
- Reduce pregnancies among adolescent females.
- Reduce the number of cases of HIV infection among adolescents.
- Reduce the number of sexually transmitted disease cases among adolescents.

Activities

Part A: HIV Prevention Integration

Awardee activities for Part A are as follows:

- Develop, implement, and evaluate a strategy to integrate HIV counseling and testing services in reproductive health settings.
- Develop, implement, and evaluate training and technical assistance in client-centered counseling skills for reproductive health staff.
- Identify, establish, and evaluate the effectiveness of one reproductive health setting within the region that will serve as a "model" clinic to showcase integration of HIV prevention services to other recipients of training and technical assistance.
- Participate in the collective management and evaluation of the program.
- Assign one senior staff member and one alternate to the Grantee Steering Committee (GSC), to be comprised of one representative from each grantee and CDC program staff.
- GSC representatives will participate in regular conference calls.
- In the first six months of the project, work with the GSC to:

—Develop a logic model for the overall program and individual projects.
—Identify key evaluation indicators and data sources from across the programs.
—Develop an overall plan of activities and accomplishments for years two through five.
—Develop a strategy to share and disseminate training and technical assistance materials and resources among the grantees and to other constituent groups.
—Participate in collaborative management and evaluation of the program.
—Assign an appropriately qualified staff person as the project evaluator.
—Travel the GSC representative and one alternate to a two-day annual grantee meeting, location to be determined.
—Travel the GSC member and the designated project evaluator to a two-day evaluation workshop at the initiation of the project, location to be determined.
—Submit timely on-line reports. (See Appendix D for additional information on the program's on-line reporting system.)

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC activities for Part A are as follows:

- Provide scientific and programmatic consultation for development and delivery of training, technical assistance, and evaluation activities.
- Serve as integral member of the Steering Committee.
- Coordinate timely dissemination of resources, materials, and relevant findings.
- Coordinate communication with other CDC programs, mainly the divisions of Reproductive Health, STD Prevention, and HIV Prevention.
- Take the lead in developing grantee capacity to evaluate project efforts. This will include identifying experts in the field of project evaluation, and designing and participating in an evaluation workshop.
- Organize, facilitate, and participate in the annual grantee meeting.

Part B: Adolescent Reproductive Health

Awardee activities for Part B are as follows:

- Develop a strategy and workplan to include a target audience, collaborative activities, and an evaluation plan, to help communities reduce teen pregnancy, STDs and HIV.
- Provide training and technical assistance to State and local coalitions, State health departments, schools, health clinics, youth serving community and faith-based organizations, or other organizations to increase the organizations' capacity to:

—Select science-based interventions or modify current practices to include science-based principles to prevent teen pregnancy, HIV and STDs, and promote adolescent reproductive health that meet the identified needs of the community.
—Select and implement science-based interventions.
—Design and implement an evaluation plan that contributes to program improvement and accountability.
—Translate and broadly disseminate evaluation findings and training materials for publication and use through a variety of mechanisms such as scientific journals, media, professional meetings the Internet, training manuals, curricula, toolkits, or other innovative means.
—Develop and implement an evaluation plan to measure the impact of training and technical assistance on organizations through progress of recipient activities.

- Share lessons learned with CDC and other grantees.
- Collaborate with CDC and national organizations and state coalitions funded through the existing "Coalition Capacity Building for Teen Pregnancy Prevention" cooperative agreement.
- Collaborate with CDC on program development, implementation, and evaluation, and disseminate lessons learned from those activities.

CDC activities for Part B are as follows:

- Provide scientific and programmatic consultation for development and delivery of training, technical assistance, and evaluation activities.
- Work with grantees to develop evaluation strategies.
- Coordinate communication with other CDC programs, mainly the

divisions of Reproductive Health and Adolescent and School Health.

• Facilitate coordination of activities and communication between recipients and national organizations and state coalitions funded through the existing "Coalition Capacity Building for Teen Pregnancy Prevention" cooperative agreement.

• Translate and disseminate nationally lessons learned and teen pregnancy, HIV and STD best practices through publications, meetings, and other means.

II. Award Information

Part A: HIV Prevention Integration

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Sections above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $860,000.

Approximate Number of Awards: 10 (one award per DHHS Region, See Appendix E for a breakdown of DHHS regions).

Approximate Average Award: $86,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: None (This ceiling is for the first 12-month budget period).

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Part B: Adolescent Reproductive Health

Approximate Total Funding for Part B only: $450,000.

Approximate Number of Awards: 4–6.

Approximate Average Award: $75,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: $75,000.

Ceiling of Award Range: $130,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 5 years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally-recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicants applying for both Parts A and B must be approved for Part A to be considered for Part B.

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If agencies are interested in applying for funding under this program announcement but do not meet the qualification criteria, they are encouraged to partner with an eligible entity.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

• Maximum number of pages for both Parts A and B: 35. If your narrative exceeds the page limit, only the first pages within the page limit will be reviewed.

—For Part A: 20 page maximum

—For Part B: 15 page maximum

- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Pages numbered consecutively.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed for Parts A and B if applicable. Applicants must clearly label all sections relating to Parts A and B as "Part A: HIV Prevention Integration" and "Part B: Adolescent Reproductive Health". Part B will require a separate narrative that should address activities to be conducted over the entire 5-year project period.

Part A: HIV Prevention Integration

1. Background

• Describe your organization's experience in providing training, capacity-building, and technical assistance in the areas of client-centered counseling or integration of HIV

prevention services. Include such information as the name, location, and type of organizations trained or provided technical assistance; staff trained (*e.g.*, job category, demographic data); nature of training or technical assistance provided; curricula, tools, or other materials used; outcome or evaluation results; and any collaboration with other organizations in developing and delivering the training or technical assistance.

• Include a memo in an Appendix that clearly describes:

—Your organization's capacity to serve all states within the DHHS region in which you are geographically located.

—The extent to which your organization has qualified staff with a minimum of five years experience designing scientific-based curricula and delivering training on integrating HIV prevention services into reproductive health care settings.

—To extent to which your organization has staff experienced in assessing DHHS region-wide HIV-prevention training needs.

• Describe staff experience in recruiting clinics that provide reproductive health services as potential collaborating partners; negotiating the terms of agreement with these potential collaborating partners; and providing technical assistance to these partners on integrating HIV prevention services.

• Identify all funding sources supporting your organization in its client-centered counseling or HIV prevention integration activities.

• Provide a copy of the most recent regional HIV and family planning training needs assessments as an appendix.

• Describe the women in your region most at-risk for HIV infection. Include such information as the documented number of known cases of HIV and AIDS, and other data indicative of behavioral risks (such as rates for STDs, tobacco use, substance abuse, incarceration, homelessness, teen pregnancy, and unintended pregnancy). Indicate the source(s) of any data provided.

• Describe the providers of reproductive health services in your region. Include the name and location, services provided, staffing patterns, communities served, and previous training or technical assistance received from your organization.

2. Objectives

Define specific, measurable, achievable, realistic, and time-phased objectives for each performance goal of the program (see Part A: HIV Prevention Integration after Purpose).

2. Plan and Methods for Activities

For HIV Prevention Integration:

• Describe the strategy you will use to support reproductive health settings to integrate HIV counseling and testing services, striving to provide technical assistance to the maximum number of sites from throughout the region, while maintaining the greatest quality of technical assistance.

• Identify and justify the settings to be targeted.

• Describe the technical assistance strategy, including targeted staff, objectives, tools, process, length of project, and evaluation plan.

• Describe anticipated obstacles.

• Include letters of support and intent to collaborate from the directors of at least five reproductive health agencies or other community or faith-based organizations that provide reproductive health services in the region. The letters must clearly state their support and commitment to the project and the specific collaboration they agree to bring to the five-year process. The inclusion of memoranda of agreement is encouraged.

• Provide a timeline demonstrating the order and timing of key project activities as they relate to the proposed goals and objectives.

For Client-Centered Counseling:

• Describe the strategy you will use to train reproductive health staff in client-centered counseling, striving to reach the maximum number throughout the region while maintaining the greatest training quality.

• Identify and justify the settings and staff to be targeted.

• Describe the training strategy, including the method of delivery, potential trainers, training objectives, length of training, curriculum and materials, and evaluation plan.

• Describe anticipated obstacles.

• Identify the scientific basis for the strategy; include a bibliography if necessary as an appendix.

• Include in an appendix letters of support and intention to collaborate from the directors of five reproductive health agencies or other community or faith-based organizations that provide reproductive health services in the region. The letters must clearly state their support and commitment to the project and the specific collaboration they agree to bring. The inclusion of memoranda of agreement is encouraged.

• Provide a timeline demonstrating the order and timing of key project activities as they relate to the proposed goals and objectives.

For Model Clinic:

• Each grantee will identify, establish, and evaluate the effectiveness of one reproductive health setting within the region that will serve as a model clinic to showcase integration of HIV prevention services and client-centered counseling skills to other recipients of training or technical assistance.

• Describe the strategy you will use to identify and establish the model clinic.

• Provide a justification for the selection of the clinic.

• Identify the strategy you will used to create the model clinic.

• Explain how the clinic will model client-centered counseling and integration of HIV prevention services to staff from other reproductive health settings in the region.

• Identify anticipated obstacles.

• Obtain a written letter of support from the clinic director of the proposed model clinic that clearly states his or her understanding of the project duration and staff requirements for the project.

• Provide a timeline demonstrating the order and timing of key project activities as they relate to the proposed goals and objectives.

4. Evaluation

• Clearly identify an evaluation plan for each project component that is consistent with CDC's Evaluation Framework for Evaluating Public Health Programs. (*http://www.cdc.gov/eval/framework.htm*).

• In the plan, identify primary stakeholders.

• For each project component, include process and outcome evaluation indicators for each measurable objective.

• Provide a data Collection, Analysis, and Management plan that includes:

—Explain how baseline data will be gathered.

—Describe how project-related data will be collected and analyzed, including measures to protect client and staff privacy and confidentiality.

—Identify who will conduct data collection, analysis, and management.

—Specify how often data will be collected and analyzed.

• Dissemination of Findings

—Describe how the data findings and evaluation results will be shared with stakeholders.

—Describe how the evaluation results will be used.

5. Project Staff

• Provide job descriptions for anticipated project staff, identifying specific roles (e.g., management and supervision, planning, curricula development, training delivery,

technical assistance, evaluation, staff support). Attach résumés of existing and newly proposed staff as an appendix.

• Provide an organizational chart as an appendix that identifies lines of authority, including who will have management authority over the project.

• Identify the senior staff member and one alternate to serve on the project's Steering Committee.

• Identify the staff person who will take the lead on the project's evaluation.

6. Budget and Justification (Does Not Count Against Narrative Page Limit.)

• Provide a detailed budget and line-item justification for all operating expenses that are consistent with the proposed program objectives and activities for each activity. Include:

—Any staff or trainee travel.
—Attendance for two people (the GSC member and the project evaluator) at two-day evaluation workshop, location to be determined.
—Attendance for two people (the GSC member and an alternate) to attend the annual grantee meeting, location to be determined.

7. Protection of Human Subjects

Address the Requirements of Title 45 CFR part 46 for the protection of Human Subjects.

Part B: Adolescent Reproductive Health

1. Background

• Describe your organization's experience in providing training and technical assistance in teen pregnancy, STD, and HIV prevention.

• Include a memo as an appendix that clearly describes:

—Your organization's experience providing technical assistance in the areas of teen pregnancy, STD, and HIV prevention.
—Your organization's experience providing technical assistance and training to State and local coalitions, State health departments, schools, health clinics, youth serving community and faith-based organizations, or other organizations.
—The extent to which your organization has staff with demonstrated experience in teen pregnancy, STD, and HIV prevention training and evaluation.
—Describe any experience developing logic models, and identifying, selecting, implementing, and evaluating science-based programs that prevent teen pregnancy, HIV and STDs, and promote adolescent reproductive health.
—Describe the results of similar efforts that used skills to provide training and technical assistance to other organizations such as State and local coalitions, State health departments, schools, health clinics, youth serving community and faith-based organizations and to disseminate findings to a broader audience.

2. *Objectives*

Define specific, measurable, achievable, realistic, and time-phased objectives to support each performance goal of the program (*see* Part B: Adolescent Reproductive Health after Purpose).

• Identify and describe the activities to support the objectives.

• Explain how achievement of the objectives will be measured.

3. Plan and Methods

• Provide a realistic timeline for activities.

• Describe how the project will be implemented.

• Describe how the project will achieve the goal of the overall program.

• Describe the training and technical assistance strategy including the method of delivery, potential trainers, training objectives, length of training, curriculum and materials, and evaluation plan.

• Describe any anticipated obstacles to accomplishing the proposed activities.

• Include letters of support and intention to collaborate from the directors of at least two organizations in the region. The letters must clearly state their support and commitment to the proposed activities and the specific collaboration they agree to bring to the five-year process. Inclusion of memoranda of agreement is encouraged.

• Describe the translation and dissemination plan for lessons learned.

4. Evaluation Plan

• Develop an evaluation plan that is consistent with CDC's Evaluation Framework for Evaluating Public Health Programs. (*See http://www.cdc.gov/eval/frameword.htm*).

• Identify primary stakeholders in the evaluation process.

• For each measurable objective, identify process and outcome indicators.

• Identify who will conduct the data collection, analysis, and management.

• Describe how data will be collected and analyzed and how often.

• Describe how the data findings and evaluation results will be shared with stakeholders and how results will be used.

5. Program Staff

• Describe the training and technical assistance experience of staff in science-based practices in teen pregnancy, STD, and HIV prevention.

• Describe the experience of the staff working with the proposed target organizations.

• Provide résumés and job descriptions of existing and newly proposed staff, with prior experience in teen pregnancy, STD, and HIV prevention, identifying their role and responsibilities in the optional teen pregnancy prevention component.

• Provide an organizational chart as an appendix that identifies lines of authority, including who will have management authority over the project.

• Identify the staff person who will take the lead on the project's evaluation.

6. Budget and Justification (Does Not Count Against Narrative Page Limit.)

• Provide a detailed budget and line-item justification for all operating expenses that are consistent with the proposed program objectives and activities for each activity. Include:

—Any staff or trainee travel costs.
—Cost for attendance for one person at a two-day evaluation workshop, location to be determined.
—Cost for one annual trip for two staff to attend a planning, training, and information-sharing meeting, location to be determined.

7. Protection of Human Subjects

Address the requirements of Title 45 CFR part 46 for the protection of human subjects.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information may include:

—Training needs assessments
—Epidemiological data
—Training curricula or materials
—Curriculum vitae/resumes
—Organizational charts
—Letters of support
—Memoranda of agreement
—Bibliographies
—Other pertinent information requested in the narrative section of the program announcement or other relevant material and documents you want to include.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is

easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

IV.3. Submission Dates and Times

Application Deadline Date: May 14, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

• You may not use funds to supplant Federal, State, or local health department funds; make building improvements or engage in other construction activities; or provide direct clinical or treatment services.

If you are requesting indirect costs in your budget, you must include a copy of your current indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA#04073, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Part A: HIV Prevention Integration

1. Plan and Methods (35)

• Does the applicant identify appropriate staff to support HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic.?

• Does the applicant propose a realistic timeline demonstrating order and timing of key project activities for HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic?

• Does the applicant demonstrate a valid process to identify training and technical assistance priorities that appear appropriate and likely to promote and support HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic?

• Does the applicant demonstrate support for the project with letters of support or memoranda of agreement for HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic? Do the letters clearly indicate an intention to collaborate and an understanding of the commitment involved?

2. Objectives (20)

• Does the applicant provide objectives that are specific, measurable, achievable, realistic, and time-phased for HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic?

• Does the applicant clearly identify which of the goals (*e.g.*, HIV prevention integration and client-centered counseling) each of their project objectives supports?

3. Evaluation (20)

• Does the applicant clearly identify an evaluation plan for HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic, including identification of stakeholders; measurable process and outcome indicators for activities and objectives; strategy to collect, analyze, and disseminate data; and use of data findings and evaluation results?

• Are the objectives linked to appropriate evaluation criteria for HIV Prevention Integration, Client-Centered Counseling, and the Model Clinic?

4. Background (15)

• Does the applicant provide information in an appendix that specifically addresses:

—Their capacity to serve all states within the DHHS region in which they are geographically located.

—The extent to which they have qualified staff with a minimum of five years experience designing scientific-based curricula and delivering training on integrating HIV prevention services into reproductive health care settings.

—The extent to which they have staff experienced in assessing DHHS region-wide HIV-prevention training needs.

• Does the applicant demonstrate recent training, capacity-building, or technical assistance related to client-centered counseling or HIV prevention integration?

• Does the applicant have a demonstrated history of providing training or technical assistance throughout the DHHS region in which they are located?

• Does the applicant demonstrate their ability to work collaboratively with other organizations in the region?

• Does the applicant demonstrate the ability to plan, develop, coordinate, deliver, and evaluate each activity?

• Does the applicant demonstrate consideration of regional needs assessments, regional HIV epidemiology, available services, and geographical and demographic issues in their selection of sites and trainees?

• Does the applicant justify their selection of sites, trainees, strategies, methodologies, tools, curricula, and objectives?

5. Program Staff (10)

• Does the applicant provide job descriptions for anticipated project staff and identify specific roles?

• Does the applicant include resumes of existing and proposed staff?

• Does the applicant provide an organizational chart that identifies lines of authority, including who will have management authority over the project?

6. Budget (Not Scored)

Does the Applicant Provide a Detailed and Clear Budget and Justification That Is Consistent With the Proposed Program Objectives and Activities?

7. Human Subjects (Not Scored)

If Relevant, Does the Applicant Address the Requirements of Title 45 CFR Part 46 for the Protection of Human Subjects?

Part B: Adolescent Reproductive Health

1. Plan and Methods (35 Points)

• Is the timeline for the proposed activities realistic?

• Does the plan describe the training and technical assistance strategy to be used, including the method of delivery, potential trainers, training objectives, length of training, curriculum and materials, and evaluation plan?

• Does the plan describe how it will achieve the overall program goal?

• Does the plan describe any anticipated obstacles to providing training to the proposed organizations and personnel?

• Does the applicant include two letters of support that describe the intent to collaborate with the applicant?

• Does the applicant describe a plan to translate and disseminate lessons learned?

2. Objectives (20 Points)

• Does the applicant provide objectives that are specific, measurable, achievable, realistic, and time-phased?

• Do the applicant's objectives and activities use the organization's strengths and meet the program goal of building capacity within communities to prevent teen pregnancy and promote adolescent reproductive health?

• Does the applicant explain how objectives will be measured?

3. Evaluation (20 Points)

• Does the applicant identify the primary stakeholders in the evaluation process?

• Does the applicant provide an evaluation plan that identifies measurable objectives, including process and outcome indicators and timeframes?

• Does the evaluation plan identify who will conduct the data collection, analysis, and management and at what intervals?

• Does the applicant describe how the evaluation results will be shared with stakeholders and how the results will be used?

4. Background (15 Points)

• Does the applicant provide information in an appendix that specifically addresses:

—Their experience providing technical assistance in the areas of teen pregnancy, STD, and HIV prevention.

—Their experience providing technical assistance and training to State and local coalitions, State health departments, schools, health clinics, youth serving community and faith-based organizations, or other organizations.

—The extent to which their staff has demonstrated experience in teen pregnancy, STD, and HIV prevention training and evaluation.

• Does the applicant describe their experience in providing training and technical assistance in science-based practices in teen pregnancy, STD and HIV prevention?

• Does the applicant describe the results of similar efforts using skills to provide training and technical assistance to other organizations and disseminate information to a broader audience?

5. Program Staff (10 Points)

• Does the proposed staff have adequate training and technical assistance experience in science-based practices to successfully implement the project?

• Does the applicant provide résumés and job descriptions of existing and newly proposed staff with prior training and technical assistance experience in teen pregnancy, STD, and HIV prevention, identifying their role and responsibilities?

• Does the applicant provide an organizational chart that identifies lines of authority including who will have management authority over the project?

6. Budget and Justification (Not Scored)

Does the applicant provide a budget that is detailed, itemized, reasonable, clearly justified, and consistent with the intended use of funds?

7. Protection of Human Subjects (Not Scored)

Does the applicant adequately address the requirements of title 45 CFR part 46 for the protection of human subjects?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the NCCDPHP staff. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet the submission requirement.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1 Criteria" section above. All applications will be reviewed against the criteria for Part A. Applications for the optional Part B will be reviewed against the criteria for Part B by the same objective review panel. Following the panel, scores will be calculated for Part A applications and the highest scoring application for each of the 10 DHHS regions will be selected. Applications for Part B by these 10 applicants only will then be considered; awards for Part B will be based on ranking by score.

V.3. Anticipated Announcement and Award Dates

Award Date: On or before September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be

signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements 45 CFR parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–7 Executive Order 12372
- AR–9 Paperwork Reduction Act Requirements (to be determined by OMB reports clearance officer)
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding.ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two copies of the following reports:

1. Interim progress reports are due March 31 and September 30 each year of the cooperative agreement. The March progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives
b. Current Budget Period Financial Progress
c. New Budget Period Program Proposed Activities and Objectives
d. Budget
e. Additional Requested Information
f. Measures of Effectiveness

2. Financial status report, due November 30 or no more than 90 days after the end of the budget period.

3. Final financial and performance reports, due November 30 or no more than 90 days after the end of the 5-year project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For program technical assistance, contact: Mary Kay Larson, Project Officer, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway NE, MS K–22, Atlanta, GA 30341–3717, Telephone: (770) 488–6299, E-mail: *marykaylarson@cdc.gov.*

For financial, grants management, or budget assistance, contact: Annie Harrison Camacho, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2735 E-mail: *ACamacho@cdc.gov.*

Dated: March 24, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7027 Filed 3–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Factors Associated With Uptake of Immunization Clinical Standards

Announcement Type: New.

Funding Opportunity Number: 04089.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

I. Funding Opportunity Description

Authority: Public Health Services Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to fund research that will help promote the implementation of pediatric and adult immunization standards. These standards represent the most desirable immunization practices which health care professionals should strive to achieve.

In 2003, updated versions of both the child and adolescent and the adult Immunization Practices Standards were published (Poland GA, Shefer AM, McCauley M, Webster PS, *et al.* Standards for adult immunization practices. Am J Prev Med 2003;25:144–150; National Vaccine Advisory Committee. Standards for child and adolescent immunization practices. Pediatrics 2002;112:958–968). The revised standards reflect changes since the publication of the original standards, such as new knowledge regarding interventions effective at increasing vaccination, the shift of childhood vaccination from the public to the private sector, the increasing complexity of the childhood vaccination schedule, and the failure of many health plans to pay for the cost of vaccination. In general, the standards focus on the accessibility and availability of vaccines, proper assessment of patient vaccination status, opportunities for patient education, correct procedures for administering vaccines, implementation of strategies to improve vaccination rates, and partnerships with the community to reach target patient populations. The Standards are recommended for use by all healthcare professionals and all public and private sector organizations that provide immunizations.

This program addresses the "Health People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control and Prevention's (CDC) National Immunization program (NIP) to reduce the number of indigenous vaccine-preventable diseases.

Research Objectives:

- Identify factors associated with the implementation of the Standards for Adult and Child and Adolescent Immunization Practices.
- Make recommendations to assist NIP in stimulating the adoption of the Immunization Standards.

Specific research objectives:

- Select an appropriate theoretical model on which to design the study and base the instruments for data collection.
- Identify characteristics of practices that are predictive of uptake, including characteristics that have been identified as key to change in previous research:

organizational capabilities for change, infrastructure for implementation, medical group characteristics, guideline characteristics, and external environment.

• Identify a framework for translating findings into recommendations for promoting the adoption of the Immunization Standards.

Activities: Awardee activities for this program are as follows:

1. Identify a theoretical model suitable for describing and analyzing the process of guideline dissemination and uptake.

2. Develop a study design suitable for determining predictors of implementation of Immunization Standards.

3. Practices should be selected in part on the basis of criteria that may affect adoption (*e.g.* solo versus group practice) and should represent a mix of public, private, and community clinics, and of adult and pediatric practices.

4. Determine setting, methods, feasibility of protocol prior to implementation.

5. Validate or document degree of implementation of Immunization Standards through direct observation of practices.

6. Identify key staff and established resources/expertise available to develop approach.

7. Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $150,000.

Approximate Number of Awards: One.

Approximate Average Award: $150,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $150,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Individuals Eligible To Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission Letter of Intent (LOI)

A LOI is required and must be written in the following format:

- Maximum number of pages: Three
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and fax number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)
- Summary of proposed activities and description of study design, methods, and analyses

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone 301–435–0714, E-mail: *GrantsInfo@nih.gov.*

The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be double spaced and be no more than 25 pages.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the. Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract.* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should be included.

3. *Program Participants.* Provide a justification and description of the specific adult and pediatric practices targeted, including the demographic and geographic characteristics of the communities in which the study will take place. In addition, the proposal should provide evidence that the recipient has the capacity necessary to recruit participants. Describe how the study sample(s) is (are) defined. A description of how recruitment, retention and referral of participants will be handled should also be included.

4. *Methods.* Describe and justify the theoretic model that will be used to form the basis of the study.

Provide examples demonstrating the suitability of this model in similar or related studies. Provide methods for assessing implementation of standards in the study sample of pediatric and adult practices, using direct observation supplemented by other methods as appropriate. If any methods are not extant, the methods and timeframe for measure development and pilot testing should be given.

5. *Project Management.* Provide evidence of the expertise, capacity, and support necessary to successfully implement the project. Each existing or proposed staff position for the project should be described by job title, function, general duties, level of effort, and allocation of time. Management operation principles, structure, and organization should also be noted.

6. *Collaborative Efforts.* List and describe any current and proposed collaborations with government, health, or youth agencies or other researchers that will impact this project. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

7. *Data Sharing and release:* Describe plans for the sharing and release of data.

8. *Budgets.* Applications must be submitted in a modular grant format. The modular grant format simplifies the preparation of the budget in these applications by limiting the level of budgetary detail. Applicants request direct costs in $25,000 modules. Section C of the research grant application instructions for the PHS 398 (rev. 5/2001) is available at: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* This includes step-by-step guidance for preparing modular grants. Additional information on modular grants is available at: *http://grants.nih.gov/grants/funding/modular/modular.htm.*

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 29, 2004.

A letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

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Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

V.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, Fax: 404–639–0108, E-mail: *BGardner@CDC.GOV.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to:

Technical Information Management—PA# 04089, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the investigator have access to a sufficient number of practices for the study to yield meaningful results?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the investigator have experience conducting similar research?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Ability to perform studies that involve wide-spread implementation of interventions or practices using industrial and organizational research methodologies as demonstrated by related peer-reviewed publications.
- Access to providers necessary to ensure success of study as demonstrated by letters of support or by previous clinic-based research.
- Experience with immunization-related research as demonstrated by related peer-reviewed publications.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NIP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level programmatic review by a NIP panel.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Anticipated Application Deadline Date: May 2004.

Anticipated Award Date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1, Human Subjects Requirements
- AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7, Executive Order 12372 Review
- AR–10, Smoke-Free Workplace Requirements
- AR–11, Healthy People 2010
- AR–12, Lobbying Restrictions
- AR–15, Proof of Non-Profit Status (If applicable)
- AR–22, Research Integrity
- AR–24, Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:Technical Information Management Section, CDC Procurement and Grants Office,2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Mr. Gary Edgar, Project Officer, CDC, National Immunization Program, 1600 Clifton Road, NE.,Mailstop E–52, Atlanta, GA 30333, Phone: 404–639–8787,E-mail: *GWE1@CDC.GOV.*

For questions about peer review, contact: Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101,E-mail: *BGardner@CDC.GOV.*

For financial, grants management, or budget assistance, contact: Jesse L. Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2747, E-mail: *jtr4@CDC.GOV.*

VIII. Other Information

National Immunization Program, Centers for Disease Control and Prevention, Internet address: *http://www.cdc.gov/nip.*

Dated: March 24, 2004.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7012 Filed 3–25–04; 1:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Increasing Influenza Vaccination of Long Term Care Facility Staff

Announcement Type: New.

Funding Opportunity Number: 04090.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

SPOC Notification Deadline: April 29, 2004. For more information, see section "IV.4. Intergovernmental Review of Applications."

I. Funding Opportunity Description

Authority: Public Health Services Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to identify effective, feasible, and sustainable methods to increase influenza vaccination of long term care facility staff.

Epidemics of influenza occur during the winter months nearly every year, and elderly residents of long term care facilities are especially vulnerable to both hospitalization and death due to influenza. During outbreaks in long term care facilities, greater than 60 percent of residents can become infected.

Although influenza vaccine has been proven effective in preventing hospitalizations and reducing death, their use in long-term care facilities remains vastly underutilized. Based on the 1999 National Nursing Home Survey, only 66 percent of residents had received the influenza vaccine in the previous year. Even though staff (doctors and nurses) plays an integral role in the spread of influenza among residents, national estimates for staff vaccination are even lower at approximately 34 percent.

This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Center for Disease Control (CDC) and Prevention's National Immunization Program (NIP) to reduce the number of indigenous cases of vaccine-preventable diseases.

Research Objective:

- To develop, implement and evaluate an intervention to increase influenza vaccination of long term care facility staff.

Activities: Awardee activities for this program are as follows: Year one will be a planning year, and implementation and evaluation of the intervention will occur in year two. We anticipate the majority of personnel costs to be incurred in year two. Awardee activities for this program are as follows:

Year One

1. Develop an intervention to increase influenza vaccination rates among long term care facility staff. Important characteristics of the intervention include sustainability and degree to which the intervention could be

implemented widely with limited resources.

In addition, the intervention developed should reflect current knowledge about effectiveness of interventions to increase vaccination, specifically the importance of systems and administrative changes.

2. Identify a minimum of five long term care facilities who will implement this intervention. Long term care facilities included should represent a mix of characteristics, including chain versus independently owned, for profit versus not for profit, skilled nursing facilities versus non skilled facilities.

3. Develop a study design suitable for evaluating the effectiveness of this intervention.

4. Determine setting, methods, feasibility of protocol prior to implementation.

5. Identify key staff and established resources/expertise available to develop, implement and evaluate intervention.

6. Identify key staff and established resources/expertise available to develop, implement, and evaluate intervention.

Year Two

1. Implement intervention in the selected long term care facilities. Collect information on barriers to program implementation.

2. Evaluate the effectiveness and cost-effectiveness of the intervention.

3. Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $100,000 for year one and $150,000 for year two.

Approximate Number of Awards: One.

Approximate Average Award: $100,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.).

Floor of Award Range: None.

Ceiling of Award Range: $100,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission Letter of Intent (LOI)

A LOI is required and must be written in the following format:

- Maximum number of pages: Three
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and fax number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)
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Application: Follow the PHS 398 application instructions for content and

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The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be double spaced and be no more than 25 pages.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract.* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should be included.

3. *Program Participants.* Provide a justification and description of the long term care facilities, including the features described in Year 1 Activities in Section 1. In addition, the proposal should provide evidence that the recipient has the capacity and support necessary to successfully recruit long term care facilities. Describe how the study sample(s) is defined. A description of how recruitment, retention and referral of participants will be handled should also be included.

4. *Intervention and evaluation.* Describe the proposed strategies or components of the intervention, including how participants within long term care facilities will be selected and which group(s) will serve as controls. Describe the proposed design; methods and analysis plan for assessing the effectiveness of the intervention. The specific type of research method chosen should reflect the nature of the intervention. Potential threats to the validity of the study should be described along with how such threats will be recognized and addressed. The status of all necessary measurement instruments should be described. If any materials are not extant, the methods and timeframe for measure development and pilot testing should be given.

5. *Project Management.* Provide evidence of the expertise, capacity, and support necessary to successfully implement the project. Each existing or proposed staff position for the project should be described by job title, function, general duties, level of effort, and allocation of time. Management operation principles, structure, and organization should also be noted.

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IV.5. Funding restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for construction

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, Fax: 404–639–0108, E-mail: *BGardner@CDC.GOV.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04090, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

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The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the investigator have experience conducting similar research?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Ability to perform intervention research as demonstrated by related publications
- Positive working relationship with long term care facilities as demonstrated by previous experience working with long term care facilities.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by the NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the NIP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the application under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level programmatic review by a National Immunization Program panel.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Anticipated Application Deadline Date: May 2004.

Anticipated Award Date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the

CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.htm.*

The following additional requirements apply to this project:

- AR–1, Human Subjects Requirements.
- AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–7, Executive Order 12372 Review.
- AR–10, Smoke-Free Workplace Requirements.
- AR–11, Healthy People 2010.
- AR–12, Lobbying Restrictions.
- AR–15, Proof of Non-Profit Status (If applicable).
- AR–22, Research Integrity.
- AR–24, Health Insurance Portability and Accountability Act Requirements.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Mr. Gary Edgar, Project Officer, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, Phone: 404–639–8787, E-mail: *GWE1@CDC.GOV.*

For questions about peer review, contact: Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, E-mail: *BGardner@CDC.GOV.*

For financial, grants management, or budget assistance, contact: Jesse L. Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2747, E-mail: *jtr4@CDC.GOV.*

VIII. Other Information

National Immunization Program, Centers for Disease Control and Prevention, Internet address: *http://www.cdc.gov/nip.*

Dated: March 24, 2004.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7013 Filed 3–25–04; 1:52 pm]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Evaluation of Parents Claiming Exemptions to School Entry Immunization Requirements

Announcement Type: New.

Funding Opportunity Number: 04091.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

I. Funding Opportunity Description

Authority: Public Health Service Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to characterize the attitudes of parents who elect to claim immunization exemptions for their children and to develop a method that can be used to assess immunization exemption rates, attitudes, and practices among parents and providers within a particular geographic area.

Immunizations are considered one of the most effective means to prevent serious, life-threatening diseases. Currently, all states have laws that require proof of immunization for school entrance. Immunization exceptions exist in all states and may be claimed for a variety of reasons including medical, religious, or philosophical reasons.

In recent years, some states have experienced an increase in the rate of immunization exemptions claimed. Previous research suggests that the rate of immunization exemptions may be related to several factors including the amount of effort needed to claim an exemption compared to the amount of effort needed to actually fulfill the immunization requirement. Anecdotal reports claim that the increase may be due to new vaccine requirements (*i.e.* hepatitis B and varicella) and to increasing parental opposition to vaccination, potentially spurred by vaccine safety concerns.

Reasons for claiming an exemption have not been thoroughly evaluated. When a parent claims an exemption it is unknown if the parent opposes all vaccines, one particular vaccine series, or simply does not have time to bring his/her child to a healthcare provider to get the last dose of vaccine in a series. It is also unknown what role the physician plays (if any) in a parent's decision to claim an exemption. Understanding why parents claim exemptions can help the Centers for Disease Control and Prevention (CDC) to ensure that exemptions are used appropriately and that parents are knowledgeable about their options.

This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with the performance goal for the Centers for Disease Control and Prevention's National Immunization Program (NIP) to reduce the number of indigenous cases of vaccine-preventable diseases.

Research Objectives: To identify reasons for immunization exemptions

from the parent and provider perspectives and provide a better understanding of why immunization exemptions are claimed.

Specific research objectives:

1. Evaluate the rate of exemptions over time within a specific geographic area (at least one state) with respect to:

a. Geographic distribution of exemptions (*e.g.*, county, school district, school grade etc.)

b. Timing of introduction of new vaccine requirements or legislation.

c. Reports of adverse health events purportedly associated with vaccines or vaccine components.

2. Select schools with high or increasing rates of exemptions within a particular geographic area and identify, characterize, and describe the types of immunization exemptions claimed by parents and their providers.

a. For parents, describe and compare parents claiming an exemption for their child to parents not claiming exemptions.

b. Evaluate and compare the health care providers of parents claiming and not claiming an exemption.

3. Evaluate the research project area to determine the disease risk or outbreak potential from vaccine-preventable diseases.

4. Based on findings from objectives #1, #2, and #3, develop a method (including data collection instruments and analytical tools) that can be used to assess immunization exemption rates, attitudes, and practices among parents and providers.

Activities:

Awardee activities for this program are as follows:

1. Develop methods for analyzing state exemption data.

2. Develop appropriate state selection criteria. Select and enroll states.

3. Develop methods for identifying, sampling, and surveying parents who have and have not claimed an exemption for their child. Survey information should include demographic characteristics, including vaccination status of children; attitudes towards vaccination, including perceived benefits and risks; sources of vaccine information; reasons for claiming (or not) an exemption. Include a description of the survey instrument, statistical analysis, and outcome measures.

4. Develop methods for identifying, sampling, and surveying healthcare providers of children whose parents have and have not claimed an exemption. Survey data should include opinions regarding vaccination and exemptions; the role they play (if any) in influencing parents to opt for/against immunization/exemption; and, whether they are claiming medical exemptions for their patients based on parental pressure. Include a description of the survey instrument, statistical analysis, and outcome measures.

5. Develop a method that can be used to assess immunization exemption rates, attitudes, and practices among parents, as described in Specific Research Objective 3 above.

6. Develop a method that can be used to assess immunization exemption rates, attitudes, and practices among providers, as described in Specific Research Objective 4 above.

7. Collect and analyze data.

8. Collaboratively disseminate research findings in peer reviewed publications and for use in determining national policy.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Contribute subject matter expertise in the areas of epidemiologic methods and statistical analysis, and survey research consultation.

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $200,000.

Approximate Number of Awards: One.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $200,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): A LOI is required and must be written in the following format:

- Maximum number of pages: Three
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, and telephone number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)
- Summary of proposed activities and description of study design, methods, and analyses.

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at (770) 488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be double spaced and no more than 25 pages.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract.* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should be included.

3. *Program Participants.* Provide a justification and description of the specific state and schools targeted, including past and current exemption data and demographic and geographic characteristics. In addition, the proposal should provide evidence that the recipient has the capacity and state or local support necessary to recruit participants, including providers and parents of children sampled at participating schools. Describe how the study sample(s) is defined. A description of how recruitment, retention and referral of participants will be handled should also be included.

4. *Methods.* Describe methods and sources of data for assessing trends in exemption data. Describe methods for sampling children (with exemptions and without) from participating schools. Describe topic areas and potential questions to be examined with providers and parents. If any materials are not extant, the methods and timeframe for measure development and pilot testing should be given.

5. *Project Management.* Provide evidence of the expertise, capacity, and support necessary to successfully implement the project. Each existing or proposed staff position for the project should be described by job title, function, general duties, level of effort, and allocation of time. Management operation principles, structure, and organization should also be noted.

6. *Collaborative Efforts.* List and describe any current and proposed collaborations with government and health agencies or other researchers that will impact this project. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

7. *Data Sharing and Release:* Describe plans for the sharing and release of data.

8. *Budget.* Applications must be submitted in a modular grant format. The modular grant format simplifies the preparation of the budget in these applications by limiting the level of budgetary detail. Applicants request direct costs in $25,000 modules. Section C of the research grant application instructions for the PHS 398 (rev. 5/2001) is available at: *http://grants.nih.gov/grants/funding/phs398/phs398.html.* This includes step-by-step guidance for preparing modular grants. Additional information on modular grants is available at: *http://grants.nih.gov/grants/funding/modular/modular.htm.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1 (866) 705–5711. For more information, see the CDC web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 29, 2004.

A letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the

United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road NE., Mailstop E–05, Atlanta, GA 30333, Phone: (404) 639–6101, Fax: (404) 639–0108, Email: *BGardner@CDC.GOV.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to:

Technical Information Management-PA# 04091, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- Applicants must have an established relationship with the state immunization program and they must provide documentation of support from the state immunization program.
- Experience with state immunization exemption rate data and ability to justify increasing exemption rates in the selected state(s).
- Ability to perform immunization-related research as demonstrated by peer-reviewed publications in the field.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to

whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by NIP. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NIP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level programmatic review by a NIP panel.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Anticipated Application Deadline Date: May 2004.

Anticipated Award Date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1, Human Subjects Requirements
- AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7, Executive Order 12372 Review
- AR–10, Smoke-Free Workplace Requirements
- AR–11, Healthy People 2010
- AR–12, Lobbying Restrictions
- AR–15, Proof of Non-Profit Status (if applicable)
- AR–22, Research Integrity
- AR–24, Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Budget.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2700.

For scientific/research issues, contact:

Mr. Gary Edgar, Extramural Project Officer, CDC, National Immunization Program, 1600 Clifton Road NE., Mailstop E–52, Atlanta, GA 30333, Phone: (404) 639–8787, E-mail: *GWE1@CDC.GOV.*

For questions about peer review, contact:

Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road NE., Mailstop E–05, Atlanta, GA 30333, Phone: (404) 639–6101, E-mail: *BGardner@CDC.GOV.*

For financial, grants management, or budget assistance, contact:

Jesse L. Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2747, E-mail: *jtr4@CDC.GOV.*

VIII. Other Information

National Immunization Program, Centers for Disease Control and Prevention, Internet address: *http://www.cdc.gov/nip.*

Dated: March 24, 2004.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7015 Filed 3–25–04; 1:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Economic Studies of Vaccines and Immunization Policies, Programs, and Practices

Announcement Type: New.

Funding Opportunity Number: 04092.

Catalog of Federal Domestic Assistance Number: 93.185.

Key Dates:

Letter of Intent Deadline: April 29, 2004.

Application Deadline: June 1, 2004.

SPOC Notification Deadline: April 29, 2004. For more information, see section "IV.4. Intergovernmental Review of Applications."

I. Funding Opportunity Description

Authority: Public Health Services Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

Purpose: The purpose of the program is to provide important economic information about vaccines and immunization policies, programs, and practices. As new vaccines or vaccine combinations are developed, economic studies provide increasingly valuable data about the costs of program implementation and maintenance, the medical costs that can be averted by vaccine use, the costs of adverse events associated with vaccines, and the changes in health utilities resulting from their use. These data assist decision makers as they balance the health burden and economic costs of disease against vaccination costs when they make immunization recommendations.

This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

Measurable outcomes of the program will be in alignment with performance goal of the Centers for Disease Control and Prevention's (CDC) National Immunization Program (NIP) to reduce the number of indigenous cases of vaccine-preventable diseases.

Research Objectives: To generate economic information needed to inform and guide immunization policy, program, and practice decisions.

Activities: Awardee activities for this program are as follows:

1. Assemble a research team with demonstrated experience in conducting health economic studies of vaccine preventable diseases from multiple perspectives. To produce research results compatible with other CDC economic research, this team must be able to conduct quantitative research in the areas of cost-effectiveness, cost-utility, and cost-benefit analysis.

2. Conduct activities addressing (a) and (b) below. The subject of activity (a) is a varicella vaccine to prevent zoster infection in adults and the elderly. Clinical trials of the vaccine are now underway. The purpose of the study is to provide important health economic information useful to the immunization decision making process once the clinical trials are completed. There is currently little information about the health values and utilities associated with herpes zoster infection, prevention of infection, and possible adverse events associated with a potential vaccine. Hence CDC's interest in innovative approaches to valuation of the benefits associated with this vaccine. Additional studies will be conducted as described in (b) below. Specific protocols for activities conducted under (1) and (2) must be developed collaboratively by the awardee and CDC.

(a) Conduct a utility analysis of vaccinating adults against zoster infection, including the associated adverse events. Primary data collection methods will be employed to obtain stated-preferences and utilities about willingness to avoid zoster infection and adverse events. Study focus will be on survey design and implementation, measurement of health state values and utilities, and translation into quality-adjusted life-years. The study will be designed so that the resulting data will be compatible with data that are obtained through the vaccine clinical trials. The analysis will complement other economic studies of vaccines being conducted at CDC.

(b) Develop and conduct as many as three additional applied studies in vaccine economics to be decided upon in collaboration with CDC staff. The awardee must have the flexibility to accommodate changes in specific studies and priorities as CDC's need for information changes.

Examples of potential areas of interest for future studies include:

(1) Evaluation of coverage rates, costs, and implementation barriers for new or modified childhood, adolescent, and adult vaccines.

(2) Evaluation of coverage rates and costs of vaccine delivery to children, adolescents, and adults in traditional and non-traditional health care settings or other alternative settings

(3) Development and application of innovative, quantitative epidemiologic and economic methods to provide data to support decisions about vaccine policies, programs, and practices.

(4) Routinely evaluate progress in achieving the purpose of this program.

(5) Analyze and interpret data from the program studies, and publish and disseminate findings in collaboration with CDC.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide CDC investigator(s) to monitor the cooperative agreement as project officer(s).

2. Participate as active project team members in the development, implementation and conduct of the research project and as coauthors of all scientific publications that result from the project.

3. Provide technical assistance on the selection and evaluation of data collection and data collection instruments.

4. Assist in the development of research protocols for Institutional Review Boards (IRB) review. The CDC IRB will review and approve the project protocol initially and on at least an annual basis until the research project is completed.

5. Provide subject matter expertise in the areas of epidemiologic methods and statistical analysis, health economics, and survey research consultation

6. Participate in the analysis and dissemination of information, data and findings from the project, facilitating dissemination of results.

7. Serve as liaisons between the recipients of the project award and other administrative units within the CDC.

8. Facilitate an annual meeting between awardee and CDC to coordinate planned efforts and review progress.

9. Analyze and interpret data from studies, and publish and disseminate findings in collaboration with CDC.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $400,000.

Approximate Number of Awards: One.

Approximate Average Award: $400,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $400,000.

Anticipated Award Date: August 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI)

A LOI is required and must be written in the following format:

- Maximum number of pages: Three
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and fax number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Program Announcement (PA)
- Summary of proposed activities and description of study design, methods, and analyses

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone 301–435–0714, E-mail: *GrantsInfo@nih.gov.*

The Program Announcement Title and number must appear in the application.

You must include a research plan with your application. The research plan should be double spaced and be no more than 25 pages.

Your application will be evaluated on the criteria listed under Section V. Application Review Information, so it is important to follow them, as well as the Research Objectives and the Administrative and National Policy Requirements (AR's), in laying out your research plan.

Your research plan should address activities to be conducted over the entire project period. The research plan should consist of the following information:

1. *Abstract.* It is especially important to include an abstract that reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

2. *Program Goals and Objectives.* Describe the goals and objectives the proposed research is designed to achieve in the short and long term. Specific research questions and hypotheses should be included.

3. *Methods.* Provide detailed methods of completing activity (a) described in Section I, including the collection of data to develop utilities associated with vaccination, and recruitment of participants if appropriate. Provide information to demonstrate how these data will be compatible with data obtained through relevant vaccine clinical trials. If any materials are not extant, the methods and timeframe for measure development and pilot testing should be given. Describe approach and any past experience relevant to completing activity (b) described in Section I.

4. *Project Management.* Provide evidence of the expertise, capacity, and support necessary to successfully implement the project with an emphasis on team members with expertise necessary to conduct activities (a) and (b) described in Section 1. Each existing or proposed staff position for the project should be described by job title, function, general duties, level of effort, and allocation of time. Management operation principles, structure, and organization should also be noted.

5. *Collaborative Efforts.* List and describe any current and proposed collaborations with government or health agencies or other researchers that will impact this project. Include letters of support and memoranda of understanding that specify the nature of past, present, and proposed collaborations, and the products/services/activities that will be provided by and to the applicant.

6. *Data Sharing and release:* Describe plans for the sharing and release of data (See AR–25 for additional information).

7. *Project Budget:* Provide a detailed budget for each activity undertaken, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: April 29, 2004.

A letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you

will not be allowed to submit an application.

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4:00 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Awards will not allow reimbursement of pre-award costs.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, Fax: 404–639–0108, E-mail: *BGardner@CDC.GOV.*

Application Submission Address: Submit the original and five hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04092, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health.

In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by it's nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

(1) Ability to assemble a research team with demonstrated experience in conducting health economic studies of vaccine preventable diseases from multiple perspectives using the following approaches:

(a) modeling of epidemiologic and economic phenomena, (b) measuring health-related utilities associated with disease, disease prevention, and vaccine-associated adverse events, (c) estimating monetary values for reduced risk of disease and for reduced morbidity and mortality, (d) constructing decision-analytic models, and (e) conducting cost-effectiveness, cost-utility, and cost-benefit analyses.

(2) Demonstrated publication record using the types of analyses in (1) above and in the fields of epidemiology and vaccine economics.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection

against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by National Immunization Program. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by National Immunization Program in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level programmatic review by a National Immunization Program panel.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Announcement and Award Dates

Anticipated Application Deadline Date: May 2004.

Anticipated Award Date: August 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–1, Human Subjects Requirements
- AR–2, Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–7, Executive Order 12372 Review
- AR–10, Smoke-Free Workplace Requirements
- AR–11, Healthy People 2010
- AR–12, Lobbying Restrictions
- AR–15, Proof of Non-Profit Status (If applicable)
- AR–22, Research Integrity
- AR–24, Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact:

Mark L. Messonnier, M.S., Ph.D., Project Officer, Lead Economist, CDC, National Immunization Program, 1600 Clifton Rd., NE., Mailstop E52, Atlanta, Georgia 30333, Telephone: (404) 639–8218, E-mail: *MMessonnier@cdc.gov.*

For questions about peer review, contact:

Ms. Beth Gardner, Scientific Review Administrator, CDC, National Immunization Program, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, GA 30333, Phone: 404–639–6101, E-mail: *BGardner@CDC.GOV.*

For financial, grants management, or budget assistance, contact:

Jesse L. Robertson, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–27347, E-mail: *jtr4@CDC.GOV.*

VIII. Other Information

National Immunization Program, Centers for Disease Control and Prevention, Internet address: *http://www.cdc.gov/nip.*

Dated: March 24, 2004.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7014 Filed 3–25–04; 1:52 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Capacity Development for International Organizations Engaged in War-Related Injuries and Mine Action

Announcement Type: New.
Funding Opportunity Number: 04121.
Catalog of Federal Domestic Assistance Number: 93.283.
Key Dates:
Application Deadline: June 1, 2004.

I. Funding Opportunity Description

Authority: Sections 301, 307, and 317 of the Public Health Service Act, [42 U.S.C., Sections 241, 242l, and 247(b)], as amended.

Purpose: The purpose of the program is to increase the public health capacity of United Nations Organizations mandated with addressing and coordinating responses to and prevention of war-related injuries in less developed countries. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention and Environmental Health.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Increase the understanding of the relationship between environmental exposures and health effects.

Activities: Awardee activities for this program are as follows:

- Use a public health approach to evaluate standard methods of mine risk education (MRE) and develop a best practices approach for MRE.
- Design, implement, evaluate, and disseminate information from surveillance systems for injuries in post-conflict settings.
- Develop mechanisms for assessing the impact of sexual violence in conflict settings, and mitigating its impact on affected populations.
- Develop public health training curricula and conduct training courses for war-related injury and mine action field staff.
- Work with CDC staff to plan dissemination strategies of lessons learned from this program to inform the war-related injury community.
- Establish and document the utility of a comprehensive public health approach to war-related injuries and mine action.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide technical assistance in the design and implementation of evaluation of MRE programs, MRE strategies and assessing sexual violence.
- Collaborate on the synthesis and dissemination of lessons learned from the program.
- Provide instructors for training courses and other capacity building programs.
- Provide technical assistance and guidance for designing, implementing and maintaining surveillance systems.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $400,000.

Approximate Number of Awards: Three.

Approximate Average Award: $75,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: $20,000.

Ceiling of Award Range: None.

Anticipated Award Date: August 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by United Nations organizations mandated by United Nations member-states with the global coordination of war-related injury and mine action activities.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Eligibility is limited to United Nations organizations because these organizations are mandated by United Nations member-states to coordinate diverse war-related injury and mine action activities. Only organizations with these mandates have the resources and access to perform these activities and to assure the greatest impact on the larger war-related injury community.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 10. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12-point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project plan.
- Understanding of topic.
- Staff.
- Timeline.
- Evaluation plan.
- Budget justification (not counted in page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes.
- Organizational Charts.
- Letters of Support.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: June 1, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This program announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows: Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

If you are a domestic organization and you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04121, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

- Project plan (30 points) Will the project plan meet the objectives of this cooperative agreement?
- Understanding of topic (20 points) Is the applicant's understanding of the program sufficient for implementation?
- Staff (20 points) Does the applicant's staff have sufficient experience and skill for the program?
- Timeline (15 points) Is the timeline appropriate for the scope of proposed activities?
- Evaluation plan (15 points) Is the proposed evaluation protocol for the proposed activities sufficient?
- Budget justification (not counted in page limit).

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by NCEH. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate your application according to the criteria listed in the "V.1. Criteria" section above.

V.3. Anticipated Announcement Award Date

August 1, 2004

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–8 Public Health System Reporting Requirements.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–16 Security Clearance Requirement.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
   f. Measures of Effectiveness.
2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Michael Gerber, Project Officer, 4770 Buford Hwy NE, Mailstop F–48, Atlanta, Georgia 30341, Telephone: 770–488–3520, E-mail: *mcg9@cdc.gov.*

For budget assistance, contact: Steward Nichols, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2788, E-mail: *shn8@cdc.gov.*

Dated: March 24, 2004.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7028 Filed 3–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES): Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Notice Citation of Previous Announcement: March 11, 2004 (Volume 69, Number 48) [Notices] [Page 11635]

From the **Federal Register** Online via GPO Access.

Previously Announced Time and Date: 8 a.m.–3:30 p.m., April 6, 2004.

Place: Adam's Mark Hotel Columbia, 1200 Hampton Street, Columbia, South Carolina 29201.

Change in the Meeting: This meeting has been canceled.

FOR FURTHER INFORMATION CONTACT: Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE. (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: March 23, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–7022 Filed 3–29–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0117]

International Conference on Harmonisation; Draft Guidance on E2E Pharmacovigilance Planning; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "E2E Pharmacovigilance Planning." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance describes a method for summarizing the identified risks of a drug, the potential for important unidentified risks, and the potentially at-risk populations and situations that were not studied before the drug was approved. The draft guidance is intended to foster better and earlier planning of pharmacovigilance activities, especially in preparation for the early postmarketing period of a new drug.

DATES: Submit written or electronic comments on the draft guidance by May 19, 2004.

ADDRESSES: Submit written comments on the draft guidance to the Division of

Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Paul J. Seligman, Center for Drug Evaluation and Research (HFD–030), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6276, or Miles Braun, Center for Biologics Evaluation and Research (HFM–220), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–6090.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2003, the ICH Steering Committee agreed that a draft guidance entitled "E2E Pharmacovigilance Planning" should be made available for public comment. The draft guidance is the product of the Efficacy E2E Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy E2E Expert Working Group.

The draft guidance describes a method for summarizing the identified risks of a drug, the potential for important unidentified risks, and the potentially at-risk populations and situations that were not studied before the drug was approved. The draft guidance is intended to foster better and earlier planning of pharmacovigilance activities, especially in preparation for the early postmarketing period of a new drug.

The draft guidance proposes a structure for a pharmacovigilance plan and sets out principles of good practice for the design and conduct of observational studies. The draft guidance does not describe other methods to reduce risks from drugs, such as risk communication.

This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm.*

Dated: March 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7105 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0118]

International Conference on Harmonisation; Draft Guidance on Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The purpose of the draft guidance is to provide principles for assessing the comparability of biotechnological/biological products before and after changes are made in the manufacturing process to ensure that the process changes did not have an adverse impact on the quality, safety, and efficacy of the

product. The draft guidance is intended to assist in the design and conduct of studies that establish the comparability of products following a change in the manufacturing process.

DATES: Submit written or electronic comments on the draft guidance by May 19, 2004.

ADDRESSES: Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Barry Cherney, Center for Drug Evaluation and Research (HFM–536), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1795; or Andrew Chang, Center for Biologics Evaluation and Research (HFM–340), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–496–4833.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2003, the ICH Steering Committee agreed that a draft guidance entitled "Q5E Comparability of Biotechnological/Biological Products Subject to Changes in Their Manufacturing Process" should be made available for public comment. The draft guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

The purpose of the draft guidance is to provide principles for assessing the comparability of biotechnological/biological products before and after changes are made in the manufacturing process to ensure that the process changes did not have an adverse impact on the quality, safety, and efficacy of the product. The draft guidance is intended to assist in the design and conduct of studies that establish the comparability of products following a change in the manufacturing process.

The draft guidance applies to:

- Proteins and polypeptides, their derivatives, and products of which they are components (e.g., conjugates). These proteins and polypeptides are produced from recombinant or nonrecombinant cell-culture expression systems and can be highly purified and characterized using an appropriate set of analytical procedures;
- Products where changes are made by a single manufacturer, including those made by a contract manufacturer, who can directly compare results from the analysis of prechange and postchange products; and
- Products where process changes are made in development or for which a marketing authorization has been granted.

The principles outlined in the draft guidance might also apply to other product types, such as proteins and polypeptides isolated from tissues and body fluids.

This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: March 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7104 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Nonprescription Drugs Advisory Committee and the Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 6, 2004, from 8 a.m. to 5:30 p.m. and May 7, 2004, from 8 a.m. to 11 a.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Karen Templeton-Somers or Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, e-mail: *topperk@cder.fda.gov* or *somersk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512541 or 3014512534. Please call the Information Line for up-to-date information on this meeting. The background materials for this meeting will become available no later than 1 business day before the meeting and will be posted at *www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2004 and scroll down to the Nonprescription Drugs Advisory Committee or the Dermatologic and Ophthalmic Drugs Advisory Committee).

Agenda: On both days, the committee will discuss efficacy and labeling issues for over-the-counter drug products used in the treatment of tinea pedis (interdigital) in patients 12 years of age and over.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 23, 2004. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 6, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 23, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers or Kimberly Littleton Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 22, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–6974 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 3 and 4, 2004, from 8 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776 or e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 3, 2004, the committee will discuss these items: (1) New drug application (NDA) 21–649, GENASENSE (oblimersen sodium) Genta, Inc., proposed indication for use in combination with DTIC DOME (dacarbazine), Bayer Pharmaceuticals Corp., proposed for the treatment of patients with advanced malignant melanoma; and (2) NDA 21–661, RSR 13 Injection (efaproxiral sodium) Allos Therapeutics, Inc., proposed indication for use as an adjunct to whole brain radiation therapy in the treatment of brain metastases from primary breast cancer. On May 4, 2004, the committee will discuss these items: (1) Safety concerns associated with ARANESP (darbepoetin alfa) Amgen, Inc., and PROCRIT (epoetin alfa) Ortho Biotech, L.P., both of which are indicated for the treatment of anemia associated with cancer chemotherapy; and (2) colorectal cancer endpoints as a followup to the November 2003 FDA Workshop.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 26, 2004 . Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and 2:30 p.m. and 3 p.m on May 3, 2004. On May 4, 2004, oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and 2:30 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 26, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Trevelin Prysock at 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 22, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–6973 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Seventh Annual Food and Drug Administration–Orange County Regulatory Affairs Educational Conference "Solutions to Regulatory Challenges"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing its seventh annual educational conference entitled "Solutions to Regulatory Challenges" cosponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the drug, device, and biologics industries with an opportunity to interact with FDA reviewers and compliance officers from FDA's centers and district offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive question and answer, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on June 2 and 3, 2004, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at The Irvine Marriott, 18000 Von Karman Ave., Irvine, CA.

Contact: Ramlah Moussa, Office of Regulatory Affairs (HFR–PA200), Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, 949–608–4408, FAX: 949–608–4456, or Orange County Regulatory Affairs Discussion Group, Attention to Detail, 5319 University Dr., suite 641, Irvine, CA 92612, 949–387–9046, FAX: 949–387–9047, Web site: *http://www.ocra-dg.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Registration and Meeting Information: See OCRA Web site at *http://www.ocra-dg.org*. Contact Attention to Detail at 949–387–9046.

Before May 20, 2004, registration fees are as follows: $495.00 for members, $545.00 for nonmembers, and $325.00 for FDA/government/full-time students with proper identification. After May 20, 2004, $545.00 for members, $595.00 for nonmembers, and $325.00 for FDA/government/full-time students with proper identification.

The registration fee will cover actual expenses including refreshments, lunch, materials, and speaker expenses.

If you need special accommodations due to a disability, please contact Ramlah Moussa at least 10 days in advance.

Dated: March 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–7106 Filed 3–29–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: April 14, 2004, 8:30 a.m.–5 p.m.; April 15, 2004, 8:30 a.m–5 p.m.; April 16, 2004, 8:30 a.m.–2 p.m.

Place: The Wyndham Washington DC Hotel, 1400 M Street, NW., Washington, DC 20005.

Status: The meeting will be open to the public.

Agenda: Agency and Bureau administrative updates will be provided. The purpose of the meeting will be to address issues related to Geriatric Care with implications for the nursing workforce. An opening presentation will provide a comprehensive view of geriatric care to be followed by presentations on the nursing workforce. The National Center for Health Workforce Analysis, Bureau of Health Professions (BHPr), staff will present reports on the health care-workforce and long term care models for the geriatric workforce. A presentation on long term care challenges and initiatives will be followed by a panel on geriatric perspectives across acute, home health and community and public health care settings. The National Center for Health Workforce Analysis, BHPr, staff will report on a study of nursing aides, home health aides and related health care occupations identifying local workforce shortages and associated data needs. Interdisciplinary issues for the geriatric workforce will be the last formal presentation. Council workgroups will then deliberate on the content of the meeting and develop recommendations on geriatric care with implications for the nursing workforce.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, M.S., R.N., Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–1405.

Dated: March 24, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–7042 Filed 3–29–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: May 20, 2004.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report of Center Director and other issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2:45 p.m. to Adjournament.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7065 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR—"Virtual Reality for Pain During Dental Procedures."

Date: April 20, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Richard C. Harrison, Chief, Contract Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401. 301–435–1437.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield.

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7050 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice of hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Midcareer Investigator Award Grants.

Date: April 19, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Glen H Nuckolls, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis, Musculoskeletal, and Skin Diseases, 6701 Democracy Boulevard, Bldg. 1, Ste 800, Bethesda, MD 20892. 301–594–4974; *nuckollg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7051 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: March 30, 2004.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy

Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, Grants Review Branch, NIAMS, NIH, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952, *ansaria@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: March 30, 2004.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, 301 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7052 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict.

Date: April 20, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict.

Date: April 21, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Member Conflict.

Date: April 21, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 92.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7053 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Loan Repayment Program Application Review.

Date: April 19, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., RM. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7054 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Amended Notice of Meeting.

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, April 8, 2004, 2:30 p.m. to April 8, 2004, 3:30 p.m., NICHD, 6100 Executive Blvd, Room 5B01, Bethesda, MD, 20892 which was published in the **Federal Register** on March 17, 2004, 69 FR 12705.

The meeting has been changed to April 7, 2004, from 2:30 p.m. to 3:30 p.m. The location is the same. The meeting is closed to the public.

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7055 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Spasticity: Mechanisms and Rehabilitation.

Date: April 20, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7056 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Characterization of Embroyonic Stem Cell Subpopulations.

Date: April 19, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884 *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7057 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Behavioral Health Screening and Assessment Package".

Date: May 27, 2004.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7058 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 19–20, 2004.

Closed: May 19, 2004, 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 20, 2004, 9 a.m. to 2:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7059 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II—"Brain Train 4 Kids: New Delivery of Brain Power Program."

Date: May 12, 2004.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II—"Healthy Worklife: A Health Promotion and Risk Prevention for Youth."

Date: May 13, 2004.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, SBIR Phase II—"A Comprehensive Wellness Program for the Workplace."

Date: May 13, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Communications Support."

Date: May 19, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "Publication of NIDA NOTES and Science and Perspectives."

Date: May 25, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7060 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–46, Review of RFA, DE04–007, Salivary Proteome.

Date: May 3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, (301) 594–4861.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–43, Review of Centers for Oral Research—Pain.

Date: May 19, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 4–41, Review Centers for Oral Research—Craniofacial.

Date: June 21–24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892 (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7061 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Loan Repayment Program.

Date: April 20, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852.

(Telephone conference call.)

Contact Person: Carl T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898; *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7062 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol, Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 HH (15)—Review of U18 Grant Application.

Date: April 20, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute of Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Reserach Center Grants, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7063 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: April 15, 2004.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817..

Contact Person: Mary J. Homer, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3255, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–7042, *mjhomer@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7066 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biology.

Date: March 29, 2004.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4194, MSC 7826, Bethesda, MD 20892–7826, (301) 402–1074, *rigasm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gap Junctions in Vascular Smooth Muscle.

Date: April 2, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Immunoprotection.

Date: April 5, 2004.

Time: 9:30 a.m. to 9:50 a.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pulmonary Innate Immunity.

Date: April 5, 2004.

Time: 10 a.m. to 10:40 a.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4202 MSC 7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Inflammation, Infection, and the Immune Response.

Date: April 5, 2004.

Time: 10:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 4202 MSC 7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Member Conflicts- Physiology.

Date: April 7, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Novel Antibiotics That Trap Holiday Junctions.

Date: April 7, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Aldose Reductase and Diabetic Complications.

Date: April 14, 2004.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael H. Chaitin, PhD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dermatology and Rheumatoid Sciences.

Date: April 16, 2004.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892, (301) 594–6376.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy.

Date: April 19, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–7064 Filed 3–29–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Substance Abuse Prevention and Treatment (SAPT) Block Grant Application Guidance and Instructions, FY 2005—2007 (OMB No. 0930–0080, Revision)—Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35) provide for annual allotments to assist States to plan, carry out, and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the Federal fiscal year 2005–2007 SAPT Block Grant application cycles, the Substance Abuse and Mental Health Services Administration (SAMHSA) will provide States with revised application guidance and instructions to implement changes made by 42 U.S.C. 290kk and 42 U.S.C. 300x–65, implemented by 45 CFR part 54 and 45 CFR 96.122(f)(5), and the recommendations of the Office of Management and Budget's Program Assessment Rating Tool (PART) analysis of the SAPT Block Grant program.

Revisions to the previously-approved application resulting from the authorizing legislation, new regulation, and PART analysis reflect the following changes: (1) In Section I, the Funding Agreements/Certifications (Form 3) are being amended to include the requirement of 42 U.S.C. 300x–65 and 45 CFR part 54 ; (2) In Section II.2, the annual report and plan includes a new reporting requirement, Goal #17, "Services Provided By Non-Governmental Organizations," and Attachment J, "Charitable Choice Notice to Program Beneficiaries." In Section II.4, the "Treatment Utilization Matrix (Form 7)," is being replaced with the "Treatment Utilization Matrix (Form 7A)," which includes clarification in its column headings to improve collection of number of persons served and the average cost of services for each modality. A column has been added to collect information on the number of State approved facilities in each level or category of service to facilitate understanding of the States' capacities. The information on number of persons served and treatment costs is being collected in response to the OMB PART analysis of the SAPT Block Grant. Form 7A replaces "Number of Persons Served (Form P1)," that appeared in Section IV–A, "Voluntary Treatment Performance Measures." A new Form 7B, "Number of Persons Served (Unduplicated Count) of Persons Served for Alcohol and Other Drug Use in State Funded Services," has been added to collect treatment utilization data by age, gender, and race/ethnicity in order to facilitate comparisons with the currently collected Forms 8 and 9. In Section III.7, the "Purchasing Services Checklist(s)" has been revised to include information on competitive and non-competitive contracts as well as information on the estimated percent of clients served and estimated percent of SAPT Block Grant expenditures.

In Section IV–A, "Voluntary Treatment Performance Measures," the "Number of Persons Served (Form P1)" has been revised and renamed as described in Section II.4. Form P2, "Employment Status," Form P3, "Living

Status," Form P4 "Criminal Activity," and Form P5, Alcohol Use," have been renamed Form T2 through T5, respectively. Form P6, "Marijuana Use," Form P7, "Cocaine Use, "Form P8, "Amphetamine Use," and P9, "Opiate Use," have been replaced by Form T6, "Other Drug Use." Form T–7, "Infectious Disease Performance Measure," is a checklist to determine the degree to which the Single State Agency provides and/or coordinates delivery of appropriate infection control practices within its service system for substance abuse treatment and prevention services. Form T–8, "Social Support for Recovery," and Form T–9, "Retention," were added to encourage States to report performance and outcome data consistent with SAMHSA's proposed performance measures. Each of the voluntary treatment performance measure forms (T2–T6, T8–T9) includes a corresponding detail sheet (checklist) in which States will be asked to identify the source(s) of the performance data used and, if unable to provide such data, the State will be asked to identify the reason(s) why such data are unavailable. The accompanying detail sheets (checklists) will provide SAMHSA with a description of the States' data reporting capabilities and will provide SAMHSA with a baseline for determining the States' technical assistance needs with regard to data collection, analysis, and reporting.

In Section IV–B, "Voluntary Prevention Performance Measures (Forms P10–P13)," have been renumbered P1–P7.

ANNUAL REPORTING BURDEN

	Number of respondents	Responses per respondent	Hours per response	Total burden
Sections I–III—States and Territories	60	1	502	30,120
Section IV–A	40	1	50	2,000
Section IV–B	20	1	42	840
Total	60			32,960

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 23, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–6983 Filed 3–29–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Protocols for the Cross-Site Evaluation of the State Incentive Grant (SIG) Program (OMB No. 0930–0226, Revision)—SAMHSA's Center for Substance Abuse Prevention (CSAP) is charged with evaluating the State Incentive Cooperative Agreements for Community-Based Action, or State Incentive Grant (SIG) Program. States receiving SIG funds are to: (1) Coordinate, leverage and/or redirect, as appropriate, all substance abuse prevention resources within the State that are directed at communities, families, schools, and workplaces, and (2) develop a revitalized, comprehensive State-wide prevention strategy aimed at reducing drug use by youth. The ultimate aim of the SIG Program is to prevent substance abuse among youths, ages 12 to 17, and also young adults, age 18–25. To date, the 41 States, along with the District of Columbia, Puerto Rico, and the Virgin Islands, that have received SIG grants are required to implement at the community level a range of substance abuse, community-based prevention programs and strategies, at least half of which meet the specifications of sound scientific research findings, such as the National Registry of Effective Programs. CSAP awarded about $3 million per year for three years to each of five States in FY 1997 (Cohort I), fourteen States in FY 1998 (Cohort II), one State and the District of Columbia in FY 1999 (Cohort III), seven states in FY 2000 (Cohort IV), eight states and Puerto Rico in FY 2001 (Cohort V), four states in FY 2002 (Cohort VI) and two states and the Virgin Islands in FY 2003 (Cohort VII).

CSAP is conducting a national, cross-site evaluation of the SIG Program, consisting of a process and an outcome evaluation. The outcome evaluation will address two questions: (1) "Has the SIG Program had an impact on youth substance abuse?" and (2) "How do SIG States differ in their impact on youth substance abuse?" These questions will be addressed primarily using the CSAP core measures, a data collection activity already approved by the Office or Management and Budget (OMB) under control number 0930–0230. In addition to the core measures, data already being collected by SAMHSA's National Survey on Drug Use and Health (NSDUH; OMB No. 0930–0110) will be examined.

The process evaluation will focus on three questions: (1) "Did States attain the SIG Program's two main goals of coordinated funding streams and revitalized comprehensive prevention strategies and how were these goals attained?" (2) "What other substance abuse prevention programming has the State implemented?" and (3) "Did SIGs meet the criterion of supporting science-based programs fifty percent of the time, and what array of prevention activities were supported?"

Three instruments are needed to collect process information about SIG activities at the State, community, and program levels: (1) A Final Report Protocol; (2) a SIG Community Site Visit Protocol; and (3) a SIG Community Telephone Interview Protocol. The Final Report Protocol will be used to collect data across the spectrum of activities associated with the SIG effort in the State. The areas captured by the Final Report Protocol are outlined in the Conceptual Framework utilized by the SIG States and cross-site evaluation team, and include the following topics: GOAMS (goals, objectives, accomplishments, and milestones), contextual conditions, SIG mobilization, system characteristics and dynamics, collaborative strategies or activities, immediate outcomes, systems change, sub-recipient characteristics and dynamics, sub-recipient planning and science-based prevention interventions, sub-recipient immediate local outcomes, long-term outcomes, possible rival explanations, and learned lessons.

The community site visits will be conducted in randomly selected sample of sub-recipient communities in Cohorts I–III that have submitted pre-post matched outcome data that includes comparison data. The SIG Community Site Visit Protocol will collect data at the sub-recipient and program levels on the following topics: degree of monitoring by the State, selection processes of interventions, evaluation strategies, technical assistance provided by the State, level of guidance by the State in program selection, and evaluation.

The sampling frame for the telephone interviews will include all active sub-recipients in Cohorts I–V that are collecting outcome data at the intervention level. Sub-recipient communities selected for site visits will be excluded from the sampling frame. The SIG Community Telephone Interview Protocol will collect data on the processes for selection and implementation of interventions and the approach to evaluation of these interventions.

OMB approval has been received for the process evaluation in the first four cohorts (N=28 states) and for states to submit previously collected outcome data for secondary analysis. This request will add the more recently funded SIG jurisdictions (Cohorts V–VII) to the process evaluation (N=16 states) and address the burden on states (Cohorts VI–VII) to submit previously collected outcome data (N=23 states). Included in this request are revised burden estimates based on actual experience, and a request for an extension of the period of OMB approval for the SIG cross-site evaluation by three years.

Estimated annual burden is as follows:

Instrument	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
SIG Final Report Protocol:				
Evaluators	16	1	200	3,200
Project Directors	16	1	40	640
Key Informants	32	1	4	128
SIG Community Site Visits in 8 States:				
State contacts	8	1	1	8
Subrecipient contacts	10	1	1	10
Site visit interviews (10 per site)	80	1	1	80
SIG Community Telephone Interviews:				
Telephone Interviews	81	1	2	162
Community outcome data (23 States)	23	2	8	368
TOTAL				4,596

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 23, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–6984 Filed 3–29–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to the Iowa Department of Public Health.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP), intends to award approximately $200,000 (total costs) for a one-year project period to the Iowa Department of Public Health. This is not a formal request for applications. Assistance will be provided only to the Iowa Department of Public Health based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SP 04–010.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 519E of the Public Health Service Act, as amended.

Justification: Only the Iowa Department of Public Health is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP), is seeking to award a single source supplemental grant to the Iowa Department of Public Health to support methamphetamine prevention infrastructure development to reduce methamphetamine production supply and use.

Iowa has a serious and growing methamphetamine abuse problem. It ranks as the sixth highest state in usage, according to the 2001 preliminary findings of the National Institute of Justice. Problems stemming from widespread use, including increases in treatment admissions, arrests, drug convictions, and seizure of methamphetamine laboratories, have overwhelmed the substance abuse prevention and treatment, and criminal justice systems. Iowa's rural and agricultural nature provides an attractive setting for clandestine methamphetamine production

laboratories, since it is characterized by open space, a network of roadways for delivery, and ample raw materials. Consequently, Iowa houses many methamphetamine laboratories.

The dramatic increase in methamphetamine use in the State of Iowa has stimulated the interest and commitment of its business community to partner with the State in responding to the problem. There is a growing awareness in the field of the importance of engaging "mainstream" sectors of the community in prevention activities in order to increase the acceptability, effectiveness, and long-term sustainability of such programs. The interest of Iowa's business community provides the State (and SAMHSA) with a unique opportunity to develop and evaluate a public-private partnership to combat methamphetamine production and cost.

FOR FURTHER INFORMATION CONTACT: Wilma Pinnock, SAMHSA/CSAP, 5600 Fishers Lane, Rockwall II, 9th Floor, Rockville, MD 20857; telephone: (301) 594–3447; E-mail: *wpinnock@samhsa.gov.*

Dated: March 24, 2004.

Margaret M. Gilliam,

Acting Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–7043 Filed 3–29–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection (IAIP)

Open Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will hold a meeting to be briefed on the status of several Working Group activities that the Council undertook at its last meeting. The NIAC advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services.

DATES: April 13, 2004, 2 p.m.–5 p.m.

ADDRESSES: The National Press Club Ballroom, 13th floor, 529 14th St, NW., Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, (202) 482–1929.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Committee meeting on April 13, 2004

I. Opening of Meeting	Nancy J. Wong, U.S. Department of Homeland Security (DHS)/Designated Federal Official, NIAC.
II. Roll Call of Members	NIAC Staff.
III. Opening Remarks	Lt. Gen. Frank Libutti (USMC, ret.), Under Secretary for Information Analysis and Infrastructure Protection, DHS Homeland Security for Infrastructure Protection; Gen. John A. Gordon (USAF, ret.), Assistant to the President and Homeland Security Advisor, Homeland Security Council; Richard K. Davidson, Chairman, President & CEO, Union Pacific Corporation; Chairman, NIAC; Erle A Nye, Chairman and CEO TXU Corp; newly appointed Chairman, NIAC; Passing of the Gavel; and John T. Chambers, President & CEO, Cisco Systems, Inc.; Vice Chairman, NIAC.
IV. Status Reports on Pending Initiatives.	
A. Hardening the Internet	George H. Conrades, Chairman & CEO, Akamai Technologies; NIAC Member.
B. Prioritization of Cyber Vulnerabilities	Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC Member.
C. Vulnerability Scoring Research Task	Vice Chairman Chambers; and John W. Thompson, Chairman & CEO, Symantec Corporation; NIAC Member.
V. Final Report and Discussion on Regulatory Guidance/Best Practices for Enhancing Security of Critical Infrastructure Industries.	Karen L. Katen, President, Pfizer Global Pharmaceuticals and Exec. V.P., Pfizer Inc.; NIAC Member.
VI. Adoption of NIAC Recommendations	NIAC Members.
VII. Final Report and Discussion on Evaluation Enhancement of Information Sharing Analysis.	Thomas E. Noonan, Chairman, and President & CEO, Internet Security and Systems, Inc.
VIII. Adoption of NIAC Recommendations	NIAC Members.
IX. Updates	White House Staff.
A. NSTAC	Chairman and Vice Chairman, NSTAC.
B. National Cyber Security Division	Amit Yoran, Director.
X. New Business	Chairman Davidson; NIAC Members.
XI. Adjournment.	

Procedural

These meetings are open to the public. Limited seating will be available. Reservations are not accepted. Please note that the meetings may close early if all business is finished. Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to NIAC members, the Council suggests that presenters forward the public presentation materials, 10 days prior to the meeting date, to the following address:

Ms. Nancy J. Wong, Infrastructure Coordination Division, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Designated Federal Official and submit written material. If you would like a copy of your material distributed

to each member of the Committee in advance of a meeting, please submit 25 copies to the Designated Federal Official (*see* **ADDRESSES** and **DATES**).

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Official as soon as possible.

Dated: March 22, 2004.

Nancy J. Wong,

Designated Federal Official for NIAC.

[FR Doc. 04–7232 Filed 3–26–04; 3:14 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Application for action on an approved application or petition; Form I–824.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 13, 2004 at 69 FR 1991, allowing for a 60-day public comment period. No comments were received by the CIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 29, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition; Form I–824.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection is used to request a duplicate approval notice, to notify and to verify to the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Steve Cooper, RPA Clearance Officer, Department of Homeland Security, Office of Chief Information Officer, Regional Office Building 3, 7th and D Streets, SW., Suite 4626–36, Washington, DC 20202.

Dated: March 23, 2004.

Richard A. Sloan,

Department Clearance Officer, Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–6981 Filed 3–29–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning quarterly reporting to FEMA for the Supplemental Property Acquisition and Elevation Assistance Program.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act (the Act) for FY 2000 (Pub. L. 106–113) authorizes FEMA to provide assistance for acquisition and relocation of properties affected by Hurricane Floyd or surrounding events for hazard mitigation purposes. Pub. L. 106–246 authorizes FEMA to provide assistance for acquisition, relocation or elevation of properties made uninhabitable by floods in areas that were declared major disasters in fiscal years 1999 or 2000. Grantees of Supplemental Property Acquisition and Elevation Assistance Program awards must report quarterly to FEMA on the performance and financial

status of grant projects. FEMA uses this information to report quarterly to Congress, as required by the Act. Grantees may use existing Hazard Mitigation recordkeeping systems to meet FEMA's financial reporting requirements and to document program funds that are not used in violation of existing regulations. Subgrantees are responsible for reporting their funds to States that are under the Supplemental Property Acquisition and Elevation Assistance Program. Financial records are maintained to document all project expenditures.

Collection of Information

Title: Supplemental Property Acquisition and Elevation Assistance.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0048.

Form Numbers: FEMA Form 20–10, Financial Status Report.

Abstract: FEMA Form 20–10 is used to review States' quarterly reports, ensure that overall programs are progressing on schedule, and projects meet the intent of the Act. States receiving grant awards are responsible for documenting and reporting to FEMA the use of program funds, in accordance with the Act and implementing regulations. Sub-grantees (local governments) are responsible for implementing the scope of work for a grant and reporting quarterly to States, the progress of projects and status of funds received under the grant. The State will review local community reports to ensure grant projects are progressing on schedule and funds are being used appropriately.

Affected Public: State, local or tribal government.

Estimated Total Annual Burden Hours:

Type of collection/forms	Number of respondents	Hours per response	Annual burden hours
FEMA Form 20–10, Financial Status Report 263 × quarterly = 1052	1052	8	8,416
Performance Report 263 × quarterly = 1052	1052	4.2	4,418
Total	1052	12.2	12,834

Estimated Cost: The estimated costs associated with this collection for the quarterly reporting process is $308,016. This calculation is based on the respondents' wage rate.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be received on or before June 1, 2004.

ADDRESSES: Interested persons should submit written comments on the proposed information collection to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address: *FEMA-Information-Collections@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Carrie Herndon, Hazard Mitigation Specialist, Mitigation Directorate, telephone number (202) 646–4330 for additional information. You may contact Ms. Anderson for copies of the proposed information collection (see addressee information above).

Dated: March 22, 2004.

George S. Trotter,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 04–7018 Filed 3–29–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes a description of the information collections required in 44 CFR 61, Appendix A(2)VII(T) and implementing guidance and the Closed Basin Lakes Conservation Easements Biennial Report that FEMA will use.

Title: Closed-Basin Lake and Endorsement Requirements.

OMB Number: 1660–0050.

Abstract: A closed basin lake is a natural lake from which water leaves primarily through evaporation and whose surface area exceeds or has exceeded one square mile at any time in the recorded past. FEMA Regional Directors shall determine that State, local government, or tribe has established new building restrictions and the State is providing the support needed to eliminate future flood losses before policyholders can qualify for insurance claim benefits under the closed basin lake standard flood insurance policy endorsement.

Affected Public: Individuals or households, business or other for profit, and State, local or tribal government.

Number of Respondents: 16,270.

Estimated Time per Respondent: The total estimated hours per respondent for the completion of all ten collections in this information collection request is 103.25 hours, with an estimated average of 10.33 hours per respondent, per collection.

Estimated Total Annual Burden Hours: 5,356 hours.

Frequency of Response: On occasion and biennially for responses to the Closed-Basin Lakes Conservation Easements Biennial Report.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory

Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA at e-mail address *kflee@omb.eop.gov* or facsimile number (202) 395–7285. Comments must be submitted on or before April 29, 2004. In addition, interested persons may also send comments to FEMA (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov*.

Dated: March 22, 2004.

George S. Trotter,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 04–7019 Filed 3–29–04; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCIES: Department of the Interior, Office of the Assistant Secretary—Water and Science, (Interior); Utah Reclamation Mitigation and Conservation Commission, (Mitigation Commission); Central Utah Water Conservancy District, (CUWCD).

ACTION: Notice of availability of the Utah Lake Drainage Basin Water Delivery System, Draft Environmental Impact Statement authorized in Section 202(a)(1) of the Central Utah Project Completion Act (CUPCA), which is part of the Bonneville Unit of the Central Utah Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, Interior, CUWCD, and the Mitigation Commission (joint lead agencies), have issued a Draft Environmental Impact Statement (DEIS) for the Utah Lake Drainage Basin Water Delivery System (Utah Lake System), Bonneville Unit, Central Utah Project. The DEIS addresses potential impacts related to construction and operation of the features proposed for the Utah Lake System. The DEIS is intended to satisfy disclosure requirements of the National Environmental Policy Act (NEPA) and will serve as the NEPA compliance document for contracts, agreements and permits that would be required for construction and operation of the Utah Lake System. The DEIS is intended to provide NEPA compliance for the Clean Water Act Section 404(r) exemption process. In addition to this notification, notices will be published in local newspapers. The purpose of these publications is to give notice to all interested parties of the availability of the Utah Lake System DEIS and provide an opportunity for the public to submit written comments.

DATES: Written comments on the DEIS must be submitted or postmarked no later than June 11, 2004. Electronic comments will not be accepted. Comments on the DEIS may also be presented verbally or submitted in writing at public hearings that will be held on: April 28, 2004, at 5 p.m. at the Sandy City Hall, located at 10,000 South Centennial Parkway, Sandy, Utah; and April 29, 2004, at 5 p.m. at the Veterans Memorial Building in Spanish Fork, located at 386 North Main Street, Spanish Fork, Utah. Verbal comments at the hearings will be limited to 5 minutes. Those wishing to give verbal comments should submit a registration form, included at the end of the DEIS, to the address listed below one week prior to the public hearings. In order to be included as part of the hearing record, written comments must be submitted at the time of the hearing.

ADDRESSES: Comments on the DEIS should be addressed to Mr. Mark Breitenbach, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah, 84058.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this notice can be obtained from Mr. Reed Murray at (801) 379–1237, or he can be reached over the Internet at *rmurray@uc.usbr.gov*.

Additional copies of the DEIS, and copies of the resource technical reports can be obtained from Ms. Laurie Barnett, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah, 84058.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058.

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City UT 84101.

Department of the Interior, Natural Resource Library, Serials Branch, 18th C Streets, NW., Washington, DC 20240.

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606.

and on the Central Utah Water Conservancy District Web site at: *http://www.cuwcd.com/cupca/projects/uls/index.htm*.

SUPPLEMENTARY INFORMATION:

Background—The Utah Lake System is one of the systems of the Bonneville Unit of the Central Utah Project that would develop central Utah's water resources for municipal and industrial supply, fish and wildlife, and recreation. Initiation of planning for the Utah Lake System was announced in the **Federal Register** on October 14, 1998, (FR Doc. 98–27484). Notice of intent to initiate scoping and prepare a DEIS was announced in the **Federal Register** on August 23, 2000, (FR Doc. 00–21458). Scoping was accomplished in two stages: informal scoping was conducted through public meetings in September 2000 and October 2001; and formal scoping was conducted through mailings and public meetings during February 2002. Comments received through the scoping process were considered during preparation of the DEIS.

Preferred Alternative—The Utah Lake System Preferred Alternative would provide an average transbasin diversion of 101,900 acre-feet which consists of 30,000 acre-feet of Municipal and Industrial (M&I) secondary water to southern Utah County and 30,000 acre-feet of M&I water to Salt Lake County water treatment plants; 1,590 acre-feet of M&I water already contracted to southern Utah County cities, and 40,310 acre-feet of M&I water to Utah Lake for exchange to Jordanelle Reservoir. It would conserve water in a Mapleton-Springville Lateral Pipeline, conserve water in the Provo River basin and deliver it along with acquired water to assist June sucker spawning and rearing, convey water to support in-stream flows in Provo River and in Hobble Creek to assist recovery of the June sucker, and develop hydropower. This alternative would involve construction of five new pipelines for delivery of water and 2 new hydropower plants and associated transmission lines. Under this alternative, Interior would acquire up to 57,003 acre-feet of the District's secondary water rights in Utah Lake to provide a firm annual yield of 60,000 acre-feet of M&I water.

Bonneville Unit Water Alternative—The Bonneville Unit Water Alternative would have an average transbasin diversion of 101,900 acre-feet consisting of: 1,590 acre-feet of M&I water already contracted to the southern Utah County cities; 15,800 acre-feet of M&I water to southern Utah County to be used in secondary water systems; and 84,510 acre-feet of M&I water delivered to Utah

Lake for exchange to Jordanelle Reservoir. It would conserve water in a Mapleton-Springville Lateral Pipeline, conserve water in the Provo River basin and deliver it along with acquired water to assist June sucker spawning and rearing, convey water to support in-stream flows in Hobble Creek to assist recovery of the June sucker, and develop hydropower. It would involve construction of three new pipelines and two new hydropower plants with associated transmission lines. Under this alternative, Interior would acquire up to 15,000 acre-feet of the District's secondary water rights in Utah Lake to provide a firm annual yield of 15,800 acre-feet of M&I water.

No Action Alternative—No new water conveyance features would be constructed under the No Action Alternative. The delivery of 86,100 acre-feet of Bonneville Unit M&I exchange water would be made without any shortages. Some of the Bonneville Unit M&I exchange water would be routed through the Strawberry Tunnel to meet instream flow needs in Sixth Water and Diamond Fork creeks. The remaining Bonneville Unit M&I exchange water would be conveyed through the Diamond Fork System and discharged into Diamond Fork Creek at the outlet near Monks Hollow or discharged from the Diamond Fork Pipeline into the Spanish Fork River at the mouth of Diamond Fork Canyon. The irrigation diversions on lower Spanish Fork River would be modified to bypass and measure the 86,100 acre-feet into Utah Lake, and to allow fish passage as previously agreed by the Interior and District in the 1999 Diamond Fork FS–FEIS and ROD. The Interior would not purchase any of the District's secondary water rights in Utah Lake and no water would be conveyed to Hobble Creek. The No Action Alternative would be the same as the Interim Proposed Action in the Diamond Fork FS–FEIS.

Dated: March 25, 2004.

Ronald Johnston,

Program Director, Department of the Interior.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 04–7034 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Study Design for the Hudson River Natural Resource Damage Assessment

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Study Design for spring 2004 avian investigations. The Draft Study Design describes the activities that constitute the Trustees' currently proposed approach to conducting investigations of avian species, particularly belted kingfisher and spotted sandpiper, beginning in spring 2004, as part of the Hudson River Natural Resource Damage Assessment (NRDA).

DATES: Written comments must be submitted on or before April 29, 2004.

ADDRESSES: Requests for copies of the Draft Study Design may be made to: Ms. Kathryn Jahn, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045. Written comments or materials regarding the Draft Study Design should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Kathryn Jahn, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045. Interested parties may also call 607–753–9334 for further information.

SUPPLEMENTARY INFORMATION: The Draft Study Design is being released for public review and comment in accordance with the Trustees' NRDA Plan for the Hudson River issued in September 2002. That NRDA Plan was released in accordance with the NRDA Regulations found at title 43 of the Code of Federal Regulations part 11.

Interested members of the public are invited to review and comment on the Draft Study Design. Copies of the Draft Study Design are available from the Service's New York Field Office at 3817 Luker Road, Cortland, New York 13045. All comments received on the Draft Study Design will be considered and a response provided either through revision of the Study Design and incorporation into the Final Study Design or by letter to the commentator.

Comments, including names and home addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withhold your name and 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. We will not, however, consider anonymous comments. 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.

Author: The primary author of this notice is Ms. Kathryn Jahn, New York Field Office, U.S. Fish and Wildlife Service, 3817 Luker Road, Cortland, New York 13045.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.

Dated: March 24, 2004.

Thomas J. Healy,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 04–7031 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–04–2822]

Notice of Emergency Temporary Closure of Public Lands to Motorized Vehicles and Certain Other Uses in San Diego County, CA, Under Burned Area Emergency Stabilization and Restoration

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency temporary closure to motorized and mechanized vehicle use and certain other uses on public lands administered by the Bureau of Land Management (BLM), Palm Springs-South Coast Field Office, California.

SUMMARY: The BLM Palm Springs-South Coast Field Office is temporarily closing portions of public lands to motorized and mechanized vehicle use, and prohibiting or restricting certain other uses, in the South Coast Resource Area in San Diego County, California. This closure is needed to protect public health and safety, cultural and natural resources, and stabilization treatments as recommended in the Department of the Interior's Burned Area Emergency Stabilization and Rehabilitation (BAER)

Plan for the Otay fire in San Diego County.

DATES: This closure is in effect from March 30, 2004, until October 30, 2004. The closure may be lifted sooner if BLM determines that road repairs, revegetation, and stabilization efforts have reduced safety hazards and if treatments result in successful regrowth of desired vegetation.

ADDRESSES: Copies of the closure and a map of the closed areas can be obtained at the BLM, Palm Springs-South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258, telephone (760) 251–4800; BLM, California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825, telephone (916) 978–4600. BLM will also announce the closure through local media outlets, by posting this notice with a map of the closed areas at key locations that provide access to the closure areas.

FOR FURTHER INFORMATION CONTACT: Greg Hill, Bureau of Land Management, phone (760) 251–4800 or by e-mail at *Greg_Hill@blm.gov*.

SUPPLEMENTARY INFORMATION: The public lands affected by the Otay Fire and addressed in the BAER Plan are closed to all motorized and mechanized vehicle use (*i.e.* including trucks, sport utility vehicles, all-terrain vehicles, cars, motorcycles, mountain bikes, etc.), except for authorized access to private lands, or other authorized use, fire, law enforcement, and emergency activities. The authorities for this closure and restriction order are 43 CFR 8364.1 and 9268.3(d).

The following paragraphs explain the background for BLM's management of the closed lands, and the reasons for the closures and restriction.

These closures and restrictions apply to BLM-managed public lands within the boundary of the San Diego National Wildlife Refuge (Jamul Mountains), and the public lands south of State Highway 94 to the US-Mexico border, east of Otay Lakes Road, and west of Marron Valley Road. These lands are part of the Otay/Kuchamaa Cooperative Management Area, as described under the San Diego Multiple Species Conservation Program (MSCP). The lands are managed to protect the wilderness values of the Otay Mountain Wilderness, habitat for several threatened and endangered plant and animal species, cultural resources, and public open space. These public lands are managed under the 1994 South Coast Resource Management Plan (RMP). Under the San Diego County Management Area of the South Coast RMP, motorized vehicle use is limited to existing routes of travel. The Otay Mountain Wilderness and the Cedar Canyon ACEC are closed to motorized vehicle use under existing legislation and the South Coast RMP. This closure and restriction order applies to approximately 21,924 acres of public lands affected by the Otay Fire of October 2003.

The Otay Mountain Truck Trail, Minnewawa Truck Trail, and portions of Marron Valley Road provide access to public lands on and around Otay Mountain and Marron Valley. Most of Marron Valley is owned by the San Diego Water Department and is not open to the public. Motorized and mechanized vehicle use is not permitted in the Otay Mountain Wilderness. This temporary closure affects all sections of the Otay Mountain Truck Trail and Minnewawa Truck Trail on public lands, and the section of Marron Valley Road on public lands south of the intersection with the Otay Mountain Truck Trail. All routes, spurs, trails or ways on public lands connecting to these roads, within the area described above, are also closed.

These lands and roads are temporarily closed to vehicles under the BAER Plan/Environmental Assessment and Decision Record dated November 15, 2003, to protect public health and safety from rockslides and slope failures due to loss of vegetation and falling trees in the areas affected by fire, and to allow for post-fire road reconstruction and maintenance. Vehicle use in the Otay Mountain Wilderness is prohibited, but the threat from illegal vehicle use may increase due to lack of vegetation and other physical barriers that previously blocked access. There is also the increased potential for the introduction of invasive/non-native plants in burned areas from motorized and mechanized vehicles, and the potential for collection or looting of cultural and historical artifacts now revealed due to loss of vegetation. The "White Cross" road is also closed to prevent access to sensitive Border Patrol operational areas along the US-Mexico border.

Sycamore Canyon and surrounding lands, including the Clark Ranch, were purchased between 1999 and 2001 as BLM additions to the San Diego MSCP preserve system. Sycamore Canyon contains riparian vegetation, including oaks and Tecate cypress. The mouth of Sycamore Canyon is relatively flat and exposed due to loss of vegetation from the Otay Fire. This area contains several recorded cultural sites and is planned for emergency reseeding to control invasive species and re-establish native plant species. These lands are closed to all motorized and mechanized vehicle use, except as authorized, to prevent driving off road and affecting exposed cultural resources, vegetation treatments and seedings, and to control erosion and distribution of non-native plant seeds on vehicle tires. The vehicle closure is also intended to limit impacts to surviving and recovering Quino checkerspot butterfly larvae, host plants, and nectar sources. These public lands are within designated Critical Habitat for the federally listed Quino checkerspot butterfly (QCB). Sycamore Canyon is within the U.S. Fish and Wildlife (FWS) designated Dulzura Occurrence Complex for QCB. Direct impacts to QCB habitat, specifically impacts to regrowth of host plants and nectar sources, could occur from uncontrolled use of off-road vehicles.

Closure Order

Section 1. Closed Lands

Public lands in the following described tracts are closed to motorized and mechanized vehicles:

Township 17 South, Range 1 East, SBBM;
Township 17 South, Range 2 East, SBBM;
Township 18 South, Range 1 East, SBBM;
Township 18 South, Range 2 East, SBBM.

Section 2. Prohibited Acts and Restrictions

The following prohibitions and restrictions apply on the lands described for the duration of the emergency closure:

a. You must not travel on foot or horseback except on existing roads.

b. You must not camp, build campfires, or set ground fires.

c. You must not engage in target shooting.

d. You may hunt consistent with California Department of Fish and Game regulations.

Section 3. Exceptions to Closure and Restriction Order

These closures and restrictions do not apply to authorized law enforcement, fire suppression, and/or resource management and recovery activities, or to access to private property by the property owners or persons with appropriate authorization. Nothing in this closure is intended to affect legal hunting as consistent with California Department of Fish and Game regulations.

Section 4. Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, if you violate these closures or restrictions on public lands within the boundaries established, you may be tried before a United States Magistrate

and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Section 5. Conditions for Ending Closures and Restrictions

Soil stabilization, revegetation, road repairs, and treatments to control invasive species will be considered successful, and the area may be returned to pre-closure travel designations and opened sooner than October 30, 2004, if and when the following occur:

a. All culverts, road safety signs, and safety mirrors are repaired or replaced on the Otay Mountain and Minnewawa Truck Trails on Otay Mountain.

b. All fencing and gates have been replaced.

c. Slopes and soils above the Otay Mountain and Minnewawa Truck Trails show signs of stabilization and have not experienced slope failure through at least one winter season and at least two major rain events.

d. Regrowth of vegetation has sufficiently obscured cultural sites previously exposed by fires.

e. Seeding treatments on 250 acres in Sycamore Canyon have resulted in at least 30% regeneration of native species, or have been deemed unsuccessful after at least one full growing season.

Bruce Shaffer,

Acting Palm Springs-South Coast Field Manager.

[FR Doc. 04–6998 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the National Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection and control of wild free-roaming horses and burros on the public lands administered by the U.S. Department of the Interior's, Bureau of Land Management and U.S. Department of Agriculture's, Forest Service.

DATES: Nominations should be submitted to the address listed below under **ADDRESSES** no later than April 15, 2004.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, U.S. Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Janet Neal; fax 775–861–6711.

FOR FURTHER INFORMATION CONTACT: Jeff Rawson, Group Manager, Wild Horse and Burro Group, (202) 452–0379. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Rawson at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee. Each nominee should state in which category he or she wishes to be included. Send nominations to the address listed under **ADDRESSES**, above. Nominations for the following categories of interest are needed for: Wild Horse and Burro Advocacy; Veterinarian Medicine; Public-at-Large.

The specific category that the nominee will represent should be identified in the letter of nomination. Board membership must be balanced in terms of categories of interest represented. Each member must be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above. Members will be appointed to a 3-year term.

Pursuant to section 7 of the Wild Free-Roaming Horse and Burro Act, Members of the Board cannot be employed by either Federal or State government.

Members will serve without salary, but will be reimbursed for travel and *per diem* expenses at current rates for government employees.

The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: February 24, 2004.

Ed Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 04–6995 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–501–1610–DU]

Notice of Intent To Prepare the San Luis Valley Travel Management Plan and Amend San Luis Valley Resource Management Plan and Start the Scoping Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) will initiate a comprehensive planning effort to address Off-Highway Vehicle (OHV) travel and other related road and trail issues for the San Luis Valley Public Land Center. The plan, entitled the San Luis Valley Travel Management Plan (TMP), will focus specifically on 520,000 acres of BLM-administered lands in the San Luis Valley that lie in Alamosa County, Conejos County, Costillo County, Saguache County, and Rio Grande County, CO.

The TMP would potentially amend the San Luis Valley RMP. The amendment process will be used to establish a travel management system of roads and trails that meets the needs of the public and protects the cultural and natural resources of the BLM-administered lands. The environmental assessment (EA) will analyze and compare the impacts of any changes in OHV area and route designations and management with the continuation of current management, and other alternatives that may be identified.

The BLM will prepare the amendment and associated EA pursuant to the BLM planning regulations in 43 CFR 1600. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies.

The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria. The BLM will prepare the TMP through coordination with other federal, state and local agencies, and affected users of BLM-administered lands.

DATES: This notice initiates the public scoping process. Comments on issues and concerns can be submitted in writing to the address listed below and will be accepted throughout the creation

of the Draft RMP amendment/EA. All public meetings will be announced through the local news media and newsletters at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: The BLM will hold public meetings during the plan scoping period. Early participation is encouraged and will help determine the future travel management of the BLM-administered lands involved in this amendment. In addition to the ongoing public participation process, the BLM will provide formal opportunities for public participation by requesting comments upon the BLM's publication of the BLM draft RMP amendment, the EA, and an (unsigned) Finding of No Significant Impact (FONSI).

ADDRESSES: Please send written comments to the Bureau of Land Management, San Luis Valley Public Land Center (SLVPLC), Attn: San Luis Valley TMP, 1803 W. Hwy 160, Monte Vista, CO 81144; Fax 719–852–6250. Documents pertinent to this proposal may be examined at the SLVPLC. Comments, including names and street addresses of respondents, will be available for public review at the SLVPLC during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the EA.

Individual respondents may request confidentiality. 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 or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Mark Swinney, Team Leader, at the SLVPLC address listed above or by calling (719) 852–6260.

SUPPLEMENTARY INFORMATION: The use of roads and trails for motorized and non-motorized recreation and other land use activities are important uses of BLM-administered lands. In response to recommendations made by the Front Range Resource Advisory Council, the BLM proposes developing a travel management plan and establishing a travel management system of designated roads and trails.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date about the existing issues and concerns with current management. The preliminary issues include: Impacts to public land users and adjacent private landowners; impacts to wildlife habitat; and impacts to water quality, vegetation, including riparian and wetland areas, and soils. These issues, along with others that may be identified through public participation, will be considered in the planning process. After gathering public comments on what issues the plan amendment should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The plan will provide rationale for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan amendment. The public is encouraged to help identify these questions and concerns during the scoping phase. The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, law enforcement, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, vegetation, and fire.

Mark Swinney,

Acting Associate Center Manager, San Luis Valley Public Land Center.

[FR Doc. 04–6993 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–930–04–1920–FM; AZA–31875]

Notice of Termination of Segregation and Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination and opening order.

SUMMARY: Termination of a classification of lands for State Selection.

FOR FURTHER INFORMATION CONTACT: Bill Ruddick, Project Manager, Arizona State Office, Bureau of Land Management, 222 North Central Avenue, Phoenix, Arizona 85004.

SUPPLEMENTARY INFORMATION: Under the provisions of Sections 2275 and 2276 of the Revised Statutes, (43 U.S.C. Sections 851, 852) the State of Arizona filed application AZA–32028 to acquire public lands in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach (In Lieu Land). Pursuant to the provisions of 43 CFR 2091.3–1(b) the lands described below were segregated for a period of 2 years from the date the application was filed. The lands described below were not utilized in the State's application for In Lieu Land. At 9 a.m., Mountain Standard Time, on April 29, 2004, the segregation affecting these lands is hereby terminated. The lands are opened only to an exchange with the State of Arizona, pursuant to the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65, 113 Stat. 877, 878) and, Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended.

Group I

Gila and Salt River Meridian, Arizona

Surface Estate

T. 10 N., R. 29 E.
Sec. 18, E½.
T. 11 N., R. 28 E.
Sec. 14, E½E½, NW¼NE¼, SW¼SE¼.
T. 12 N., R. 28 E.
Sec. 12, NW¼NE¼, NE¼NW¼, W½SW¼.
T. 12 N., R. 31 E.
Sec. 15, Lots 1–4, inclusive, W½E½, W½.

Containing 1265.82 acres, more or less.

Sub Surface Estate

T. 10 N., R. 30 E.
Sec. 14, All;
Sec. 23, All;
Sec. 25, NW¼NE¼, NW¼.
Containing 1480.00 acres, more or less.

Pursuant to the provisions of 43 CFR 2091.3–1(b) the lands described below were segregated for a period of 2 years from the date the application was filed. The lands were not utilized in the State's application for In Lieu Land. At 9 a.m., Mountain Standard Time, on April 29, 2004, the segregation affecting these lands is hereby terminated. The lands are now open to public land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations

of record, and the requirements of applicable law.

Group II

Surface and Subsurface Estate

T. 12 N., R. 28 E.
Sec. 10, NW¼SE¼.
Containing 40.00 acres, more or less.

The lands described below were segregated from appropriation under the public land laws and mineral laws for an exchange with the State of Arizona, pursuant to the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65, 113 Stat. 877, 878) and, Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The lands have subsequently been dropped from the exchange. At 9 a.m., Mountain Standard Time, on April 29, 2004, the segregation affecting these lands is hereby terminated. The lands are now open to public land laws, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Group III

Gila and Salt River Meridian, Arizona

Subsurface Estate

T. 12 N., R. 28 E.
Sec. 14, E½NE¼, NW¼NE¼, W½NW¼, NW¼SW¼, W½SE¼, SE¼SE¼.
T. 12 N., R. 30 E.
Sec. 12, NW¼.
T. 12 N., R. 31 E.
Sec. 22, Lots 1–4, inclusive, W½E½, W½.
Containing 1063.10 acres, more or less.

Surface Estate

T. 11 N., R. 28 E.
Sec. 27, SW¼SE¼.
T. 12 N., R. 29 E.
Sec. 4, Lots 4, 5, 12, & 13, SW¼.
Containing 352.94 acres, more or less.

Appropriation of lands described in Groups II & III under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights because Congress has provided for such determinations in local courts.

All valid applications under the public land laws received at or prior to 9 a.m., Mountain Standard Time, on April 29, 2004, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 3, 2004.

Michael A. Taylor,

Deputy State Director for Resources.

[FR Doc. 04–6996 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1430–ER]

Notice of Realty Action—Riverside County, CA, Competitive Bidding for a Preference Right to Apply for a Right-of-way To Construct Wind-Energy Testing and/or Generating Facilities on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

Authority: 43 CFR 2803.1–3(c).

SUMMARY: Beginning June 1, 2004, the Bureau of Land Management (BLM) will accept written bids to award a preference right to apply for a right-of-way to construct, operate and maintain wind-energy testing and/or generating facilities on approximately 285 acres of public lands described as a portion of section 28, T.3S., R.4E., San Bernardino Meridian.

DATES: Written bids will be accepted for a 45-day period beginning Tuesday June 1, 2004 and ending 3 p.m., Thursday July 15, 2004. The bidding period may be extended.

ADDRESSES: Initial written bids must be submitted to the Bureau of Land Management, Palm Springs—South Coast Field Office, 690 West Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258–1260.

FOR FURTHER INFORMATION CONTACT: Mr. Claude Kirby at the Palm Springs—South Coast Field Office, phone number (760) 251–4850.

SUPPLEMENTARY INFORMATION: The competitive bid process is described in greater detail in an Invitation For Bids (IFB) available from the Palm Springs South Coast Field Office at the address listed above. Bidding will end at 3 p.m., July 15, 2004, but may be extended as provided in the Invitation For Bids. The minimum initial bid is $5,000 and must be submitted on the bid form provided in the IFB. After submitting these items, qualified bidders will be assigned a bid number and may increase their bid in increments of $500 in writing or by facsimile to the Palm Springs—South Coast Field Office at (760) 251–4899, with no additional bid deposit required.

BLM will notify the selected qualified bidder and award a right to apply for a right-of-way to construct, operate and maintain wind-energy testing and/or generating facilities on the public lands described above. The selected qualified bidder will be obligated to pay the difference between the high bid and the initial bid deposit within 15 days of notification by BLM. The winning bid will be deposited with the U.S. Treasury and will not be returned. After the close of bidding, with the exception of the selected qualified bidder's deposit, all other bid deposits will be returned.

The right must be exercised within 60 days by submitting a right-of-way application, SF 299, with a plan of development to BLM for consideration. Detailed terms and conditions of any right-of-way grant will be determined through the environmental review process and are expected to include requirements for cost reimbursement, bonding, and habitat compensation. BLM provides no assurance that after consideration of any right-of-way application it will issue a favorable decision and grant a right-of-way on public lands. Bid forms and a complete description of the bid process are contained in an Invitation For Bids that will be available at the BLM Web site *www.ca.blm.gov/palmsprings/*.

Dated: March 2, 2004.

J. Anthony Danna,

Deputy State Director, Natural Resources.

[FR Doc. 04–7000 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–056–1220–AA–GP–03–0127]

Final Special Rules for Public Lands Along the Deschutes Wild & Scenic River Corridor, Deschutes Resource Area, Prineville District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Final special rules.

SUMMARY: The Bureau of Land Management's (BLM) Deschutes Resource Area is revising its special rules for the Lower Deschutes National Wild and Scenic River corridor in Oregon. The special rules are necessary to protect the river's natural resources and the public health and safety. The revisions in the special rules are needed to resolve inconsistencies between them and rules of the State of Oregon.

EFFECTIVE DATE: April 29, 2004.

ADDRESSES: You may send inquiries or suggestions to the following addresses:

Mail or personal delivery: Bureau of Land Management, Deschutes Resource Field Manager, Prineville District Office, 3050 NE Third, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Robert Towne, Field Manager for the Deschutes Resource Area, at (541) 416–6700. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Area Description
II. Background
III. Discussion of Special Rules
IV. Procedural Matters

I. Area Description

Public lands and waters within the Lower Deschutes River Final National Wild and Scenic River Boundary, as it appears in the Lower Deschutes River Management Plan and Environmental Impact Statement, volume 1, published January 1993 by BLM (this document contains a complete legal description; copies available from the BLM Prineville District Office). This area is more generally described as approximately ¼ mile from either side of the Lower Deschutes River, commencing at Pelton Reregulation Dam and extending downstream to the Columbia River.

II. Background

In 1970, the lower 100 miles of the Deschutes River were designated as an Oregon State Scenic Waterway. In 1988, the U.S. Congress designated this same 100 mile river segment as a National Wild and Scenic River. Through a management plan approved in 1993, this area is collectively managed by the Bureau of Land Management, the Bureau of Indian Affairs/Confederated Tribes of the Warm Springs, and the State of Oregon. In 1994, pursuant to the management plan, separate rules for public use were created by the State of Oregon in the form of Oregon Administrative Rules and by BLM in the form of Special Rules under 43 CFR 8351.2.

Both the state and BLM developed rules independently and in many particulars they proved inconsistent with each other. Since inception, both state and Federal rules have undergone multiple revisions to accommodate changing management needs and objectives. The final special rules revise the existing Federal rules to match state rules, create new rules to meet current management objectives, and combine all the Federal rules, including past revisions, into one document.

The special rules govern conduct on all public lands and waters managed by BLM within the river corridor described in the notice. The rules are needed to protect the river's natural resources and the public health and safety.

III. Discussion of Special Rules

BLM has determined these special rules are necessary to protect the river's resources and to provide for safe public recreation, public health, and data collection. The objective is to provide a quality recreational experience to the general public with minimal user conflicts and minimum damage to the public lands and resources.

In addition, these rules are in accordance with the Lower Deschutes River Management Plan and Environmental Impact Statement, dated January 1993.

Exemptions to these rules apply to cooperating agency personnel for administrative purposes, including but not limited to monitoring, research, law enforcement, search and rescue, and fire fighting operations. Exemptions may also be allowed on a case-by-case basis by BLM.

During the public comment period on the proposed special rules, BLM received no public comments. Therefore, we are publishing these final special rules as they were proposed, with a few editorial changes to correct grammar and improve clarity.

IV. Procedural Matters

The principal author of these special rules is Tom Teaford of the Prineville District Office, BLM.

Regulatory Planning and Review (E.O. 12866)

These special rules are not significant and are not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) These special rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) These special rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These special rules do not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) These special rules do not raise novel legal or policy issues.

The special rules do not affect legal commercial activity, but contain rules of conduct for public use of a limited selection of public lands.

Regulatory Flexibility Act

The Department of the Interior certifies that these special rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (*5 U.S.C. 601 et seq.*). The special rules do not affect legal commercial activity, but govern conduct for public use of a limited selection of public lands.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These special rules are not major under *5 U.S.C. 804(2)*, the Small Business Regulatory Enforcement Fairness Act. These special rules:

Do not have an annual effect on the economy of $100 million or more. (*See* the discussion under Regulatory Planning and Review, above.)

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. *See* the discussion above under *Regulatory Flexibility Act.*

Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

These special rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The special rules do not have a significant or unique effect on state, local, or tribal governments or the private sector. The special rules will have no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (*2 U.S.C. 1531 et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the special rules do not have significant takings implications. The enforcement provision in the proposed special rules do not include any language requiring or authorizing forfeiture of personal property or any property rights. E.O. 12630 addresses concerns based on the Fifth Amendment dealing with private property taken for public use without compensation. The lands covered by the special rules are public land managed by the Bureau of

Land Management; therefore no private property is affected. A takings implications assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, BLM finds that the special rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The special rules do 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. The special rules do not preempt state law.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that these special rules do not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with Executive Order 13175, we have found that these final special rules do not include policies that have tribal implications. The special rules do not affect lands held for the benefit of Indians, Aleuts, and Eskimos.

Paperwork Reduction Act

These special rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

These special rules were considered in the Lower Deschutes River Management Plan and Environmental Impact Statement, published in January 1993, which is on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The special rules themselves should not have a significant effect on the human environment. They are principally rules of conduct intended to protect human health and safety, to minimize environmental degradation, and to ensure that use of the river and associated facilities are properly authorized.

Authority

The authority for these special rules is found in 43 U.S.C. 1733 and 43 CFR 8351.2–1.

Special Rules for Lower Deschutes River Corridor

Under 43 CFR 8351.2–1, the Bureau of Land Management will enforce the following rules year around within the Lower Deschutes Wild and Scenic River corridor.

Sec. 1. Definitions

The following definitions will apply to the rules:

Approved portable toilet means any non-biodegradable, rigid, durable, container designed to receive and hold human waste, in any container position, without leaking, and equipped with a dumping system that allows the container to be emptied into a standard receiving or dump system designed for that purpose, such as a SCAT machine or recreational vehicle dump station, in a sanitary manner, without spills, seepage, or human exposure to human waste.

Boat means every watercraft or device used as a means of transport on the water.

Camping means erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, trailer, or mooring a boat, for apparent overnight occupancy.

Designated campsite means a BLM-designated campsite, marked with a visible number mounted on a post or placard.

Developed area is a site or area that contains structures or capital improvements primarily used by the public for recreational purposes. This may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water, grills or fire rings; tables; or controlled access.

Developed toilet facility is a vault type toilet provided by the Bureau of Land Management or Oregon State Parks and Recreation Commission.

Display intent to remain overnight means any off-loading onto the riverbank, or preparing for use, common overnight camping equipment such as tents, sleeping bags or bedding, food, cooking or dining equipment, or lighting equipment, or to prepare common camping equipment for use in or on any boat.

Excessive noise is any noise which is unreasonable, considering the location, time of day, impact on river users, or other factors which govern the conduct of a reasonably prudent person under the circumstances.

Firearm means a weapon, by whatever name known, designed to expel a projectile by the action of powder and is readily capable of use as a weapon.

Fireworks means any combustible or explosive composition or substance or any combination of any such composition or substances or any other article prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges, or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, wheels, colored fires, fountains, mines, serpents, or any other article of like construction or any article containing any explosive or flammable compound or any tablets or other device containing any explosive substance or flammable compound.

Group means any number of persons affiliated together with a common goal to recreate with each other in activities such as rafting, eating, camping, or swimming.

Group size limit means the maximum number of persons a group may have while together within the river corridor, regardless of the number of persons covered by each boating pass possessed by members of the group. This limit is intended to avoid resource damage and social conflicts caused by large groups concentrating in small areas.

Highway means every public way, road, street, thoroughfare and place, including bridges, viaducts, and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

Motorboat means any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

Non-designated campsite means a campsite *not* designated by BLM and *not* marked with a visible number.

Obscene means objectionable or offensive to accepted standards of decency.

Refuse includes but is not limited to wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, or other useless or worthless parts of things.

Remain overnight means human presence in the Lower Deschutes River Corridor on a boat-in basis for any period of time from one hour after legal sunset to one hour before legal sunrise.

River corridor means those public lands located within the Final National Wild and Scenic River boundary as described in the Lower Deschutes River Management Plan and Environmental Impact Statement, Volume 1, January 1993.

Vessel means every watercraft or device used as a means of transport on the water except single inner tubes, air mattresses, and water toys.

Unoccupied means the absence of human presence between 10 p.m. and one hour before legal sunrise.

Sec 2. Prohibited Acts

The following are prohibited:

a. Camping

1. Camping outside of a designated campsite in river segments 1, 2, or 3.

2. Camping for a total period of more than 14 nights during any 28-night period. The 28-night period will begin the first night the site is occupied. The 14-night limit may be reached either through a number of separate visits or through a period of continuous occupation. Once the 14-night limit is reached in any camping area, the person(s) must move a distance of not less than 50 linear miles to continue camping on public lands.

3. Camping in one campsite by non-motorized boat longer than 4 consecutive nights.

4. At the end of a four-night camping stay as described in (a)(3) above, failing to remove all camping equipment and personal property and not relocating your camp within ¼ mile of the same site for a period of at least 14 nights.

5. Camping in one campsite by motorized boat longer than 9 consecutive nights between May 15 and October 15.

6. Between May 15 and October 15, whenever motorized boaters vacate a campsite and it will be unoccupied, failing to remove all camping and personal property from the area and not relocating within ¼ mile of the same site for a period of at least 14 days.

7. Camping on any river island.

8. Camping in any area posted as closed to camping.

9. Being present in any designated day-use area between 10 p.m. and one hour before sunrise.

10. Possessing or leaving refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

11. Leaving camping equipment, personal property, site alterations, or refuse after departing any campsite or in any vacant campsite.

12. Failing to pay camping fees within 30 minutes of occupying a fee campsite.

13. Installing permanent camping facilities.

14. Failing to meet the minimum or exceeding the maximum number of persons and/or vehicles allowed for a campsite.

15. Paying for or placing camping equipment or other personal property in/at/near a campsite, which is not to be occupied by that same person, for the purpose of holding or reserving the campsite site for later occupation by another person(s).

16. Moving any table, stove, barrier, litter receptacle, or other campground equipment.

17. Digging or leveling the ground at any campsite.

18. Failing to contain all group and personal equipment within a campsite.

b. Fires

1. Between June 1 and October 15:

i. Building, igniting, maintaining, using, tending, or being within 20 feet of: a campfire, charcoal fire, or any other type of open flame. Exception: You may use commercially manufactured metal camp stoves and shielded lanterns when fueled with bottled propane or liquid fuel and operated in a responsible manner.

ii. Smoking except in non-public buildings, closed vehicles, while in boats on the water, or while standing in the water.

2. Between October 16 and May 31:

i. Building, igniting, maintaining, using, tending, or being within 20 feet of: a campfire unless it is contained in a metal fire pan or similar metal container with sides measuring at least 2″ in height and prevents ashes or burning material from spilling onto the ground and is elevated above the ground.

ii. Exception: BLM-provided metal campfire rings may be used in lieu of a fire pan.

3. Leaving a fire unattended or without completely extinguishing it.

4. Burning or attempting to burn non-combustible items such as tin, aluminum, or glass.

5. Discarding lighted or smoldering material, or lighting, tending, or using a fire, stove or lantern in such a manner that threatens, causes damage to, or results in the burning of property or resources, or creates a public safety hazard.

6. Using or possessing fireworks.

7. Failing to observe any fire prevention order or regulation issued by the Bureau of Land Management.

8. Gathering or burning any living, dead, or down vegetation gathered within the river corridor.

c. Sanitation and Refuse

1. For members of overnight boating groups that remain, intend to remain, or display intent to remain overnight within the river corridor, failing to carry an approved portable toilet. Except: This requirement shall not apply to overnight kayak trips entirely self-contained (not supported by a gear boat), or overnight hikers or bikers.

2. When boating within the river corridor on an overnight basis, failing to use either an approved portable toilet or developed toilet facility for all solid human waste. Exception: This requirement shall not apply to overnight kayak trips entirely self-contained, or overnight hikers or bikers.

3. For all persons who remain, intend to remain, or display intent to remain overnight, failing to set up an approved portable toilet, ready for use, as soon as practical upon landing at the campsite to be occupied.

4. Leaving, depositing, or scattering human waste, toilet paper, or items used as toilet paper anywhere except in an approved portable toilet or developed toilet facility.

5. Where a developed toilet facility is not provided and an approved portable toilet is not required, and the situation makes it impractical to use an approved portable toilet, failing to bury all human waste and toilet paper, or material used as toilet paper, at least six inches below the surface of the ground in natural soil and at least fifty feet from the edge of the river or any other water source.

6. Burying or abandoning or burning refuse.

7. Failing to use developed toilet facilities provided at public recreation sites.

8. Emptying an approved portable toilet into a developed toilet facility, or any other facility not developed and identified especially for that purpose.

9. Disposing of refuse in other than refuse receptacles provided for that purpose.

10. Depositing non-biodegradable refuse in the vault of a developed toilet facility.

11. Depositing household, landscaping, commercial, or industrial refuse brought in as such from non-government property into government-provided refuse receptacles.

12. Allowing any refuse to drain from any vehicle or structure constructed for movement on highways except through a sealed connection and into a suitable container which prevents human contact with the contents.

13. Washing dishes or using soap in the river or any tributaries.

d. Firearms/Weapons

1. Discharging a firearm from the 3rd Saturday in May through August 31, except during authorized hunting seasons.

2. Discharging a firearm at any time within a developed area, or within 150 yards of a residence, building,

developed recreation site, or occupied area.

3. Discharging a firearm at any time into or from within any area posted as a no shooting or safety zone.

4. Carrying, possessing, or discharging a firearm or other weapon in violation of Oregon State law.

e. Disorderly Conduct

1. With the intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly committing a risk thereof, committing any of the following acts:

i. Engaging in fighting, threatening, or violent behavior, or

ii. Using language, an utterance or gesture, or engaging in a display or act that is lewd or obscene, physically threatening, or menacing, or done in a manner likely to inflict injury or incite an immediate breach of the peace, or

iii. Making excessive noise, or

iv. Creating or maintaining a hazardous or physically offensive condition that causes personal or public alarm, nuisance, jeopardy or violence by possessing, using, or operating any water projectile device, including but not limited to hydro sticks, or water balloons/water balloon launchers, spud guns, air rifles, or

v. Using motorized/mechanized water cannons, or

vi. Creating *excessive noise* by voice, generators, amplified music, or any other means from 10 p.m. to 7 a.m., or

vii. Rolling any stone or other object that endangers or threatens the public, property, or wildlife.

f. Vehicles

1. Parking a vehicle in such a manner as to impede or obstruct the normal flow of traffic, or create a hazardous condition.

2. Failing to obey posted parking closures or restrictions.

3. Exceeding posted speed limits.

4. Traveling or parking off of designated roads, parking areas or launch sites.

5. Operating any motor vehicle in violation of any Oregon State law or regulation.

6. Operating any motor vehicle without a valid state driver's license and current vehicle registration.

7. Operating a vehicle with a seating capacity greater than 24 passengers (each seat to hold no more than 2 persons) and 1 driver and/or a total vehicle length greater than 28 feet.

8. Riding or allowing anyone to ride in or on top of a boat being carried by a motor vehicle. Exceptions: (1) A person(s) may ride within a single boat that is secured to the bed of a pickup truck by ropes or straps and the boat is contained within the pickup siderails; (2) A person(s) may also ride within a single boat which is likewise secured to the bed of a flatbed motor vehicle.

9. Operating any vehicle or combination of vehicles or load thereon which is wider than 8 feet 6 inches except as under a variance permit or other exemption as authorized by state law.

10. Riding or allowing anyone to ride on the exterior part of a motor vehicle.

11. Operating a vehicle or combination of vehicles when the overall height, including the load, is greater than 14 feet.

12. Operating a vehicle with a load which is unsecured, unsafe, or otherwise presents a hazard to the public.

g. Other Acts

1. Defacing, disturbing, removing, or destroying any personal property, or structures, or any scientific, cultural, archaeological, or historic resource, or natural object or thing.

2. Defacing, removing, or destroying plants or their parts, soil, rocks or minerals.

3. Abandoning property.

4. Leaving property unattended for longer than 24 hours.

5. Destroying, injuring, defacing, or damaging U.S. Government property.

6. Failing to exhibit required permits or identification when requested by a BLM authorized officer or representative.

7. Selling, offering for sale, or promoting any services or merchandise or conducting any kind of business enterprise on public land or waters without a BLM permit.

8. Failing to possess a BLM Special Recreation Permit for commercial use as defined in 43 CFR 8372.0–5.

9. Failing to restrain an animal on a leash not longer than 6 feet and secured to a fixed object or a person, or otherwise physically restricted at all times except when hunting.

10. Allowing a pet to make noise that is unreasonable considering location, time of day or night, impact on public land users, and other relevant factors or that frightens wildlife by barking, howling, or making other noise.

11. Failing to remove pet waste.

12. Leaving an animal unattended in an unsafe location or situation.

13. Operating an aircraft in violation of FAA rules and regulations.

14. Landing an aircraft without authorization when required.

15. Taking, attempting to take, or possessing any fish or wildlife in violation of any Oregon State law or regulation.

16. Participating in an unauthorized event or activity.

17. Allowing livestock to graze in any area or at any time when grazing is prohibited.

18. Violation by commercial permittee or their employee of any stipulations outlined in the *Guidelines for Commercial Use of Rivers in the Prineville District.*

19. Allowing a group to exceed the group size limit of 16 people in river segments 1, 3, and 4, and 24 people in segment 2.

h. Boating

1. Failing to possess a Deschutes River boater's pass as required by Oregon State Parks and Recreation Commission.

2. Operating any motor-driven boat in any area posted or designated as closed to such use.

3. Operating any boat or vessel in such manner as to create a hazardous or unsafe condition.

4. Operating any personal watercraft, including but not limited to jet skis, wet bikes, wave runners, and wet jets from Heritage Landing boat ramp upstream.

5. Operating a motor-driven boat with more than seven people, including the operator, on board.

6. Making more than two round trips per day in a motor-driven boat.

7. While operating a boat, stopping along or tying up to the riverbank, except in an emergency, within the Rattlesnake-Moody Rapids pass through zone. This zone extends from the upstream end of Rattlesnake Rapids at about river mile 2.5 to the no wake zone at the downstream end of Moody Rapids at about river mile .5.

8. Swimming or floating with or without a flotation device and/or using inner tubes, float tubes, boogie boards, surf boards, and other similar water toys used for the transport of persons or property in the Deschutes River channel in Moody Rapids on those days when power boats are allowed, except as provided below. This prohibition is in effect from the upstream end of Moody Rapids down river to the downstream side of Moody Rapids channel marker from legal sunrise to legal sunset when power boats are allowed by the Oregon State Marine Board. Anglers using float tubes may cross the Moody Rapids channel during these times provided they do so in the most direct route possible. Float tube anglers crossing the Moody Rapids channel shall look out for and give right of way to any motorized boat, which is in Moody Rapids channel or about to enter the rapids from downstream or upstream, or in any event when motorboats are

approaching close enough to create a hazard.

9. Exceeding Oregon State noise standards for motorboats.

10. Violating any Oregon State Marine Board Regulation.

11. Failing to complete boater registration when requested to do so by agency personnel.

12. Launching or taking out watercraft in an area designated as closed to this activity.

13. Securing any person(s), inner tube, float tube, boogie board, surf board, or other similar water toys used for transport of persons or property, or in or on the waters of the Deschutes River, to the river bank or to any tree, fixed object, or anchoring device on lands adjacent to the river bank or to any such object or device within the boundaries of the river and river banks of the Deschutes River by any cable, rope, line, bungee cord, or other means except to secure boats to the river bank as a normal and recognized necessity. No person shall hold on to any such line or to any device secured to such line in order to ride or be transported into any channel of the Deschutes River.

14. Securing any cable, rope, line, or bungee cord or any device across the river except as necessary for rescue and/or salvage operations and other necessary uses upon consent of the managing agencies of the Confederated Tribes of the Warm Springs, Oregon Parks and Recreation Department, Bureau of Land Management, and Oregon State Police. Exception: the cables presently in place across the Deschutes River at Dant, the upstream area (approximately river mile 52) of the City of Maupin, and the flow station cable car crossing upstream from Deschutes State Park are exempt from these special rules.

i. Alcoholic Beverages and Controlled Substances

1. Violating any prohibitions relating to liquor as found in the Oregon Criminal Code, Title 37, Chapter 471.

2. Committing any open container violation as found in the Oregon Vehicle Code 811.170.

3. No person under the influence of intoxicating liquor or controlled substance shall operate, propel, or be in actual physical control of a boat upon the water. Not less than .08 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

4. No owner of a boat or person in charge or in control of a boat shall authorize or knowingly permit a boat to be propelled or operated upon the water by any person who is under the influence of intoxicating liquor or a controlled substance.

5. Operating or being in actual physical control of a motor vehicle is prohibited while the operator:

i. Is under the influence of alcohol, or a drug, or drugs, or inhalant, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

ii. Has .08 percent or more by weight of alcohol in the blood of the operator.

6. The provisions in paragraphs (i)(3), (i)(5)(i), and (i)(5)(ii) above also apply to an operator who is or has been legally entitled to use alcohol or another drug.

7. Cultivating, manufacturing, delivering, or trafficking a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11-1308.15, except when distribution is made by a licensed practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship; or

8. Possessing a controlled substance, as defined in 21 U.S.C. 802(6) and 812 and 21 CFR 1308.11–1308.15, unless such substance was obtained, either directly or pursuant to a valid prescription or order of as otherwise allowed by Federal or State law, by the possessor from a licensed practitioner acting in the course of professional practice.

j. Interfering With Agency Functions

1. Threatening, resisting, intimidating, or intentionally interfering with a government employee volunteer, or agent engaged in an official duty, or on account of the performance of an official duty.

2. Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, wildlife management operations involving animals which pose a threat to public safety, law enforcement actions, and emergency operations that involve a threat to public safety or public land resources, or other activities where the control of public movement and activities is necessary to maintain order and public safety.

3. Knowingly giving a false or fictitious report or other false information:

i. To an authorized person investigating an accident or violation of law or regulation, or

ii. On application for a permit.

4. Knowingly giving a false report for the purposes of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the United States to a fictitious event.

Sec. 3. Penalties

On public lands, under 43 CFR 8351.2–1, any person who violates any of these special rules may be tried before a United States Magistrate and fined up to $500 or imprisoned for up to 6 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Marci L. Todd,

Acting District Manager, Prineville District.

[FR Doc. 04–6994 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–04–1610–DP]

Notice of Intent To Prepare a Resource Management Plan Revision/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent was developed under the authority of the planning regulations (43 CFR 1610.2 (c)). Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Hollister Field Office will prepare a Resource Management Plan (RMP) Revision and Environmental Impact Statement (EIS) for approximately 278,000 acres of public land. The planning area is located within portions of the following counties: Alameda, Contra Costa, Fresno, Madera, Merced, Modesto, Monterey, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, and Stanislaus. The revised land use plan will establish land use management policy for multiple resource uses and will guide resource management in these areas into the foreseeable future. The RMP Revision will be prepared under guidance provided through 43 CFR part 1600 (BLM Planning Regulations). The BLM will work closely with interested parties to identify issues, resolve disputes, and develop management actions that are best suited to the management of the resources and the needs of the public.

This collaborative process will take into account local, regional, and national concerns. This Notice formally initiates the public scoping process to identify planning issues and to review preliminary planning criteria.

DATES: This notice initiates the public scoping process. Public scoping comments and resource information submissions will be most effective if submitted within 90 days of publication of this notice. Public meetings, public comment periods, and comment closing dates will be announced through local news media, and newsletters.

ADDRESSES: Written comments should be sent to "RMP COMMENTS", BLM, Hollister Field Office, 20 Hamilton Court, Hollister, CA, 95023. Fax: 831–630–5055. Documents pertinent to this proposal may be examined at the Hollister Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Hollister Field Office during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays, and may be published as part of the RMP/EIS.

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. BLM will not consider anonymous comments. 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.

FOR FURTHER INFORMATION CONTACT: George E. Hill, Assistant Field Manager, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, CA, 95023, phone: 831–630–5036. To have your name added to our mailing list, contact Lesly Smith, Outdoor Recreation Planner, BLM, Hollister Field Office, 20 Hamilton Court, Hollister, CA, 95023, phone: 831–630–5015.

SUPPLEMENTARY INFORMATION: Opportunities to participate will occur throughout the planning process. To ensure local community participation and input, public scoping meetings will be held, at a minimum, in three towns strategically located in or near the planning area. Early participation by all interested parties is encouraged and will help guide the planning process and determine the future management of public lands. All activities where the public is invited to attend will be announced at least 15 days prior to the event in local news media. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify their views. Written comments will be accepted throughout the planning process at the address shown above. Additional formal opportunities for public participation and comment will be provided upon publication of the draft RMP Revision and draft EIS.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues are: Management of public land resources at the watershed level; off-highway vehicle management and designations; management of ecosystems and riparian areas to maintain and improve properly functioning conditions; implementation of the Federal Wildland Fire Policy; fluid and solid mineral development; effects of urban interface and meeting the needs of local and regional communities; land tenure adjustments; status of Areas of Critical Environmental Concern and consideration of lands for special management designation; identification of resource values on recently acquired public lands; sustaining traditional practices of Native American cultures; and providing recreation opportunities to meet the recreation demand.

Preliminary management concerns include: Management of current and future special status species; addressing impacts to human health and resources from past mining activities; addressing resource management impacts to air quality in non-attainment areas; reducing impacts to watershed resources and water quality; disproportionate impacts to disadvantaged communities resulting from execution of land management decisions (Environmental Justice Executive Order 12898); the potential for the spread of noxious weeds; and the management of designated streams (Clean Water Act, section 303-(d)).

These preliminary issues will be further redefined by direct input through active public participation. The public is encouraged to help identify issues, questions, and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. The interdisciplinary team involved in the planning process will include specialists with expertise in minerals and geology, forestry, range, fire and fuels, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, air quality, sociology and economics.

Planning criteria will be developed during public scoping to help guide the planning effort. Preliminary planning criteria being considered for the Hollister planning effort require that BLM: Recognize valid existing rights; comply with existing law, executive orders, regulation, and BLM policy and program guidance; seek public input; consider adjoining non-public lands when making management decisions to minimize land use conflicts; consider planning jurisdictions of other federal agencies, and state, local and tribal governments; develop reasonable and sound alternatives; use current scientific data to evaluate appropriate management strategies; analyze socioeconomic effects of alternatives along with the environmental effects; carry forward valid analysis from existing documents and incorporate the Rangeland Health Standards and Guidelines and the Hollister Oil and Gas RMP amendment. The Hollister Field Office is presently managed under the Hollister RMP (1984, as amended). Information and decisions from the existing Hollister RMP will be reviewed and incorporated in this plan revision to the extent possible. Management will continue under the Hollister RMP until the revised RMP is approved.

Dated: January 28, 2004.

Robert E. Beehler,

Field Manager.

[FR Doc. 04–6999 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DO]

Revised Notice of Intent To Prepare an Amendment to the Carson City Field Office Consolidated Resource Management Plan, Known as the Churchill County Plan, and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Revised Notice of Intent (NOI) to prepare an amendment to the Bureau of Land Management (BLM) Carson City Field Office (CCFO) Consolidated Resource Management Plan (CRMP), known as the Churchill County Plan, and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the BLM has revised the

NOI, published in the **Federal Register** on July 22, 2003. to prepare an amendment to the CRMP with an associated EIS for the CCFO to address energy resources, fire management, off-highway vehicle (OHV) use and designations, and Churchill County open-space needs. The NOI has been corrected to change the United States Navy's status in the process from a joint interest in the plan amendment to a cooperating agency for the EIS. The Navy's intent to revise its Integrated Natural Resources Management Plan (INRMP) has been postponed to a later date. In addition, the plan amendment now includes an analysis of a proposal to develop a geothermal power plant east of Fallon, NV. The planning area is primarily limited to Churchill County, Nevada, for all issues with the exception of energy resources, which will be addressed for all lands managed by the CCFO. The BLM will continue to work collaboratively and cooperatively with interested parties to identify management decisions that may address local, regional, and national needs and concerns.

EFFECTIVE DATES: This notice reinitiates the public scoping process. Comments can be submitted in writing to the address listed below, and will be accepted throughout the preparation of the Draft CRMP/EIS. All public meetings will be announced through the local news media, newsletters, and scoping documents at least 15 days prior to the event. At a minimum, another public meeting will be held in Fallon, Nevada. Formal opportunities for public participation also will be provided through comment on the draft and final documents.

ADDRESSES: Written comments should be sent to BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701; Fax (775) 885–6147. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. 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. BLM will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Gary Ryan (Project Manager) at (775) 426–4011 or Terri Knutson (BLM Environmental Planner) at (775) 885–6156.

SUPPLEMENTARY INFORMATION: On July 22, 2003 the BLM published the *Notice of Intent To Prepare a Combined Amendment to the Carson City Field Office Consolidated Resource Management Plan and a Revision to the Naval Air Station Fallon Integrated Natural Resources Management Plan, Known as the Churchill County Plan, and Associated Environmental Impact Statement* in the **Federal Register** (Vol. 68, No. 140, Pg. 43368–43369). Through the scoping process and after several meetings with planning partners and the Navy, the Navy determined that revision of its INRMP would not be a part of this plan amendment. In addition, the BLM received a proposal from Nevada Geothermal Specialists LLC (NGS) for the development of a geothermal power plant located approximately ten miles east of Fallon, NV. In the interest of cost and time savings, BLM determined that the analysis of the power plant will be included in the Churchill County Plan and EIS.

Dated: February 6, 2004.

Elayn Briggs,

Associate Field Manager, Carson City Field Office.

[FR Doc. 04–7001 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ 050–04–1610–DO; 1610]

Arizona: Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for the BLM Yuma Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Yuma Field Office intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the public lands located within the boundaries of the Yuma Field Office. The revised Yuma RMP will replace portions of the existing Yuma District Resource Management Plan (1987), portions of the Lower Gila South Resource Management Plan (1988), and portions of the Lower Gila North Management Framework Plan (1983). Public scoping meetings to identify relevant issues will be announced in advance through BLM's Web site and in local news media.

DATES: The scoping comment period commences with the publication of this notice and will continue for at least 60 days. Public meetings will be held during the spring of 2004. Public notice will be provided specifying when the meetings will occur and will include notification of when the scoping period will close.

ADDRESSES: Yuma Resource Management Plan—Bureau of Land Management, Yuma Field Office, 2555 E. Gila Ridge Rd., Yuma, AZ 85365. Use the above mailing address to mail or hand deliver written comments; additionally, comments can be faxed to (928) 317–3250.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Micki Bailey, Yuma Field Office, 2555 E. Gila Ridge Rd., Yuma, AZ 85365, telephone (928) 317–3215.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Yuma Field Office, Yuma, Arizona, intends to prepare an RMP with an associated EIS for the public lands within the boundaries of the Yuma Field Office. The RMP/EIS will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), other laws, regulations, and BLM management policies. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. The first phase of the planning process is scoping which includes the identification of issues that should be addressed in the planning process and development of planning criteria.

The Yuma Field Office area encompasses 1.2 million acres along the lower Colorado River in southwest Arizona and southeast California, extending eastward into Arizona. The public lands are configured in an area 155 miles long and up to 90 miles wide. This area extends northward along the lower Colorado River from the Southern International Boundary at San Luis, Arizona, to north of Blythe, California, and Ehrenberg, Arizona. The Yuma Field Office boundary extends eastward to the Eagletail Mountains Wilderness

Area and south along the Yuma and Maricopa county line to the northern boundary of the Barry Goldwater Range. The planning area is located in Yuma, La Paz, and Maricopa Counties in Arizona; and Imperial and Riverside Counties in California. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. Comments, including names and street addresses of respondents, will be available for public review at the BLM Yuma Field Office at the above address during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Documents relevant to the planning effort may be examined during normal business hours, Monday through Friday, at the BLM Yuma Field Office at the above address. Individual respondents may request confidentiality. 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 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.

Public meetings will be held throughout the planning process. In order to ensure local community participation and input, public meetings will occur in many cities and towns within the planning area, which include Dateland, Quartzsite, San Luis, Somerton, Wellton, and Yuma, Arizona; and Blythe, California. Early participation by all those interested is encouraged and will help determine the future management of the public lands. At least 15 days public notice will be given for activities where the public is invited to attend. Meetings and comment deadlines will be announced through the local news media and newsletters. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the Draft RMP/Draft EIS.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. This represents the BLM's knowledge to date on the existing issues and concerns with current management. Additional issues and refinement of known issues will be identified during public scoping. The major issues that will be addressed during the planning process include, but are not limited to, management of public land resources including natural resource management; cultural resource management and protection; recreation/visitor use and safety; access and transportation on the public lands; location and management of utility corridors; management of grazing, mining, mineral materials, and other uses; and better coordination of public land management, local community, tribal, and other agency needs and plans.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of four categories:

1. How do we best protect and manage the natural, biological, and cultural resources on the public lands?

2. What resource uses are appropriate for the Yuma Field Office? How should public use activities be managed?

3. How do we evaluate public lands under appropriate designations?

4. How do we coordinate public land management with other agency and community plans?

In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify management concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include rangeland management, minerals and geology, outdoor recreation, archaeology, wildlife, wilderness, lands and realty, hydrology, soils, sociology, and economics. Where necessary, outside expertise may be used.

Dated: January 29, 2004.

Thomas Zale,

Acting Field Manager, Yuma.

[FR Doc. 04–6997 Filed 3–29–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: notice of firearms manufactured or imported.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 1, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Schaible, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 2 (5320.2). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: State, local or tribal government. The ATF F 2 (5320.2) form is used by a federally, qualified firearms manufacturer or importer to report firearms manufactured or imported; and to have these firearms registered in the National Firearms Registration and Transfer Record as proof of the lawful existence of the firearm.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 816 respondents will complete a 45-minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,750 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 24, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, PRA, Department of Justice.

[FR Doc. 04–7021 Filed 3–29–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on April 28 and 29, 2004. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's program. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 28, 2004—Conference Rooms 9 and 10

10–11:30 a.m.—Committee on Occupational Safety and Health

1. 2002 Survey of Occupational Injuries and Illnesses results
(a) December Summary release
(b) March Case and Demographics release
(c) New data on time of event and time shift started
2. Report on Internet data collection for 2003 survey
3. Special surveys
(a) Workplace Violence
(b) Respiratory Disease Agents
4. CFOI Chartbook
5. Budget update
6. Other business
7. Discussion of agenda items for the Fall 2004 meeting

1–2:30 p.m.—Committee on Price Indexes

1. Review of PPI NAICS conversion
2. The measurement of services in the IPP
3. The measurement of software prices in the PPI
4. The use of scanner data in the CPI
5. Discussion of agenda items for the Fall 2004 meeting

3–4:30 p.m.—Committee on Employment and Unemployment Statistics

1. Brief updates on release plans for the Job Openings and Labor Turnover Survey and Business Employment Dynamics programs—Jack Galvin
2. Quarterly Census of Employment and Wages (ES–202 Program) plans for republishing 1990–2000 data on a NAICS basis—Rick Clayton
3. Highlights of the 2002–2012 projections—Mike Horrigan
4. Current Employment Statistics (CES) plans for producing data on all employee hours and earnings and on total wages—Pat Getz
5. Review and discussion of CES experiences/lessons learned from the NAICS conversion—Pat Getz
6. Discussion of agenda items for the Fall 2004 meeting

Thursday, April 29, 2004—Conference Rooms 9 & 10

8:30–10 a.m.—Committee on Compensation and Working Conditions

1. Demonstration and discussion of the National Compensation Survey's Internet collection vehicle—Gayle Griffith
2. New Employee Benefit Data from NCS—Review of recently released information and plans for additional outputs—Wayne Shelly
3. Other topics and new business identified by the members
4. Discussion of agenda items for the Fall 2004 meeting

10:30 a.m.—12 p.m.—Council Meeting

1. Council Chair's remarks
2. Commissioner's remarks
3. Discussion of agenda items for the Fall 2004 council meeting

1:30–3 p.m.—Committee on Productivity and Foreign Labor Statistics

1. The role of outsourcing in the productivity measures
2. Recent developments in the industry productivity program
3. Cooperative work with the International Labor Organization (ILO) on comparisons of hourly compensation costs
4. Discussion of agenda items for the Fall 2004 meeting

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at (202) 691–5869.

Signed at Washington, DC, this 18th day of March, 2004.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 04–7007 Filed 3–29–04; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Disaster Relief Emergency Grant Instructions

AGENCY: Legal Services Corporation.

ACTION: Notice of issuance of disaster relief emergency grant instructions.

SUMMARY: The Legal Services Corporation (LSC) has been able, on occasion, to obtain special funding to meet the emergency needs of programs in a disaster area. This notice sets forth instructions for current LSC grant recipients who have experienced needs due to a disaster in a federally-declared disaster area to apply for disaster relief funding, when such funds are available. This information is also posted to the LSC Web site at *www.lsc.gov*.

EFFECTIVE DATE: These instructions are effective as of April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Kimberly Heron, Program Analyst III,

Office of Compliance and Enforcement, Legal Services Corporation, 3333 K St., NW., Washington, DC, 20007, (202) 295–1520 (phone); (202) 337–1254 (fax); *heronk@lsc.gov*.

SUPPLEMENTARY INFORMATION:

Instructions for Applying for Disaster Relief

Eligibility

The Legal Services Corporation (LSC) has been able, on occasion, to obtain special funding to meet the emergency needs of programs in a disaster area. When funding is available, only current LSC recipients in a federally-declared disaster area are eligible to apply for such emergency funds.

Disaster Relief Grant Application Instructions

To obtain emergency funding from the LSC, a recipient shall submit an application in writing to the President, Legal Services Corporation. The application must be signed by the executive director and the chair of the board of directors of the recipient. Nevertheless, if an emergency is such as to preclude the submission of a written application (such as when the office building has been destroyed as a result of the disaster or there is no electricity in the office) the recipient may make a verbal application for initial processing, by telephoning the Disaster Relief Desk (DRD), Kimberly Heron at (202) 295–1521. An initial verbal request must be followed by a written request as soon as possible.

The following information must be included in the application:

(1) Resources, Need and Objectives

(a) The recipient's name and number;
(b) A description of the damage sustained by recipient and the surge in demand for services as a result of the disaster;
(c) An estimate, in dollars, of lost property, including records, and equipment;
(d) The amount of emergency funds requested;
(e) A brief narrative stating the purpose of the requested funds;
(f) The recipient's current annual budget of revenue and expenses (LSC and non-LSC);
(g) The recipient's fiscal year.

(2) Operational Procedures

Describe the operational procedures for the disaster relief project(s) including the following items where applicable:
(a) The anticipated length of time to restore operations from emergency status to normal;
(b) The anticipated term of the emergency grant (*i.e.*, proposed beginning and termination dates), not to exceed twelve months;
(c) A description of the project, including criteria to be used for determining successful completion;

(3) Grant Assurances

(a) An assurance that recipient will comply with all of the grant assurances applicable to its basic field grant (which are herein incorporated by reference) in the expenditure of the emergency funds; and
(e) An assurance that the recipient will follow the special LSC accounting and reporting requirements for the emergency funds (*i.e.*, separate reporting by natural line item in the annual audit, separate case reporting in the CSR report, and if requested, periodic progress reports to the LSC) specified below.

(4) Budget

Provide a detailed budget of expenses for the emergency need, including the following information:
(a) The amount of emergency funds requested from LSC;
(b) Projected funding from other (non-LSC) sources, including insurance proceeds;
(c) Any in-kind contributions;
(d) Expenses by natural line item; and
(e) Any anticipated purchases in excess of $10,000.

Disaster Relief Emergency Grant Approval Criteria

Given the nature of emergency situations arising from natural disasters, requests for assistance will be processed on a priority basis. The primary emphasis will be on restoring, as quickly as possible, the program's capacity to serve eligible clients.

Disaster Relief Emergency Grant Extensions

To obtain approval for an extension of the grant term, a recipient must submit a request in writing no later than 60 days prior to the termination date of the grant. LSC shall respond to such request no later than 30 days prior to the termination date of the grant.

Disaster Relief Emergency Grant Accounting and Reporting

Accounting for the Grant

The grant must be separately reported by natural line item in recipient's annual audit(s). This reporting may be done either on the face of the financial statements, or in a schedule attached to the financial statements. Any fund balance remaining at the end of the grant period shall be refunded to the LSC at submission of the audit report.

Case Service Reporting

In times of crisis, the immediate needs of victims supersede the need to adhere to the recipient's established priorities and recipients confronted by natural disasters generally dispense with the stated priorities to respond to the most pressing needs of their clients. Depending on the extent of the disaster and the impact it has on the recipient's case activities, the recipient may find that it has processed a substantial number of cases outside its normal priorities and the case reporting would reflect this. To avoid a distorted picture when disaster cases are reported in the regular CSRs, LSC requires that there be separate case reporting for disaster related cases for which emergency funding was provided.

Periodic Progress Reports

If requested, the recipient shall make periodic reports to LSC on the progress being made by the recipient in the completion of the disaster relief project(s).

Victor M. Fortuno,
General Counsel and Vice President for Legal Affairs.

[FR Doc. 04–6980 Filed 3–29–04; 8:45 am]
BILLING CODE 7050–01–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., April 19, 2004.

PLACE: On board MISSISSIPPI V at City Front, Caruthersville, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 20, 2004.

PLACE: on board MISSISSIPPI V at Helena Harbor Boat Ramp, Helena, AR.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 10 a.m., April 21, 2004.

PLACE: On board MISSISSIPPI V at Fulton Street Landing, Natchez, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District and; (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 23, 2004.

PLACE: On board MISSISSIPPI V at New Orleans District Dock, Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Gambrell, telephone (601) 634–5766.

Richard B. Jenkins,

Colonel, Corps of Engineers, Secretary, Mississippi River Commission.

[FR Doc. 04–7190 Filed 3–26–04; 11:39 am]

BILLING CODE 3710–GX–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–048]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Mission Technologies, Inc., of San Antonio, TX, has applied for a partially exclusive license to practice the invention described and claimed in U.S. pending patent application identified as NASA Case No. MSC–23510–1, "Portable Catapult Launcher for Small Aircraft." The patent application is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this Notice should be received by April 14, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: March 24, 2004.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 04–7049 Filed 3–29–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CAPITAL PLANNING COMMISSION

Public Comment Period on the Draft Comprehensive Plan for the National Capital: Federal Elements

AGENCY: National Capital Planning Commission.

ACTION: Release of the *Draft Comprehensive Plan for the National Capital: Federal Elements* and authorization for public comment.

SUMMARY: The National Capital Planning Commission has released a draft of the Federal Elements of the *Comprehensive Plan for the National Capital* for public review. The Federal Elements cover matters relating to Federal properties and Federal interests in the National Capital Region and serves as a blueprint for the long-term development of the National Capital. The plan provides the decisionmaking framework for actions that the Commission takes on specific plans and proposals submitted for its review. Plan elements include: Federal Workplace: Location, Impact, and the Community; Foreign Missions and International Organizations; Transportation; Parks and Open Space; Federal Environment; Preservation and Historic Features; and Visitors. The Commission updated the plan to address new policy issues and planning concerns that have surfaced since the previous adoption of the Federal elements in the mid-1980s. The revised elements respond to the changing needs of the Federal Government and the Nation's capital and provide goals and policies for future Federal development in the Washington area.

DATES: An initial public comment meeting was held on Wednesday, March 24, 2004, and an additional meeting will be held on Monday, April 19, 2004, from 5:30–7:30 p.m.

ADDRESSES: The meeting will be held at the National Capital Planning Commission office, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20576.

SUPPLEMENTARY INFORMATION: The draft plan is available under Publications on the Commission's Web site at *www.ncpc.gov*. Printed copies will be available upon request. Individuals interested in testifying at the public meetings should call the National Capital Planning Commission at (202) 482–7200. A sign-up sheet will also be available before the start of each public session. Those testifying will be limited to three minutes and will speak in the order they signed up. Written comments may be mailed to Comprehensive Plan Public Comment, National Capital Planning Commission, 401 9th Street, NW., North Lobby, Suite 500, Washington, DC 20576. Comments may also be sent by fax at (202) 482–7252 or by e-mail to *comment@ncpc.gov*. The public comment period closes May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Ramona Taylor, (202) 482–7252.

Dated: March 25, 2004.

Wayne Costa,

Acting General Counsel & Designated Federal Register Officer.

[FR Doc. 04–7166 Filed 3–29–04; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: April 19, 2004, 9 a.m.—5:30 p.m. and April 20, 2004, 9 a.m.—3 p.m.

Places: Little Big Horn College in Crow Agency, Montana and Chief Dull Knife College in Lame Deer, Montana.

Type of Meeting: Open.

Contact Persons: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8040.

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Monday, April 19, 2004

Welcome by President of Little Big Horn College
Response by the CEOSE Chair
Presentations:
- Profile of Little Big Horn College
- NSF Support of Little Big Horn College Programs
- Science and Education Priorities and Needs
- Partnerships
- Other Relevant Topics

Tour of Little Big Horn College Campus
Discussion of Recommendations and Action Items Resulting from the Meeting

Tuesday, April 20, 2004

Welcome by President of Chief Dull Knife College
Response by the CEOSE Chair
Presentations:
- Profile in Chief Dull Knife College
- NSF Support of Chief Dull Knife College Programs
- Science and Education Priorities and Needs
- Partnerships
- Other Relevant Topics

Tour of Chief Dull Knife College
Discussion of Recommendations and Action Items Resulting from the Meeting

Dated: March 25, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–7073 Filed 3–29–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 9:30 a.m., Wednesday, April 7, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is Open to the public.

MATTER TO BE CONSIDERED:

7623—Highway Accident Report—15-Passenger Child Care Van Run-off-Road Accident in Memphis, Tennessee, on April 4, 2002.

NEWS MEDIA CONTACT:

Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, April 2, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB Home page at *www.ntsb.gov*.

FOR FURTHER INFORMATION CONTACT:

Vicky D'Onofrio, (202) 334–6410.

Dated: March 26, 2004.

Vicky D'Onofrio,

Federal Register Liaison Office.

[FR Doc. 04–7213 Filed 3–26–04; 1:36 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36499]

Notice of Application for a License for Eastern Technologies, Inc., Berwick, PA and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of a new license application request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by June 1, 2004.

FOR FURTHER INFORMATION CONTACT:

Donna M. Janda, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5371 or e-mail *dmj@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering an application for a new license from Eastern Technologies, Inc. to operate a nuclear laundry at the licensee's facility located at 51 River Road, Berwick, Pennsylvania. The license would authorize the collection, laundering, and decontamination of contaminated clothing and other launderable non-apparel items; collection and decontamination of respirators and other items that are used in conjunction with a protective clothing program; and for the possession of contaminated equipment in the licensee's portable laundry unit.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a new license. In accordance with the general requirements in Subpart C of 10 CFR Part 2,[1] "Rules of General Applicability; Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302 (a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention Rulemakings and Adjudications Staff between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *Hearingdocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302 (b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, by delivery to Eastern Technologies, Inc., P.O. Box 409, Ashford, Alabama 36312; and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General

[1] The references to 10 CFR Part 2 in this notice refer to the amendments to the NRC Rules of Practice, 69 FR 2182 (January 14, 2004), codified at 10 CFR Part 2.

Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

The formal requirements for documents are contained in 10 CFR 2.304 (b), (c), (d),and (e), and must be met. However, in accordance with 10 CFR 2.304 (f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), if an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309 (b), a request for a hearing must be filed within 60 days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requestor;

2. The nature of the requestor's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requestor's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requestor's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309 (b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the requestor/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309 (f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requestors/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309 (f)(3), any requestor/petitioner that wishes to adopt a contention proposed by another requestor/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requestor/petitioner.

In accordance with 10 CFR 2.309 (g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," details with respect to this action, including the license application by Eastern Technologies, Inc. and related documents are available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. These documents are also available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. The only document currently on file is the Eastern Technologies, Inc. License Application dated January 30, 2004 (ADAMS Accession No. ML040510525). This document may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at King of Prussia, Pennsylvania, this 23rd day of March, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–7030 Filed 3–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05222]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for E.R. Squibb & Sons, Inc.'s Facility in New Brunswick, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Donna M. Janda, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5371, fax (610) 337–5269; or by e-mail: *dmj@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to E.R. Squibb & Sons, Inc. for Materials License No. 29–00139–02, to authorize release of Buildings 122 and 124 and associated outdoor areas at its facility in New Brunswick, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to allow for the release of Buildings 122 and 124 and associated outdoor areas at the licensee's New Brunswick, New Jersey facility for unrestricted use. E.R. Squibb & Sons, Inc. was authorized by NRC from 1964 to use radioactive materials for research and development and manufacturing and distribution purposes at the site. On October 16, 2003, E.R. Squibb & Sons, Inc. requested that NRC release Buildings 122 and 124 and associated outdoor areas at the New Brunswick facility for unrestricted use. E.R. Squibb & Sons, Inc. has conducted surveys of the buildings and associated outdoor areas and determined that the buildings and outdoor areas meet the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to release the buildings for unrestricted use. The NRC staff has evaluated E.R. Squibb & Sons, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML040830086). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Persons who do not have access to ADAMS should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at King of Prussia, Pennsylvania, this 23rd day of March, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–7011 Filed 3–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 29, April 5, 12, 19, 26, May 3, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 29, 2004

There are no meetings scheduled for the Week of March 29, 2004.

Week of April 5, 2004—Tentative

There are no meetings scheduled for the Week of April 5, 2004.

Week of April 12, 2004—Tentative

Tuesday, April 13, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alan Levin, (301) 415–6656). This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 19, 2004—Tentative

There are no meetings scheduled for the Week of April 19, 2004.

Week of April 26, 2004—Tentative

Wednesday, April 28, 2004

9:30 a.m. Discussion of Security Issues (closed—ex. 1).

Week of May 3, 2004—Tentative

Tuesday, May 4, 2004

9:30 a.m. Briefing on Results of the Agency Action Review Meeting (Public Meeting) (Contact: Bob Pascarelli, (301) 415–1245). This meeting will be webcast live at the Web address—*www.nrc.gov*.

Thursday, May 6, 2004

1:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, (301) 415–7360). This meeting will be webcast live at the Web address—*www.nrc.gov*.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

Additional Information

By a vote of 3–0 on March 16 and 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (closed—ex. 1 & 2)" be held March 22, and on less than one week's notice to the public.

By a vote of 3–0 on March 23, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (1) Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation) Intervenor Ohngo Gaudadeh Devia's Motion to Reopen the Case Record on Contention "O"—Environmental Justice, and (2) Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFI" be held on March 24, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at *www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This Notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: March 25, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–7161 Filed 3–26–04; 9:54 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended

(the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 5, 2004 through March 18, 2004. The last biweekly notice was published on March 16, 2004 (69 FR 12361).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: January 9, 2004.

Description of amendment requests: The Haddam Neck Plant (HNP) is currently undergoing active decommissioning. The proposed amendment would revise Technical Specifications (TS) 6.6.4, 6.7.1, and 6.8 in accordance with Technical Specification Task Force (TSTF) travelers 152, 258 and 308 to reflect changes to Title 10 Part 20 of the Code of Federal Regulations (CFR). The proposed amendment would also revise TS 6.1, 6.2.1, 6.4, 6.5, and 6.6 to reflect the use of generic organizational titles, modeled after TSTF 65 revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are proposed to reflect the current version of 10 CFR 20 and to eliminate the need for a TS change each time there is a organizational change. These changes do not impact any design basis accidents described in the updated Final Safety Analysis Report (FSAR) for the HNP. Since the proposed changes are administrative or editorial, they cannot affect the likelihood or consequences of accidents.

Therefore, the proposed administrative changes to the Operating License and Technical Specifications will not increase the probability or consequences of an accident previously evaluated.

2. Will the proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

No. The proposed changes do not affect plant system operation. The proposed changes do not involve a physical alteration to the plant or any change in plant configuration. The proposed changes do not require any new operator actions. The changes do not alter the way any structure, system, or component functions. The changes do not introduce any new failure modes.

Therefore, this proposed administrative change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes will make the HNP Operating License and Defueled Technical Specifications consistent with the current 10 CFR 20, and eliminate the need for a TS change each time there is an organizational change. The proposed changes will not result in any technical changes to current requirements. The proposed changes have no effect on assumptions and any acceptance criteria for the design basis accidents described in the updated FSAR for the HNP.

Therefore, the proposed administrative changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

NRC Section Chief: Claudia Craig.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: February 9, 2004.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or

included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated February 9, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations (PARs) to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOPs), and site survey monitoring that support modification of emergency plan PARs.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 9, 2004.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NHSC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC

determination in its application dated February 9, 2004. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations (PARs) to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOPs), and site survey monitoring that support modification of emergency plan PARs.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 3, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves," to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to operable status within seven days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination in its application dated February 3, 2004. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead of requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: December 9, 2003.

Description of amendment request: The amendment would allow a one-time increase in the completion time for restoring an inoperable emergency feedwater (EFW) system train to operable status to allow the realignment of the diesel-driven EFW pump during power operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment extends, on a one-time basis, the Completion Time for restoring an inoperable Emergency Feedwater System train to Operable status. The Emergency Feedwater System is designed to provide cooling for components essential to the mitigation of plant transients and accidents. The system is not an initiator of design basis accidents. During the requested extended time period of 14 days, the redundant Emergency Feedwater Pump (EFP) will be available and capable of providing cooling to the Once-Through Steam Generators (OTSGs) during emergency conditions. In addition, a safety-grade motor driven pump (EFP–1) is available for manual initiation and is capable of providing adequate EFW flow for OTSG cooling during all design basis events. EFP–1 is also capable of being supplied by the "A" train emergency diesel generator if sufficient electrical loading capacity is available during a loss of offsite power condition. Although Feedwater (FW) pump FWP–7 is non-safety related and its motor is non-seismic, it will also be available and capable of providing OTSG cooling during all but the most limiting design basis events. FWP–7 also has a non-safety diesel backup power supply in the event normal power is not available.

A Probabilistic Safety Assessment (PSA) has been performed to assess the risk impact of an increase in Completion Time. Although the proposed one-time change results in an increase in Core Damage Frequency and Large Early Release Frequency, the value of these increases are considered as very small in the current regulatory guidance.

Therefore, granting this LAR [License Amendment Request] does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed license amendment extends, on a one-time basis, the Completion Time for restoring an inoperable Emergency Feedwater System train to Operable status.

The proposed LAR will not result in changes to the design, physical configuration of the plant or the assumptions made in the safety analysis. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

The proposed license amendment extends, on a one-time basis, the Completion Time for restoring an inoperable Emergency Feedwater System train to Operable status. The proposed change will allow online alignment of one of the Emergency Feedwater pumps to improve its reliability, thus increasing the long-term margin of safety of the system.

The proposed LAR will reduce the probability (and associated risk) of a plant shutdown to repair an Emergency Feedwater pump. To ensure defense-in-depth capabilities and the assumptions in the risk assessment are maintained during the proposed one-time extended Completion Time, CR–3 [Crystal River Unit 3] will continue the performance of 10 CFR 50.65(a)(4) assessments before performing maintenance or surveillance activities. Other compensatory actions that may be implemented include: use of pre-job briefings and periodic operator walkdowns to assess the status of risk sensitive equipment in the redundant train, use of operator walkdowns to assess and limit transient combustibles in risk significant fire areas, and no elective maintenance to be scheduled in the switchyard that would challenge the availability of offsite power to the ES [engineered safeguards] buses.

As described above in Item 1, a PSA has been performed to assess the risk impact of an increase in Completion Time. Although the proposed one-time change results in an increase in Core Damage Frequency and Large Early Release Frequency, the value of these increases are considered as very small in the current regulatory guidance.

Therefore, granting this LAR does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: William F. Burton, Acting.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: March 3, 2004.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Surveillance Requirement 4.0.5 by updating the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code references as the source of inservice testing requirements for ASME Code Class 1, 2, and 3 pumps and valves. The proposed amendments replace reference to Section XI of the Code with reference to ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed changes. The amendments application proposes to revise the Turkey Point Units 3

and 4 Technical Specifications Surveillance Requirement 4.0.5. The proposed changes would revise the technical specifications to conform to the requirements of 10 CFR 50.55a(f) regarding the inservice testing of pumps and valves for the Fourth 10-Year interval.

The current Turkey Point Units 3 and 4 Technical Specifications reference the ASME Code, Section XI, requirements for the inservice testing of ASME Code Class 1, 2, and 3 pumps and valves. The proposed changes would reference the ASME OM Code, which is consistent with 10 CFR Section 50.55a(f). In addition, surveillance interval definitions for "biennially or every 2 years" as used in the ASME OM Code would be added to TS surveillance requirement 4.0.5.b to ensure consistent interpretation of the terms.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new or different accident initiators are introduced by these proposed changes.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because there are no changes to initial conditions contributing to accident severity or consequences. Thus, there is not significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: William F. Burton, Acting.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 23, 2003.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to eliminate the reactor head cooling containment isolation function since the reactor head cooling system has been removed from service. In addition, the TS are being changed to correct and clarify existing requirements, make wording enhancements, and revise an existing limiting condition for operation for radiation monitors used to isolate reactor building ventilation and initiate the standby gas treatment system (SGTS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

One of the proposed changes removes the Reactor Head Cooling system primary containment isolation signal from the TS. The existing piping will be removed and the existing process pipe through the containment penetration will be cut and capped. This equipment was only used for the shutdown-cooling (non-safety related) mode of operation. This system does not support safe shutdown of the facility. The proposed TS change does not introduce new equipment or new equipment operating modes, nor does the proposed change alter existing system relationships. These proposed changes do not increase the likelihood of the malfunction of any structure, system or component (SSC) or impact any analyzed accident. Consequently, the probability of an accident previously evaluated is not increased.

The other proposed change adds an allowable outage time to the radiation monitors described in TS that initiate the SGTS and adds a time requirement for placing inoperable channels in a tripped condition. The proposed TS change does not introduce new equipment or new equipment operating modes, nor does the proposed change alter existing system relationships. The change does not affect plant operation, design function or any analysis that verifies the capability of a SSC to perform a design function. Further, the proposed change does not increase the likelihood of the malfunction of any structure, system or component (SSC) or impact any analyzed accident. Consequently, the probability of an accident previously evaluated is not affected.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

One of the proposed changes removes the Reactor Head Cooling system primary containment isolation signal from the TS. The existing piping will be removed and the existing process pipe through the containment penetration will be cut and capped. This equipment was only used for the shutdown-cooling (non-safety related) mode of operation. The change does not create the possibility of new credible failure mechanisms, or malfunctions. The proposed change does not introduce new accident initiators. Consequently, the changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

The other proposed change adds an allowable outage time to the radiation monitors described in TS that initiate the SGTS and adds a time requirement for placing inoperable channels in a tripped condition. This change does not modify the design function or operation of any SSC. Further the change does not involve physical alterations of the plant; no new or different type of equipment will be installed. The proposed change is not an indicator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not affected.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

One of the proposed changes removes the Reactor Head Cooling system primary containment isolation signal from the TS. The existing piping will be removed and the existing process pipe through the containment penetration will be cut and capped. This equipment was only used for the shutdown-cooling (non-safety related) mode of operation. This system does not support safe shutdown of the facility. This change does not exceed or alter a design basis or a safety limit for a parameter established in the MNGP [Monticello Nuclear Generating Plant] Updated Safety Analysis Report (USAR) or the MNGP facility license. Consequently, the change does not result in a significant reduction in the margin of safety.

The other proposed change adds an allowable outage time to the radiation monitors described in TS that initiate the SGTS and adds a time requirement for placing inoperable channels in a tripped condition. This change ensures continued compliance with regulatory and licensing requirements. The change does not exceed or alter a design basis or safety limit for a parameter established in the MNGP USAR or MNGP facility license. Consequently, the proposed amendment does not involve a significant reduction in the margin of safety.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 13, 2004.

Description of amendment requests: The amendment would revise Technical Specifications (TSs) 3.3.1, "Reactor Trip System (RTS) Instrumentation," 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," and 3.3.6, "Containment Ventilation Isolation Instrumentation." The purpose of the amendment is to adopt the completion time, test bypass time, and surveillance frequency time changes approved by the NRC in Topical Reports WCAP–14333–P–A, "Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times," and WCAP–15376–P–A, "Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times." The proposed changes would revise the required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; increase frequency time intervals (including certain notes) in several surveillance requirements (SRs); add an action condition and required actions; add or revise notes in certain SRs; and revise Table 3.3.1–1. There are also administrative corrections to the format of the TSs (*e.g.*, remove the bold appearance of page number 3.3–45).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same RTS and ESFAS instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the TS [in the amendment] do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators [because the proposed changes are not event initiators]. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Updated Final Safety Analysis Report [for Diablo Canyon Units 1 and 2].

The determination that the results of the proposed changes are acceptable [to be considered for plant-specific TS] was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A, Revision 1, (issued by letter dated July 15, 1998) and for WCAP–15376–P–A, Revision 1, (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions [for the two WCAPs].

The proposed changes to the CTs [completion times], test bypass times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious engineered safety features actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the CT changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides (RGs) 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their [safety] functions with high reliability as originally assumed, and the increase in risk as measured by ΔCDF, ΔLERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of existing [NRC] regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, [the] change[s do] not increase the probability or consequences of any accident previously evaluated.

2.The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit. There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling limits, local power peaking factor (F_Q), hot channel factor (FΔH), loss-of-coolant accident (LOCA) peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard [to] the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RGs 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased CTs and bypass test times, it is expected that there would be a net benefit due to a reduced potential for

spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

(a) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, less frequent distraction of operations personnel without significantly affecting RTS and ESFAS reliability.

(b) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short CTs.

(c) Longer repair times associated with increased CTs will lead to higher quality repairs and improved reliability.

(d) The CT extensions for the reactor trip breakers will provide additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker CT, and provide consistency with the CT for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment request: January 28, 2004.

Description of amendment request: Southern California Edison (SCE) permanently shutdown San Onofre Nuclear Generating Station (SONGS), Unit 1, in November 1992. Active decommissioning of SONGS Unit 1 began in June 1999. As part of decommissioning, SCE constructed an Independent Spent Fuel Storage Installation (ISFSI) at SONGS for dry cask storage of spent fuel. In March 2004, SCE plans to begin moving the spent fuel located in the Unit 1 spent fuel pool into the ISFSI. SCE has proposed to eliminate License information and technical specifications which will no longer be applicable following the transfer of the last fuel assembly from the Unit 1 spent fuel pool to the ISFSI.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This proposed change provides the necessary requirements for Unit 1 with no spent fuel located in the spent fuel pool. With no spent fuel located at Unit 1, the probability and consequence of the fuel handling accident are removed.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. These changes provide the necessary requirements for SONGS Unit 1 with no spent fuel in the spent fuel pool. With no spent fuel located at Unit 1, there is no possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. These changes provide the necessary requirements for SONGS Unit 1 with no spent fuel in the spent fuel pool. With no spent fuel located at Unit 1, the fuel handling accident is not applicable and there is impact on the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Mark Thaggard.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 19, 2003.

Description of amendment request: The proposed change will revise the Technical Specifications (TSs) Surveillance Requirement (SR) 4.2.4.2, to reflect the use of the Power Distribution Monitoring System (PDMS) for a core power distribution measurement. This change will also result in revising the Bases for 3/4.2.4 to reflect the use of the PDMS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to TS 4.2.4.2 clarifies the use of the PDMS as means of measuring core power distribution with one Power Range Channel inoperable to determine if QPTR [Quadrant Power Tilt Ratio] is within the limit. The use of PDMS was approved in Amendment 142 and added as TS 3.3.3.11. This clarification of its use in TS 4.2.4.2 specifies an additional method of performing the surveillance requirement and will not increase the probability of an accident previously evaluated.

The probability or consequences of accidents previously evaluated in the VCSNS FSAR [Final Safety Analysis Report] are unaffected by this proposed change because there is no change to any equipment response or accident mitigation scenario. There are no additional challenges to fission product barrier integrity. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new different kind of accident from any previously evaluated?

No. The proposed change to TS 4.2.4.2 clarifies the use of the PDMS as means of measuring core power distribution with one Power Range Channel inoperable to determine if QPTR is within the limit. The use of the PDMS was approved in Amendment 142 and added as TS 3.3.3.11. This clarification of its use in TS 4.2.4.2 specifies an additional method of performing the surveillance requirement and does not create the possibility of a new different kind of accident or malfunction.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

No. The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. A change to the surveillance requirement is proposed; however, this clarification of the use of PDMS in TS 4.2.4.2 specifies an additional method of performing the surveillance requirement.

The NRC staff has reviewed the licencee's analysis and based on this

review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 10, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specification allowable value for the spent fuel pool area radiation monitors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed technical specification (TS) change to reduce the allowable value for the spent fuel pool area radiation monitors does not change any operator actions nor does it change plant systems or structures. Therefore, the proposed change does not result in a significant increase in the probability of a Fuel Handling Accident (FHA). The surveillance requirement radiation limit for the spent fuel pool area radiation monitors will be lowered to compensate for the change in source terms which resulted from the methodology change due to discovery of a modeling error. This change ensures the monitors perform their safety function of limiting the site boundary dose to a small fraction of the 10 CFR part 100 limits. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed TS change does not alter the function of the spent fuel monitors which is to initiate ABGTS [Auxiliary Building Gas Treatment System actuation] upon an FHA. The TS allowable value and the associated setpoints for the spent fuel pool area radiation monitors will be lowered due to calculation methodology changes resulting from discovery of a modeling error. The change will not result in the installation of any new equipment or system. No new operations procedures, conditions, or modes will be created by this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in margin of safety?

No. The method for calculating the radiological consequences are revised for calculating the safety limit of the spent fuel pool area radiation monitors to correctly account for isotopic release fractions. The monitors' setpoints are based on 30 rem thyroid at the site boundary resulting from an unfiltered release. At the monitor setpoint, the monitors initiate ABGTS and thus the release is filtered. The radiological dose consequences do not change and remain less than a small fraction of the dose limit identified in 10 CFR 100. The surveillance requirement is being reduced for consistency with calculation methodology changes and to ensure the monitors perform their intended design function of limiting the site boundary dose to less than 30 rem thyroid subsequent to an FHA. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: William F. Burton, Acting.

Virginia Electric and Power Company, Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: January 23, 2004.

Description of amendment request: The proposed amendment would revise Improved Technical Specifications (TS) Surveillance Requirements 3.5.1.4, 3.5.4.3, and 3.6.7.3 to delete a note that differentiates between the amount of boron concentrations at North Anna Power Station, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS Surveillance Requirements 3.5.1.4, 3.5.4.3, and 3.6.7.3 delete a note that is no longer necessary and do not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. The proposed changes will not alter assumptions relative to the mitigation of an accident or transient event.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes do not alter the boron concentrations in the safety injection accumulators, RWST [refueling water storage tank], and casing cooling tank. The proposed changes to TS Surveillance Requirements 3.5.1.4, 3.5.4.3, and 3.6.7.3 are considered administrative in nature. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance

with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. 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*.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of application for amendment: December 3, 2003, as supplemented January 14 and February 6, 2004.

Brief description of amendment: The amendment eliminates a license condition that limits HBRSEP2 operation to 504 effective full-power days. This license condition was added in License Amendment No. 196, issued on November 5, 2002.

Date of issuance: March 10, 2004.

Effective date: March 10, 2004.

Amendment No. 200.

Facility Operating License No. DPR–23: Amendment revises Appendix B, "Additional Conditions," to the Facility Operating License.

Date of initial notice in **Federal Register:** February 3, 2004 (69 FR 5201). The February 6, 2004, supplemental letter provided clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2004.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: October 22, 2003.

Brief description of amendment: The amendment deletes requirements from the Technical Specifications to maintain hydrogen recombiners and hydrogen and oxygen monitors.

Date of issuance: March 15, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 159.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5202).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2004.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 7, 2003 as supplemented September 18, 2003.

Brief description of amendment: The amendment changed Technical Specifications (TSs) affecting cycle-specific parameters that will be relocated to the Core Operating Limits Report.

Date of issuance: March 9, 2004.

Effective date: As of the date of issuance, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 218.

Facility Operating License No. NPF–49: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28849). The September 18, 2003 supplement contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 14, 2002, supplemented by letters dated September 11, 2003, and March 10, 2004.

Brief description of amendments: The amendments revised the Technical Specification 3.3.2, "Engineered Safety Features Actuation System Instrumentation."

Date of issuance: March 16, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 220 & 202.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 19, 2003 (68 FR 49815).

The supplements dated September 11, 2003, and March 10, 2004, provided clarifying information that did not change the scope of the November 14, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 19, 2003.

Brief description of amendment: The amendment deletes the requirements from the Technical Specifications to maintain hydrogen recombiners and hydrogen analyzers.

Date of issuance: March 9, 2004.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment No.: 192.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 20, 2004 (69 FR 2741).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 18, 2003.

Brief description of amendments: The amendments revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the change modifies TS Table 3.3.6.1–1, "Primary

Containment Isolation Instrumentation," to add the requirement to perform a Channel Check in accordance with Surveillance Requirement (SR) 3.3.6.1.1 to thirteen listed instrument functions. The change is the result of the replacement of existing plant equipment with equipment that has the capability of permitting the performance of a Channel Check with the plant in MODES 1, 2, and 3. The change is consistent with the wording specified in NUREG–1434, "Standard Technical Specifications General Electric Plants, BWR/6," Revision 2, dated June 2001.

Date of issuance: March 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 166/152.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34667).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: December 22, 2003, as supplemented by letter dated February 13, 2004. The February 13, 2004, submittal provided clarifying information and did not change the staff's proposed finding of no significant hazards.

Brief description of amendment: This amendment revised the safety limit minimum critical power ratio value in TS 2.1 with the reactor steam dome pressure greater than 785 psig and core flow greater than 10% of rated core flow from the current specification of 1.10 to 1.07 for two recirculation-loop operation and from 1.11 to 1.08 for single recirculation-loop operation.

Date of issuance: March 12, 2004.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment No. 170.

Facility Operating License No. NPF–39. This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5203).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 12, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 27, 2003, as supplemented by letters dated April 11 and August 5, 2003.

Brief description of amendments: The amendments revise the Technical Specifications to allow a one-time change in the containment Type A integrated leakage rate test interval that extends the test interval from 10 to 15 years.

Date of issuance: March 8, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 220/214.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 1, 2003 (68 FR 15759). The April 11 and August 5, 2003, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: November 14, 2003, as supplemented by letters dated December 23, 2003, and January 7, 2004.

Brief description of amendment: The amendment revises the values and wording of the Technical Specifications safety limit minimum critical power ratio (SLMCPR).

Date of issuance: March 10, 2004.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 215.

Facility Operating License No. DPR–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 20, 2004 (69 FR 2743). The December 23, 2003, and January 7, 2004, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2004.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: November 21, 2003.

Brief description of amendments: These amendments allow transfer of the requirements of Technical Specifications (TSs) 6.5 (Review and Audit), 6.8.2 and 6.8.3 (Procedures and Programs Review Specifics), and 6.10 (Record Retention) to the St. Lucie Plant's Quality Assurance Plan (a licensee-controlled document).

Date of Issuance: March 11, 2004.

Effective Date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 189 & 133.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** January 6, 2004 (69 FR 698).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 11, 2004.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendments: July 1, 2003, as supplemented by letters dated November 17 and December 22, 2003.

Brief description of amendments: The amendment revised the values of the Safety Limit for Minimum Critical Power Ratio in the Unit 1 Technical Specifications (TSs) 2.1.1.2, clarified fuel design features in TS 4.2.1, and updated the references used to determine the core operating limits in TS 5.6.5.b.

Date of issuance: March 9, 2004.

Effective date: As of the date of issuance and shall be implemented upon startup following the thirteenth refueling and inspection outage.

Amendment Nos.: 216.

Facility Operating License No. NPF–14: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 5, 2003 (68 FR 46245).

The supplements dated November 17 and December 22, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 3, 2003, as supplemented February 9, 2004.

Brief description of amendments: The amendments revised the Technical Specifications. to add a Limiting Condition for Operation (LCO) for the Liner Heat Generation Rate. The new LCO is included in Section 3.2, Power Distribution Limits. The proposed amendments would also change the recirculation loop LCO, Section 5.6.5, and the appropriate Bases.

Date of issuance: March 8, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 239 / 182.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2003 (68 FR 64128).

The supplement dated February 9, 2004, provided clarifying information that did not change the scope of the October 3, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 2004.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: December 18, 2003.

Brief description of amendments: The amendments modified Technical Specification 3.9.6 to correct completion times of ACTIONS B.2 and B.3, which were overlooked in Amendment No. 105.

Date of issuance: March 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 110 and 110.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5209).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2004.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 18, 2003, as supplemented by letter dated August 14, 2003.

Brief description of amendments: The amendments modified Technical Specifications (TS) to permanently except seven containment isolation valves in each unit, in residual heat removal and containment spray systems, from local leakage rate testing requirements of 10 CFR Part 50, Appendix J.

Date of issuance: March 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 111 and 111.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 8289).

The August 14, 2003, supplemental letter provided clarifying information and did not change the scope of the original **Federal Register** notice or staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 2004.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 27, 2003, as supplemented by letter dated December 12, 2003.

Brief description of amendment: The amendment (1) revises the definition of dose equivalent radioiodine 131 (I–131), and (2) increases the maximum allowed closure time of each main feedwater isolation valve (MFIV) from 5 seconds to 15 seconds. A plant modification would replace the electro-hydraulic MFIV actuators with system-medium actuators to improve MFIV reliability and reduce maintenance requirements, and the MFIV stroke time would be increased. A plant modification would also replace swing check valves in each auxiliary feedwater (AFW) motor-driven pump discharge line with an automatic recirculation control check valve to reduce the potential for vibration and increase AFW flow margin. The NRC also approves the re-analysis of the steam generator tube rupture with overfill accident submitted in the application.

Date of issuance: March 11, 2004.

Effective date: March 11, 2004, and shall be implemented prior to the entry into Mode 3 in the restart of the Callaway Plant from the Refueling Outage (RO) 13, which is scheduled for April 2004.

Amendment No.: 159.

Facility Operating License No. NPF–30: The amendment revises the Technical Specifications and updates the Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** July 22, 2003 (68 FR 43394).

The additional information provided in the supplemental letter does not expand the scope of the application as noticed and does not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 11, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 19th day of March, 2004.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Director, Acting, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–6682 Filed 3–29–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Regulatory Guide 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed

Activities," is being issued for trial use. Regulatory Guide 1.200 is being developed to provide guidance to licensees in determining the technical adequacy of a probabilistic risk analysis used in a risk-informed, integrated decision-making process.

Standard Review Plan Chapter 19.1, "Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," has been developed for the NRC staff to use in conjunction with Regulatory Guide 1.200.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. A. Singh, (301) 415–0250; e-mail: *AXS3@NRC.GOV*.

Regulatory guides and certain SRP chapters are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, MD this 27th day of February 2004.

For the Nuclear Regulatory Commission.

Jack R. Strosnider

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 04–7029 Filed 3–29–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49464; File Nos. SR–NYSE–2004–03; SR–NASD–2004–020]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to Certain Prerequisites to and Exemptions From Taking the Research Analyst Qualification Examination ("Series 86/87")

March 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] on January 30, 2004, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"), and on February 3, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or the "Commission") proposed rule changes to set forth certain prerequisites and exemptions from the requirement that all members who function as research analysts be registered as such and pass a qualification examination. Specifically, the proposed rule changes would (1) establish, as a prerequisite to be registered as a research analyst, the requirement that an applicant also be registered as a General Securities Representative and (2) provide for an exemption from the analytical portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst ("CFA") Examination.

The proposed rule changes were published for comment for fifteen days in the **Federal Register** on March 2, 2004.[3] The Commission received one comment on SR–NASD–2004–020.[4] This order approves the proposed rule changes on an accelerated basis.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the regulations thereunder applicable to the NYSE and NASD.[5] In particular, the Commission believes that the proposals are consistent with Sections 6(b)(8) and 6(c)(3)(B) of the Act,[6] and Sections 15A(b)(6) and 15A(b)(9) of the Act.[7]

The Commission finds that the NYSE's proposed rule change is consistent with Section 6(c)(3)(B) of the Act.[8] Section 6(c)(3)(B) of the Act[9] provides that a national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the exchange. Section 6(c)(3)(B) of the Act[10] also provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

In addition, the Commission finds that the NYSE's proposed rule change is consistent with Section 6(b)(8) of the Act,[11] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the NASD's proposed rule change is consistent with Section 15A(g)(3).[12] Section 15A(g)(3) of the Act[13] provides that a registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the association. Section 15A(g)(3) of the Act[14] also provides that a registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49314 (February 24, 2004), 69 FR 9888.

[4] The Commission received one comment letter on SR–NASD–2004–020, which generally supported the proposal but mainly addressed the issue of soft dollar payments for third-party research.

[5] *See* 15 U.S.C. 19(b)(2).

[6] 15 U.S.C. 78f(b)(8) and (c)(3)(B).

[7] 15 U.S.C. 78*o*–3(b)(6) and (b)(9).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] *Id.*

[10] *Id.*

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78*o*–3(g)(3).

[13] *Id.*

[14] *Id.*

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,[15] which requires that the rules of an association not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the NYSE and NASD proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[16] The proposals set forth certain prerequisites and exemptions from the research analyst registration requirements. The NYSE and the NASD stated their intentions to file proposed rule changes to require that applicants also be registered as General Securities Representatives as a prerequisite to being registered as research analysts, in related rule filings that were published in the **Federal Register** on February 13, 2004.[17] In addition, the proposals to provide for an exemption from the analytical portion of the Research Analyst Qualification Examination for certain applicants who have passed certain portions of the CFA Examination, are responsive to comments received in response to the SRO's rule changes that mandated registration requirements for research analysts. Those rule changes were approved on July 29, 2003.[18]

The Commission believes, moreover, that approving these proposed rule changes further the public interest and the investor protection goals of the Exchange Act. Finally, the Commission also finds that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the research analyst registration requirements.

Accordingly, the Commission finds good cause, consistent with Sections 6(c)(3)(B), 15A(b)(6) and 19(b) of the Exchange Act,[19] to approve the proposed rule changes on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule changes (SR–NYSE–2004–03; SR–NASD–2004–020) are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7079 Filed 3–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49459; File No. SR–Phlx–2004–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Pilot Program Regarding the Book Sweep Function of the Exchange's Automated Options Market System

March 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act",[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 17, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with 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 the Phlx. The Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] 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 Substance of the Proposed Rule Change

The Phlx proposes to extend a pilot program concerning a feature of the Exchange's Automated Options Market ("AUTOM") System,[5] designed to automatically execute limit orders on the book when the specialist's quotation locks or crosses a limit order on the book, thus rendering such limit order marketable. This feature, governed by Exchange Rule 1080(c)(iii), is called "Book Sweep." Book Sweep is currently operating as a six-month pilot.[6]

The pilot is scheduled to expire on March 31, 2004. The Exchange notes that it has submitted a proposed rule change requesting permanent approval of the Book Sweep feature.[7] The instant proposal is intended to extend the pilot from April 1, 2004 until the earlier of July 1, 2004 or such time as the Commission approves the Book Sweep feature on a permanent basis.

The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission. The proposed rule change does not alter the text of the pilot language in Rule 1080(c)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to continue to further automate options order handling by extending a current pilot enhancement to the Exchange's AUTOM system, called Book Sweep, that allows certain orders resting on the limit order book [8] to be automatically executed in the situation where the bid or offer generated by the Exchange's Auto-

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[15] 15 U.S.C. 78*o*–3(b)(9).

[16] In approving the NYSE's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] *See* note 3 supra.

[18] *See* Securities Exchange Act Release No. 48252, 69 FR 45875 (August 4, 2003).

[19] 15 U.S.C. 78f(c)(3)(B), 78*o*–3(b)(6), and 78s(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[6] In September, 2003, the Commission approved the Exchange's Book Sweep proposal on a six-month pilot basis. *See* Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR–Phlx–2003–30).

[7] *See* Securities Exchange Act Release No. 49365 (March 4, 2004), 69 FR 11690 (March 11, 2004) (SR–Phlx–2004–18).

[8] The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Exchange Rule 1080, Commentary .02.

Quote[9] system (or by a proprietary quoting system called "Specialized Quote Feed" or "SQF")[10] locks (*i.e.*, $1.00 bid, $1.00 offer) or crosses (*i.e.*, $1.05 bid, $1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders executed by the Book Sweep feature are allocated among crowd participants participating on the Wheel.[11]

The Exchange believes that the Book Sweep feature provides for more timely and efficient executions of marketable limit orders on the limit order book. Prior to the deployment of Book Sweep, when the Auto-Quote or SQF bid or offer locked or crossed a booked order, the specialist handled the execution manually after being alerted by the system that one or more limit orders on the book have become marketable and are due an execution. This situation could occur for several series in the same option, which prior to the deployment of Book Sweep required multiple executions of booked limit orders in each such series to be carried out by the specialist. Book Sweep automates the execution of such orders.

Book Sweep Size

Book Sweep automatically executes a number of contracts not to exceed the size associated with the quotation that locks or crosses a limit order on the book. The purpose of this provision is to make automatic executions in the Book Sweep function consistent with the Exchange's rules relating to AUTO–X, the automatic execution feature of AUTOM. The Exchange no longer has an artificial "AUTO–X guarantee" applicable to an option. Instead, the Exchange currently provides automatic executions for eligible orders[12] delivered via AUTOM at the Exchange's disseminated price, up to the disseminated size, for both customer and broker-dealer orders.[13] Because the Exchange's disseminated size (and thus its guaranteed AUTO–X size) is dependent on the size displayed when an order is received, and thus is fluid, in order to achieve consistency, the number of contracts to be executed via Book Sweep is equal to the size associated with the quote that locks or crosses the limit order on the book.

When a quotation generated by Auto-Quote or SQF locks or crosses a limit order on the book, there are three possible scenarios that may occur. First, if such a quotation is for a number of contracts that is equal to the size associated with the limit order on the book, the entire limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quotation that locks or crosses such a limit order is 200 contracts, the entire limit order on the book would be executed, and Auto-Quote or SQF would thereafter refresh the quotation (including the size associated with such a quotation).

The second possible scenario is that the size associated with a quotation that locks or crosses a limit order on the book could be for a greater number of contracts than the size associated with the booked limit order. In such a situation, the entire size of the limit order would be executed. For example, if a limit order is resting on the book with a size of 200 contracts, and size associated with the quotation that locks or crosses such a limit order is 300 contracts, the entire limit order would be executed. Following the execution, Auto-Quote or SQF would thereafter refresh the quotation (including the size associated with such a quotation).

The third possible scenario is that the size associated with the quote that locks or crosses a limit order on the book would be for fewer contracts than the size associated with the booked limit order. In this situation, the limit order would be partially executed automatically at the size associated with the quote that locks or crosses the limit order,[14] and Auto-Quote or SQF would refresh the quotation. For example, if a limit order is resting on the book with a size of 200 contracts, and the size associated with the quote that locks or crosses such a limit order is 100 contracts, Book Sweep would generate an automatic execution for 100 contracts, leaving 100 contracts resting on the limit order book, and Auto-Quote or SQF would refresh the quote. If the refreshed quote locks or crosses the remaining contracts in the limit order resting on the book, Book Sweep would initiate another automatic execution for the size associated with the refreshed quote. If the refreshed bid or offer is for a price that is inferior to the remaining contracts in the limit order on the book, such that the limit order represents the Exchange's best bid or offer, the price and size of the limit order would be disseminated by the Exchange. If the refreshed bid or offer is for a price that is superior to the price of the remaining limit order, the Exchange would disseminate the refreshed bid or offer, and the remaining limit order would rest on the limit order book until it becomes due for execution or is cancelled.

Manual Book Sweep

Book Sweep would be engaged when AUTO–X is engaged, and would be disengaged when AUTO–X is disengaged.[15] However, the Exchange proposes to allow specialists to engage Book Sweep manually when orders are received when AUTO–X is disengaged, and Auto-Quote or SQF matches or crosses the Exchange's best bid or offer in a particular series as established by an order on the limit order book. The purpose of this provision is to enable the specialist to execute limit orders on the book that are due for execution more efficiently by manually initiating Book Sweep (rather than executing such

[9] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[10] See Exchange Rule 1080, Commentary .01(b)(i).

[11] The "Wheel" is a feature of AUTOM that allocates contra-party participation respecting automatically executed trades among the specialist and Registered Options Traders ("ROTs") signed onto the Wheel for that listed option. *See* Exchange Rule 1080(g). *See also* Option Floor Procedure Advice ("OFPA") F–24.

[12] For a list of circumstances in which orders otherwise eligible for AUTO–X are instead manually handled by the specialist, *see* Exchange Rule 1080(c)(iv). *See also* Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR-Phlx-2001–24).

[13] See Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR-Phlx-2003–18).

[14] Exchange Rule 1082(b) provides that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer and broker-dealer orders at the disseminated price in an amount up to the disseminated size. *See also* Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1.

[15] Exchange Rule 1080(c)(iv) provides that an order otherwise eligible for AUTO–X will instead be manually handled by the specialist in the following situations:

(A) The Exchange's disseminated market is crossed (*i.e.*, 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange;

(B) One of the following order types: stop, stop limit, market on closing, market on opening, or an all-or-none order where the full size of the order cannot be executed;

(C) The AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

(D) The disseminated market is produced during an opening or other rotation;

(E) When the specialist posts a bid or offer that is better than the specialist's own bid or offer (except with respect to orders eligible for "Book Match" as described in Rule 1080(g));

(F) If the NBBO Feature, described in Exchange Rule 1080(c)(i), is not engaged, and the Exchange's bid or offer is not the NBBO;

(G) When the price of a limit order is not in the appropriate minimum trading increment pursuant to Rule 1034;

(H) When the bid price is zero respecting sell orders; and

(I) When the number of contracts automatically executed within a 15 second period in an option (subject to a pilot program until November 30, 2004) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually.

orders individually), thus providing more efficient executions and ensuring that the specialist may maintain a fair and orderly market when such orders become due for execution.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. The Exchange believes that Book Sweep helps provide faster executions for investors, while reducing the burden on the Exchange's specialists with respect to the manual execution of booked orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b-4(f)(6) thereunder. [19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waivers will allow the Book Sweep feature to operate without interruption until the earlier of July 1, 2004 or Commission approval of the Book Sweep feature on a permanent basis. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[20]

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-Phlx-2004–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 Phlx. All submissions should refer to File No. SR-Phlx-2004–21 and should be submitted by April 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–7080 Filed 3–29–04; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b-4(f)(6).

[20] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4642]

Notice of Meeting; United States International Telecommunication Advisory Committee Meeting–Radiocommunication Sector (ITAC–R)

The Department of State announces meetings of the ITAC–R. The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC–R will meet to discuss the matters related to the meeting of the ITU Council's Ad Hoc Group on Cost Recovery for Satellite Network Filings that will take place 4–6 May 2004 in Geneva, Switzerland. ITAC–R meetings will be convened on 13 April, and 27 April from 1:30 to 4 pm in Room 6 B 516 at the Federal Communications Commission (FCC). The FCC is located at 445 12th Street, SW., Washington, DC.

Members of the public will be admitted to the extent that seating is available and may join in the discussions subject to the instructions of the Chair. Entrance to the FCC is controlled. Persons planning to attend the meeting should arrive early enough to complete the entry procedure. One of the following current photo identifications must be presented to gain entrance to the FCC: U.S. driver's license with your photo on it, U.S. passport, or U.S. Government identification. For further information on these meetings, please contact Douglas Spalt, International Communications and Information Policy, Department of State at (202) 647–0200.

Dated: March 18, 2004.

Douglas R. Spalt,

International Telecommunications and Information Policy, Department of State.

[FR Doc. 04–7082 Filed 3–29–04; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Acceptable on Federal Bonds: Arch Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 11 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, on page 39191 to reflect this addition:

Arch Insurance Company.

BUSINESS ADDRESS: One Liberty Plaza, 53rd Floor, New York, NY 10006. PHONE: (203) 338–3300. UNDERWRITING LIMITATION b/: $24,943,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 19, 2004.

Teresa Casswell,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–6987 Filed 3–29–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Notice of Merger, Name Change, and Change in Underwriting Limitation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: The Guarantee Company of North America USA (NAIC #37443), a Michigan corporation, has formally merged with and into Mid-State Surety Corporation (NAIC #36650), a Michigan corporation, effective December 31, 2003. The Guarantee Company of North America USA (NAIC #37443) was last listed as an acceptable surety on Federal bonds at 68 FR 39203, July 1, 2003 and Mid-State Surety Corporation (NAIC #36650) was last listed as an acceptable surety on Federal bonds at 68 FR 39210, July 1, 2003.

Notice is hereby given that the Certificate of Authority issued by the Treasury to The Guarantee Company of North America USA (NAIC #37443), under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby terminated. With respect to any bonds currently in force with The Guarantee Company of North America USA (NAIC #37443), bond-approving officers may let such bonds run to expiration and need not secure new bonds.

In addition, Mid-State Surety Corporation (NAIC #36650) has changed its name to The Guarantee Company of North America USA effective December 31, 2003. A new Certificate of authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to The Guarantee Company of North America USA (NAIC #36650), Grosse Pointe Farms, Michigan. This new certificate replaces the Certificate of Authority issued to the company prior to the merger. A revised underwriting limitation of $5,573,000 is now established for The Guarantee Company of North America USA (NAIC #36650).

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512-1800. When ordering the circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 22, 2004.

Teresa Casswell,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–6986 Filed 3–29–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Acceptable on Federal Bonds; Madison Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 Revision, on page 39209 to reflect this addition:

Madison Insurance Company.

BUSINESS ADDRESS: 303 Peachtree Street NE., Suite 700, Atlanta, GA 30308. PHONE: (404) 588–8344. UNDERWRITING LIMITATION b/: $6,734,000. SURETY

LICENSES c/: DC, FL, GA, MD, TN, VA. INCORPORATED IN: Georgia.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04643–2.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 22, 2004.

Teresa Casswell,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–6989 Filed 3–29–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Company Acceptable on Federal Bonds: Change in State of Incorporation: United States Fire Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 10 to the Treasury Department Circular 570; 2003 Revision, published July 1, 2003, at 68 FR 39186.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: United States Fire Insurance Company has redomesticated from the state of New York to the state of Delaware effective December 31, 2003. The Company was last listed as an acceptable surety on Federal bonds at 68 FR 39223, July 1, 2003.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2003 revision, on page 39223 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: March 19, 2004.

Teresa Casswell,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–6988 Filed 3–29–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 20, 2004, at 1:30 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, April 20, 2004, from 1:30 to 3 p.m. eastern standard time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: March 25, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–7089 Filed 3–29–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 29, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0525."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0525" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA MATIC Change, VA Form 29–0165.

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–0165 is used by the insured to change the bank account number and/or bank from which VA currently deducts his/her premium payments.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 16, 2004, at page 2652.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 19, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–6976 Filed 3–29–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 29, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0379."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0379" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Time Record (Work-Study Program), VA Form 22–8690.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct. When a claimant elects to receive an advance payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2003, at page 59245

Affected Public: State, Local or Tribal Governments, Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal Government.

Estimated Annual Burden: 10,750 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 129,000.

Estimated Number of Respondents: 32,250.

Dated: March 19, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–6977 Filed 3–29–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Department of Veterans Affairs.

ACTION: Notice of government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *bob.potts@hq.med.va.gov*. Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Patent Application No. 10/672,241 "Compositions and Methods for Bowel Care in Individuals with Chronic Intestinal Pseudo-Obstruction".

Dated: March 22, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–6975 Filed 3–29–04; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 69, No. 61
Tuesday, March 30, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comments Request Improving Media Coverage of Cancer: A Survey of Science and Health Reporters

Correction

In notice document 04–5542 beginning on page 11638 in the issue of Thursday, March 11, 2004, make the following correction:

On page 11638, in the second column, in the second paragraph, in the eighth line, "new media" should read "news media."

[FR Doc. C4–5542 Filed 3–29–04; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 30, 2004

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 286, 302, 309, and 310
Tribal Child Support Enforcement Programs; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 286, 302, 309 and 310

RIN 0970–AB73

Tribal Child Support Enforcement Programs

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: ACF is issuing final regulations to implement direct funding to Indian Tribes and Tribal organizations under section 455(f) of the Social Security Act (the Act). Section 455(f) of the Act authorizes direct funding of Tribal Child Support Enforcement (IV–D) programs meeting requirements contained in the statute and established by the Secretary of HHS by regulation. These regulations address these requirements and related provisions, and provide guidance to Tribes and Tribal organizations on how to apply for and, upon approval, receive direct funding for the operation of Tribal IV–D programs.

DATES: This rule is effective March 30, 2004. For Tribes and Tribal organizations not operating a Tribal IV–D program under 45 CFR part 310, these regulations are applicable March 30, 2004. For Tribes operating a Tribal IV–D program under the Interim Final Rule, 45 CFR part 310 will apply until no later than October 1, 2004. Tribes operating under 45 CFR part 310 must comply with these final regulations (45 CFR part 309) no later than October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Biava, Policy Specialist, OCSE Division of Policy, (202) 401–5635.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 from Monday through Friday between the hours of 8 a.m. and 7 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This final regulation implements section 455(f) of the Act, as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by section 5546 of the Balanced Budget Act of 1997 (Pub. L. 105–33). This final regulation is also issued under the authority granted to the Secretary of HHS (Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

Section 455(f) of the Act, as amended, reads as follows: "The Secretary may make direct payments under this part to an Indian Tribe or Tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible for a grant under this subsection."

Scope of This Rulemaking

On August 21, 2000, a Notice of Proposed Rulemaking (NPRM) and Interim Final Rule were published (65 FR 50800 and 65 FR 50786, respectively). The NPRM set forth the proposed rules for direct funding to Tribal IV–D agencies. The rulemaking process is ordinarily a lengthy process. A number of Tribes expressed concern that efforts they had under way would be unduly delayed or disrupted if the regulatory process had to run its ordinary course before funds could be made available under section 455(f). The Interim Final Rule allowed Tribes and Tribal organizations currently operating comprehensive Tribal IV–D programs comprising the five mandatory elements listed in section 455(f) and meeting the requirements specified in the interim rule to apply for, and if approved, receive direct funding to operate a Tribal IV–D program.

This rulemaking is intended to establish the minimum requirements that must be satisfied by an Indian Tribe or Tribal organization to be eligible for direct funding under title IV–D of the Social Security Act. The final regulation establishes application procedures, child support enforcement plan requirements, funding provisions, and accountability and reporting requirements. OCSE is planning a series of conferences across the country to explain, discuss, and respond to questions on the final regulation. Additional information about these conferences will be forthcoming.

The national Child Support Enforcement Program was initially established in 1975 under title IV–D of the Act as a joint Federal/State partnership. The goal of the Child Support Enforcement Program (also known as the title IV–D program) is to ensure that all parents financially support their children. The IV–D program locates noncustodial parents, establishes paternity, establishes and enforces support orders, and collects child support payments from parents who are legally obligated to pay.

We believe the promulgation of these regulations is not only consistent with the commitment of the Department to the government-to-government relationship with Indian Tribes, but also with a productive partnership of the Office of Child Support Enforcement in all dealings with Tribes.

Tribal Child Support Enforcement

Prior to enactment of PRWORA, title IV–D of the Act placed authority to administer the delivery of IV–D services solely with the States. However, within much of Tribal territory, the authority of State and local governments is limited or non-existent. The Constitution, numerous court decisions, and Federal law clearly reserve to Indian Tribes important powers of self-government, including the authority to make and enforce laws, to adjudicate civil and criminal disputes including domestic relations cases, to tax, and to license. Consequently, States have been limited in their ability to provide IV–D services on Tribal lands and to establish paternity and establish and enforce child support orders and Indian families have had difficulty getting IV–D services from State IV–D programs. Some child support enforcement services have been provided through cooperative agreements between Tribes and States and have helped bring child support services to some Indian and Alaska Native families.

Prior to enactment of PRWORA, Federal funding under title IV–D of the Act was limited to funding State child support enforcement programs and there was no direct Federal funding to Tribes for child support enforcement activities. Federal funding was only available indirectly to Tribes through States for eligible expenditures of Tribes pursuant to cooperative agreements with States under which the State delegated functions of the IV–D program to the Tribal entity. The Tribal entity was required to comply with all aspects of title IV–D of the Act applicable to the function or functions delegated to the Tribe. Only under these circumstances was Federal reimbursement under title IV–D available to the State for costs incurred by the Tribal entity for performing IV–D functions.

For the first time in the history of the title IV–D program, PRWORA authorized direct funding of Tribes and Tribal organizations for operating child support enforcement programs. The Department recognizes the unique relationship between the Federal government and Federally-recognized Indian Tribes and acknowledges this special government-to-government relationship in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to administer their own IV–D programs to meet the needs of children and their families.

Principles Governing Regulatory Development

Essential to the Federal-State-Tribal effort to ensure that noncustodial parents support their children is coordination and partnership, especially in the processing of inter-jurisdictional cases. Therefore, we believe that all IV–D programs must be administered under a basic framework to ensure that the objectives of title IV–D are successfully implemented. This common title IV–D framework does not mean that Indian Tribes are subject to the same regulations as States are. However, this regulation sets forth the minimum core requirements that must be met in order for a Tribe or Tribal organization to receive direct funding for IV–D programs.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities because the primary impact of these regulations is on Tribal governments, not considered small entities under the Act.

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 this rule is consistent with these priorities and principles. The regulations are required by PRWORA and represent the requirements governing direct funding to Tribal IV–D agencies that demonstrate the capacity to operate a IV–D program, including establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings held across the county. In addition, a toll free "800" number was created to allow for additional comments and input from Tribes and Tribal organizations and more in-depth individual consultations also occurred.

This rule is considered a "significant regulatory action" under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Executive Order 13175

Executive Order 13175 (65 FR 6724, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." The purpose of consultation is to strengthen the United States government-to-government relationship with Indian Tribes and to reduce the imposition of unfunded mandates upon Indian Tribes. ACF consulted with Tribes and Tribal organizations and their representatives to obtain their views prior to the publication of this final rule. Consultations included a series of six Nation-to-Nation meetings in Albuquerque, New Mexico; Portland, Oregon; Nashville, Tennessee; Fairbanks, Alaska; Washington, DC; and Prior Lake, Minnesota on the Shakopee Indian Reservation. Each of the consultations lasted for two and a half days and further follow up was conducted on an individual level. In addition, a toll free "800" number was created to allow for additional comments and input by Tribes and Tribal organizations. The consultations were successful in eliciting a wide range of questions, issues, and suggestions.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes 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 in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the rule.

We have determined that the rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. The following are estimated Federal annual expenditures under the Tribal IV–D Program: FY 2004—$18.0 million; FY 2005—$38.0 million; FY 2006—$53.0 million; FY2007—$57.4 million. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this regulation may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families. This rule is responsive to the needs of Tribes and Tribal organizations and provides them the opportunity to design programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal IV–D programs will result in increased child support enforcement services, including increased child support payments, for Tribal service populations. By helping to ensure that parents support their children, the rule will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct

effects on the States, on the relationship between the national government and the States, or on the distributions of power and responsibilities among the various levels of government." This rule does not have federalism implications for State or local governments as defined in the Executive Order.

Paperwork Reduction Act of 1995

This final rule contains reporting requirements as proposed at 45 CFR part 309. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families submitted the requirements to the Office of Management and Budget (OMB) for its review.

Part 309 contains a regulatory requirement that, in order to receive funding for an independent Tribal IV–D program, a Tribe or Tribal organization must submit an application containing standard forms 424 and 424A and a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. Tribes and Tribal organizations must respond if they wish to operate a Federally funded program. In addition, any Tribe or Tribal organization participating in the program would be required to submit standard form 269A and form OCSE 34A and to submit statistical and narrative reports regarding its Tribal IV–D program. The potential respondents to these information collection requirements are approximately 10 Federally recognized Tribes, and Tribal organizations, during Year 1; 65 additional Federally recognized Tribes and Tribal organizations during Year 2; and 75 additional Federally recognized Tribes and Tribal organizations during Year 3; for a three year total of 150 grantees. This information collection requirement will impose the estimated total annual burden on the Tribes and Tribal organizations described in the table below:

Information collection	Number of espondents	Responses per respondent	Average burden per response	Total annual burden
Year 1				
SF 424	10	1	.75	7.5
SF 424A	10	1	3	30
SF 269A	10	5	2	100
45 CFR 309—Plan	10	1	480	4,800
Form OCSE 34A	10	4	8	320
Statistical Reporting	10	1	24	240
Total				5,497.5
Year 2				
SF 424	75	1	.75	56.25
SF 424A	75	1	3	225
SF 269A	75	5	2	750
45 CFR 309—Plan	65	1	480	31,200
Form OCSE 34A	75	4	8	2,400
Statistical Reporting	75	1	24	1,800
Total				36,431.25
Year 3				
SF 424	150	1	.75	112.5
SF 424A	150	1	3	450
SF 269A	150	5	2	1,500
45 CFR 309—Plan	75	1	480	36,000
Form OCSE 34A	150	4	8	4,800
Statistical Reporting	150	1	24	3,600
Total				46,462.5

Total Burden for 3 Years: 88,391.25.

Total Annual Burden Averaged Over 3 Years: 29,463.75 per year.

The information collection requirements were approved by OMB under OMB number 0970–0218.

Summary Description of Regulatory Provisions

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) and Interim Final Rule for Comprehensive Tribal Child Support Enforcement Programs were published in the **Federal Register** on August 21, 2000 (65 FR 50786). The NPRM contained part 309, subparts A through F, and the Interim Final Rule contained part 310, subparts A through G. Subparts A through F were essentially the same in part 309 and part 310, with one exception. Part 309 included proposed provisions both for Tribes and Tribal organizations that already are able to operate comprehensive IV–D programs, and for Tribes and Tribal organizations that do not already operate comprehensive IV–D programs and need program development funding for start-up IV–D programs. Because the Interim Final Rule, part 310, applied only to Tribes and Tribal organizations that already operate comprehensive IV–D programs, it did not include provisions for program development funding for start-up IV–D programs. Subpart G of the part 310 rule contained additional specific requirements for interim funding of operational comprehensive Tribal IV–D programs. On the effective date of these regulations, part 310 will become time-limited. For Tribes operating a Tribal IV–D program under the Interim Final

Rule, 45 CFR part 310 will be applicable to grants covering the period up to the first day of the quarter beginning 6 months after the date of publication of the final regulations for 45 CFR part 309. Tribes operating under 45 CFR part 310 must make changes to their current program to comply with this final rule not later than the first day of the quarter beginning 6 months after the date of publication of the final rule in order to receive continued IV–D funding.

Since issuance of the proposed rule, we have also made changes to Sections 286 and 302. Part 286 was modified to comply with the distribution requirements found in part 309 of the rule. Changes were made to part 302 to include cooperation with Tribal IV–D agencies as a requirement for State IV–D agencies.

45 CFR Chapter II

Tribal TANF Provisions, Section 286, Subpart C—Tribal TANF Plan Content and Processing

Section 286.155 sets out the eligibility provisions for Tribal TANF in relationship to assignment of child support. This section currently requires the Tribal TANF agency to have procedures for ensuring that child support collections in excess of the amount of Tribal TANF received by the family must be paid to the family. The section was modified to eliminate references to payments to the family because distribution of these collections is now addressed in § 309.115 of this rule.

45 CFR Chapter III

Section 302, State Plan Requirements

Section 302.36 details the State plan requirement for States to cooperate with other states in interstate IV–D cases. This section title and content is modified to include cooperation with all Tribal IV–D programs. Section 302.36(a)(2) requires States to extend the full range of services available under its IV–D plan to all Tribal IV–D programs.

Part 309—Comprehensive Tribal Child Support Enforcement (CSE) Programs

Subpart A—Tribal Child Support Enforcement Program (IV–D) Program: General Provisions

Section 309.01 provides the general provisions. Section 309.05 defines key terms. We added a number of definitions for clarification and to make the rule easier to read. Definitions were added for the following terms: income, non-cash support, notice of disapproval, OCSE, program development plan, TANF and Tribal custom.

This section establishes definitions for terms used throughout part 309 of this final rule. We also want to make clear that underlying these regulations is the recognition that many Tribal customs and traditions have the force and effect of law. We have determined that such Tribal customs are equivalent to "common law" as described by William Blackstone: "[t]he lex non scripta, or unwritten law, includes not only general customs, or the common law properly so called; but also the particular customs of certain parts of the kingdom; and likewise those particular laws, that are by custom observed only in certain courts and jurisdictions" (Blackstone, 1 Commentaries on the Law of England 62).

Section 309.10 outlines who is eligible to apply for Federal funding to operate a Tribal IV–D program. Proposed § 309.10 required a Tribe or Tribal organization to have at least 100 children under the age of majority in the population subject to the jurisdiction of the Tribe in order to be eligible to receive Federal funding to operate a Tribal IV–D program. In response to comments, we added a provision at § 309.10(c) that, if a Tribe or Tribal organization can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a cost effective program with less than the minimum number of children, it may be considered eligible for direct funding under a waiver. Details on what information must be included in a waiver request are provided in the regulation at § 309.10(c)(1) and (2) and the waiver request must be included in the original application.

Subpart B—Tribal IV–D Program Application Procedures

Section 309.15 establishes what must be included in an application for direct funding. The application must include a Standard Form (SF) 424, "Application for Federal Assistance," SF 424A, "Budget Information-Non-Construction Programs" and a Tribal IV–D plan—a comprehensive statement that demonstrates the capacity of the Tribe or Tribal organization to operate a IV–D program meeting the objectives of title IV–D. This section also describes annual budget submissions including a specific mechanism to deal with requests for inclusion of indirect costs.

The provisions in proposed § 309.15 described what was included in the initial application, including the SF 424 and 424A, as well as the Tribal IV–D plan. We expanded this provision to clarify the requirements. The SF 424A, "Budget Information—Non-Construction Programs," must be completed and include: A quarter-by-quarter estimate of expenditures for the funding period; notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method to calculate estimated indirect costs; a narrative justification for each cost category on the form; a statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or a request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate. These new requirements are based on our experience with the Tribal IV–D programs currently funded under the Interim Final Rule. We discovered that our requirements in the interim rule were not explicit enough to ensure we received the information necessary to make an informed decision on funding. In our review of the applications, we found that it was necessary to request the information listed in § 309.15(a)(2)(i)–(iv). These new requirements will save time for the applicant and OCSE by making immediately available all information needed for approval and funding decisions.

We added language at § 309.15(a)(3) giving Tribes an option regarding the inclusion of indirect costs. If a Tribe or Tribal organization's budget request includes indirect costs as part of its request for Federal funds, such requests may be submitted in one of two ways. For applications which include indirect costs, we have determined that an applicant may, at its option, either calculate the estimated indirect costs by documenting the dollar amount of indirect costs allocable to the IV–D program, or submit its current indirect cost rate negotiated with the Department of the Interior and a dollar amount of indirect costs based on that rate. If the Tribe elects to submit actual estimated costs attributable to the Tribal IV–D program, the methodology used to arrive at the dollar amount must be included in the application. Whichever option an applicant chooses, the applicants obligations remains the same: Tribal IV–D grantees are responsible for ensuring that actual expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.*, all actual costs claimed under the IV–D grant must be allocable to the IV–D program. The Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether

such costs are characterized as "direct" or "indirect" costs. Grantees are prohibited from shifting costs to IV–D grants which are not attributable to operation of the IV–D program. Adjustments will be made for any differences between estimated and actual costs attributable to the IV–D program.

In the Temporary Assistance for Needy Families (TANF) program, even though Tribal grantees may use their negotiated indirect cost rate to calculate indirect costs, total actual costs are limited and may not go beyond a regulatory cap on administrative expenditures. Similarly, in the Tribal IV–D program, Tribal grantees may use their negotiated indirect cost rate to calculate estimated indirect costs, but the Federal statute limits the total amount of costs that may be claimed to those that are directly attributable to administration of the IV–D program.

We also added language at § 309.15(a)(4) that the initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part, and that describes the capacity of the Tribe or Tribal organization to operate a IV–D program which meets the objectives of title IV–D of the Act.

Section 309.16 establishes the rules for a Tribe or Tribal organization to apply for start-up funding authorized under § 309.65(b) if the Tribe or Tribal organization cannot, at the time of application, meet all the Tribal IV–D plan requirements in § 309.65(a). In addition to the application requirements listed in § 309.15 above, a Tribe or Tribal organization must include a program development plan describing how a Tribal IV–D agency will meet any Tribal IV–D plan requirements not currently met within a reasonable, specific period of time, not to exceed two years. Funding is limited to $500,000. In extraordinary circumstances, the Secretary may grant a no-cost extension of time.

The language at proposed § 309.65(b)(1) and (2) contained requirements for a start-up application and a program development plan. In order to clarify the rule, we moved that language to § 309.16(a)(4) and (5). We added language at § 309.16(a)(3) that if a Tribe or Tribal organization's budget for start-up funding includes a request for indirect costs, a mechanism parallel to that described at § 309.15(a)(3) must be used. If a Tribe or Tribal organization receives funding based on submission and approval of a Tribal IV–D application which includes a program development plan under § 309.16(a)(5), a progress report that describes accomplishments in carrying out the plan, as required by § 309.170(b)(6), must be submitted with the next annual refunding request.

New language was added at paragraph (b) indicating that the approval and disapproval procedures for applications for start-up funding are found in §§ 309.35, 309.40, 309.45 and 309.50. We also added language that clarifies that an application for start-up funding is not subject to administrative appeal.

Paragraph (c) of § 309.16 indicates that start-up funding is limited to $500,000 and must be obligated and liquidated within two years from the first day of the quarter after the start-up application is approved. The Secretary will consider a request to extend the period of time during which the start-up funding is available or increase the amount of funding provided. The language that addressed the no-cost extension or the additional start-up funding was only found in the preamble discussion of the NPRM and is now clearly stated in the final rule in paragraphs (c)(1) and (c)(2).

Proposed §§ 309.20 and 309.30 were consolidated in the final rule as § 309.20 for clarity. Section 309.20 now addresses who submits a Tribal IV–D application and where it must be submitted. The authorized representative of a Tribe or Tribal organization must sign and submit the application. Two copies of an application or plan amendment must be submitted: the original to the OCSE Central Office, and a copy to the appropriate regional office.

Proposed §§ 309.25 and 309.35 were consolidated as § 309.35 for clarity. Section 309.35 now outlines the procedures for review of IV–D program applications, plans and plan amendments. The Secretary will determine whether the application, plan or plan amendment meets the requirements not later than 90 days after receipt. If additional information is required, the determination will be made within 45 days of receipt of all necessary information. Determinations as to whether the Tribal IV–D plan, including plan amendments, meets or continues to meet the requirements are based on applicable Federal statutes and regulations. Guidance may be furnished to assist in interpretation. All relevant changes required by new Federal statutes, rules, regulations and interpretations are required to be submitted so that OCSE may determine whether the plan continues to meet Federal requirements. If a Tribe or Tribal organization intends to make any substantive change to the Tribal IV–D program, a plan amendment must be submitted at the earliest reasonable time. The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which a plan or amendment is approved.

Section 309.40 describes the basis for disapproval of a Tribal IV–D program application, IV–D plan or plan amendment. An application, plan or plan amendment will be disapproved if the Secretary determines that: It fails to meet, or no longer meets one or more of the Federal requirements; the required Tribal laws, codes or regulations are not in effect; or the application is not complete (after the Tribe or Tribal organization has had the opportunity to submit all necessary information.) A written Notice of Disapproval will be sent to the Tribe or Tribal organization upon determination that any of the conditions for disapproval applies. If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination, the Secretary will request the necessary information.

Section 309.45 provides that a Tribe or Tribal organization may request reconsideration of disapproval of a Tribal IV–D application, plan or plan amendment and describes the process. The request for reconsideration must include all documentation that is relevant and supportive of the application, plan or plan amendment and a written response to each ground for disapproval. The request for reconsideration must also include whether the Tribe or Tribal organization requests a meeting or conference call with the Secretary. The Secretary will have a 60-day period to make a written determination affirming, modifying or reversing disapproval of the application. Disapproval of start-up funding or of a request for waiver of the 100-child rule or waiver of the required Tribal share of expenditures is not subject to administrative appeal.

If we intend to disapprove an existing IV–D plan, we will send the Tribe a Notice of Intent to Disapprove the plan. The Tribe may request a hearing within 60 days of the date of the notice of our intent to disapprove the plan if the Tribe waives its right to a reconsideration under § 309.45. Although we received no written comments on this section, we added the opportunity for a hearing prior to disapproval of an existing Tribal IV–D plan because of the significant consequences of Tribal plan disapproval.

Section 309.50 describes the consequences of disapproval of an application or plan amendment. If an

application is disapproved, the Tribe can receive no direct funding until a new application is submitted and approved. If a plan amendment is disapproved, there is no funding for the proposed activity.

A Tribe or Tribal organization may reapply at any time once it has remedied the circumstances that led to disapproval of the application, plan or plan amendment.

Subpart C—Tribal IV–D Plan Requirements

Section 309.55 states that subpart C of § 309 defines the Tribal IV–D provisions that are required to demonstrate the Tribe or Tribal organization has the capacity to operate a child support enforcement program.

Section 309.60 describes who is responsible for administration of the Tribal IV–D program under the plan. The Tribe or Tribal organization must designate an agency to administer the Tribal IV–D plan. The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV–D program. If a Tribe or Tribal organization delegates any functions of the Tribal IV–D program to another Tribe, State, and/or another agency or entity, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the plan. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV–D plan any agreements, contracts, or Tribal resolutions between the Tribal IV–D agency and a Tribe, State, other agency or entity.

Section 309.65(a) describes what a Tribal IV–D plan must include in order to be approved and receive Federal funds for the operation of the Tribal IV–D program. This part outlines the 14 required elements which include: (1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes; (2) evidence that the Tribe has in place procedures for accepting all applications for IV–D services and providing IV–D services required by law and regulation; (3) assurance that due process rights are protected; (4) administrative and management procedures; (5) safeguarding procedures; (6) maintenance of records; (7) copies of applicable Tribal laws and regulations (8) procedures for the location of noncustodial parents; (9) procedures for the establishment of paternity; (10) guidelines for the establishment and modification of child support obligations; (11) procedures for income withholding; (12) procedures for the distribution of child support collections; (13) procedures for intergovernmental case processing; and (14) Tribally-determined performance targets.

Section 309.65(b) includes a provision for Tribes or Tribal organizations that can demonstrate the capacity to operate a IV–D program but that are unable at the time of application to satisfy all of the requirements of paragraph (a) to request start-up funding. The NPRM at § 309.65(b) outlined what must be included in a start-up application. Those provisions are now found at § 309.16. The Tribe or Tribal organization may demonstrate capacity to operate a Tribal IV–D program by submission of an application for start-up funding as required by § 309.16. Proposed § 309.65(c) said that the Secretary will cease funding to a Tribe or Tribal organization's start-up efforts if that Tribe or Tribal organization fails to demonstrate satisfactory progress pursuant to §§ 309.15(b)(2) and 309.25(d) toward putting a full program in place. The language was revised for clarity and now says, "The Secretary may cease start-up funding to a Tribe or Tribal organization of that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan." This requirement is now found at 309.65(b)(2).

In §§ 309.70 through 309.120, we eliminate duplicative language in the introduction to each section that read, "A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting objectives of title IV–D of this Act." The language is unnecessary as approval of a plan is based on the contents of the plan. the new introductory language reads: "A Tribe or Tribal organization must include in its Tribal IV–D plan a description of. * * *"

Section 309.70 requires that the Tribe or Tribal organization include a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the population subject to the Tribe's jurisdiction, in accordance with § 309.10 of this part and subject to § 309.10(c)

Section 309.75 outlines the administrative and management procedures that must be included in the plan. The plan must include a description of the agency and the distribution of responsibilities within the agency. In response to comments, we eliminated as duplicative the requirement that the plan includes procedures under which applications are made available to the public upon request and that the plan also includes procedures under which the agency must promptly open a case record and determine necessary action. This requirement is found at § 309.65(a)(2).

The plan must include evidence that all Federal funds and amounts collected by the Tribal IV–D agency are protected against loss. Tribes and Tribal organizations may comply with this requirement by submitting documentation that every person who receives, disburses, handles, or has access to or control over funds collected is covered by a bond or insurance sufficient to cover all losses. In response to comments we eliminated as duplicative the language in proposed § 309.75(d)(3) that specified, "the requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program."

The plan must include that notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV–D program at least once a year and to either the custodial or noncustodial parent upon request. The plan must include a certification that the Tribe or Tribal organization will comply with the provisions of chapter 75 of title 31 of the U.S.C. (the Single Audit Act of 1984, Pub. L. 98–502, as amended) and OMB Circular A–133.

We added a new provision at § 309.75(e) that if the Tribal IV–D agency intends to charge an application fee, the plan must contain provisions that the fee will be uniformly applied and cannot exceed $25.00; that in intergovernmental cases referred for services, the application fee may only be charged by the jurisdiction where the individual applies for services; that fees may not be charged to individuals receiving services under titles IV–A, IV–E foster care assistance or XIX (Medicaid) of the Act; and that the Tribal IV–D agency may recover actual costs of providing services in excess of the application fee. Fees collected and costs recovered are considered program income and must be used to reduce the amounts of expenditures for Federal matching. The Tribal IV–D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter. Assessment of a fee and/or recovery of costs are not mandatory requirements, but optional provisions that some Tribes may choose to use.

Section 309.80 outlines what safeguarding procedures a Tribe or

Tribal organization must include in its plan. The plan must include procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV–D agency is limited to purposes directly connected to the administration of the program, or other programs or purposes prescribed by the Secretary in regulations. The plan must include procedures for safeguards that are applicable to all confidential information including safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, establish, modify or enforce support. Also included are prohibitions against the release of information on the whereabouts of one party or the child to another party when a protective order has been entered, and against the release of information if the Tribe has reason to believe the release of the information may result in physical or emotional harm to the party or child, and any other procedures in accordance with specific safeguarding regulations applicable to Tribal IV–D programs promulgated by the Secretary. The plan must also contain sanctions to be imposed for unauthorized disclosure of personal information.

Although not specified in this final rule, in addition to programs and purposes prescribed by the Secretary, Tribal IV–D programs are authorized to disclose information to individuals for purposes authorized by Federal statute. If a Federal statute requires a Tribal IV–D program to share information, the agency must comply.

Section 309.85 was amended to clarify the section's requirements. Previously, the title of the section was "What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?" The emphasis was on procedures. The title now reads: "What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?" This more appropriately places the emphasis on what will be maintained. This section now requires that the Tribal IV–D plan provide that the Tribal IV–D agency will maintain records necessary for proper and efficient operation of the program including: (1) Applications for child support services; (2) efforts to locate noncustodial parents; (3) actions taken to establish paternity and obtain and enforce support; (4) amounts owed, arrearages, and amounts and sources of support collections, and the distribution of such collections; (5) IV–D program expenditures; (6) any fees charged and collected, if applicable; and (7) statistical, fiscal and other records necessary for reporting and accountability. Records must be maintained in accordance with 45 CFR 74.53. The NRPM noted that records would be maintained in accordance with 45 CFR 92.42; however, it is more appropriate that they be maintained in accordance with part 74. Both require three-year records retention, but title IV–D falls under part 74.

Section 309.90(a) requires the submission of copies of Tribal law, code, regulations or procedures and other evidence that provides for: (1) Establishment of paternity for any child up to at least 18 years of age; (2) establishment and modification of child support obligations; (3) enforcement of child support obligations including requirements that Tribal employers comply with income withholding; and (4) location of custodial and noncustodial parents. In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a).

Section 309.95 requires the plan to include provisions governing the location of custodial and noncustodial parents and their assets. The Tribal IV–D agency must attempt to locate custodial and noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case, and must use all sources of information and records reasonably available to locate custodial and noncustodial parents and their sources of income and/or assets. We added the reference to custodial parents to ensure that locate sources are used to find custodial parents for whom support has been collected and whom the Tribe may be unable to find.

Section 309.100 outlines the paternity establishment procedures that a Tribe or Tribal organization must include in its plan. The agency must attempt to establish paternity by the process set out under Tribal law, code and/or custom and provide the alleged father an opportunity to voluntarily acknowledge paternity. In a contested paternity case the child and all other parties must submit to a genetic test (unless otherwise barred by Tribal law) upon the request of any party if the request is supported by a sworn statement alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. The phrase 'otherwise barred by Tribal law' is intended to cover situations where, either by action of one or both of the parties or the application of Tribal law, or both, paternity has already been conclusively determined and may not be reconsidered. In such cases, genetic testing to challenge the paternity determination would not be authorized. Examples of such a paternity determination would include a voluntary admission of paternity or circumstances under which the Tribe has other means of recognizing paternity under Tribal law. A Tribe, through its own custom, tradition or procedure, may recognize a man as the father or may preclude a man who holds himself out to be the father from challenging paternity. Similarly, a Tribe may have a conclusive presumption of paternity when a child is born to married parents or if a noncustodial parent has been validly served in a paternity proceeding and failed to contest paternity in such proceeding. A uniquely Tribal means would be acceptable as precluding the need for genetic tests if Tribal law is used to establish paternity. In such cases, because paternity has already been determined, genetic testing would be "otherwise barred by Tribal law." This language is consistent with the language found at section 466(a)(5)(B) of the Act, which mandates genetic testing in contested cases to ensure that the rights of both parties are protected.

In any case involving incest or forcible rape, or in a case in which legal proceedings for adoption are pending, the agency need not attempt to establish paternity. The agency must use accredited laboratories, which perform legally and medically-acceptable genetic tests when genetic testing is used to establish paternity. Establishment of paternity under this section has no effect on Tribal enrollment or membership.

Section 309.105 indicates what procedures governing child support guidelines must be included in the plan. We changed the title of this section to better reflect its content. The section requires that a Tribal IV–D plan establish one set of child support guidelines by law or by judicial action for setting and modifying child support obligation amounts; include a copy of the child support guidelines; and indicate whether non-cash payments of support will be permitted to satisfy the child support obligation. In response to comments, we added language that the plan must indicate whether non-cash payments will be permitted to satisfy support obligations and if so, require that Tribal support orders allowing non-cash payments also state the specific

dollar amount of the support obligation, and describe the types of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order. We also added language providing that non-cash payments may not be used to satisfy assigned support obligations.

The guidelines must be reviewed, and if appropriate, revised at least every four years and provide a rebuttable presumption that the child support award based on the guidelines is the correct amount. The plan must provide for the application of the guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case. The guidelines must take into account the needs of the child and the earnings and income of the noncustodial parent and be based on specific descriptive and numeric criteria.

Section 309.110 outlines the procedures and requirements governing income withholding. The income withholding requirements are similar to those requirements governing States' IV–D programs, except that income is subject to withholding once the noncustodial parent has failed to make a payment equal to the support payable for one month. In response to comments from Tribes that income withholding may not be appropriate in all cases, we added language to § 309.110(h), that income withholding will not be required in any case where either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or a signed written agreement is reached between the custodial and noncustodial parent which provides for an alternate agreement. We added a requirement at § 309.110(m) indicating that the Tribal IV–D agency must allocate amounts withheld across multiple withholding orders and that, in no case, shall the allocation result in a withholding for one of the orders not being implemented. Section 309.110(n) was amended by adding a requirement that the Tribal IV–D agency is responsible for receiving and processing income withholding orders from States or other Tribes and ensuring orders are promptly served on employers.

Section 309.115 outlines the requirements governing distribution. This section was rewritten for clarity. A Tribal IV–D plan must outline procedures for distribution of child support collections. As a general rule, the Tribal IV–D agency, in a timely manner, must apply collections first to satisfy current support obligations, and pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program, or the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency. Such requests for assistance may be to collect support assigned to the State or Tribe as a condition of receiving assistance or to provide services on behalf of a family residing in or receiving services from the referring State or Tribe. When support is owed to both States and Tribes, the Tribal IV–D agency may either send collections to the requesting State or Tribe for distribution *or* determine appropriate distribution by contacting the requesting State or Tribe and distribute collections accordingly. We added a new requirement that any collections attributable to the Federal Income Tax Refund Offset must be applied to satisfy child support arrears. This is consistent with section 464 of the Act. Finally, we made a conforming change to Tribal TANF regulations at 45 CFR 286.155 to eliminate reference to payments to the family because distribution of collections is addressed in § 309.115 of this rule.

Section 309.120 requires a Tribe or Tribal organization to specify procedures under which the Tribal IV–D agency will extend the full range of services available under its IV–D plan to respond to all requests from, and cooperate with State and other Tribal IV–D programs. The Tribe or Tribal organization must also provide assurances that it will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act (FFCCSOA). ACF is making a parallel change to include cooperation with Tribal IV–D agencies as a requirement for State IV–D programs at 45 CFR 302.36.

Subpart D—Tribal IV–D Program Funding

Section 309.125 provides the basis on which Tribal IV–D program funding is determined. The funding is based on the Tribal IV–D application, which includes the proposed budget and a description of the nature and scope of the Tribal IV–D program and gives assurance that the program will be administered in conformity with applicable requirements of title IV–D of the Act, regulations contained in this part, and other official issuances of the Department that specifically apply to Tribes and Tribal organizations.

Section 309.130 outlines the general mechanism for funding Tribal IV–D programs; financial form submittal requirements; the Federal share of program expenditures; non-Federal share of program expenditures; waiver of non-Federal share of program expenditures; an increase in an approved budget; obtaining Federal funds and grant administration requirements. The changes in this section are addressed below.

New language was added at § 309.130(a) indicating that the Tribe or Tribal organization will receive funds in the amount equal to the percentage specified in paragraph (c) of the total amount of approved and allowable expenditures. This language was added for clarity. We also added language explaining that Tribes receiving grants of less than $1 million per 12-month funding period will receive a single annual award and those Tribes that receive grants of $1 million or more per 12-month funding period will receive four equal quarterly awards. The Department-wide grant procedures require that grant funds be disbursed in this manner. The programs administered by the Tribes currently being funded under the Interim Final Rule received their grant funds in this fashion. This language was added to the rule to clarify the manner in which funds are disbursed.

Section 309.130(b) outlines that the financial forms required must be submitted to ACF. ACF reviews each application for direct funding. The requirements associated with the submission of the SF 424A, "Budget Information—Non-Construction Programs" form have changed. The rule now requires a quarter-by-quarter estimate of expenditures for the fiscal year; notification of whether the Tribe or Tribal organization is requesting funds for indirect costs; a narrative justification for each cost category on the form for funding under § 309.65(a); and either: a statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or a request for a waiver of the non-Federal share in accordance with paragraph (e). As mentioned earlier in the preamble, we discovered that our requirements in the Interim Final Rule were not explicit enough to get the information necessary to make an informed decision on funding. In our review of applications from Tribes being funded under the Interim Final Rule, we found it necessary to request the information listed above. Requiring the

information from the onset will result in a timesaving for the applicant and for OCSE, as we will have the necessary information earlier in the process and the approval and funding, if appropriate, will not be unduly delayed.

The requirement in proposed § 309.140 that the Tribe or Tribal organization must submit a Financial Status Report, SF 269, was moved to § 309.130(b)(3). We eliminated proposed § 309.140. The final rule requires that the SF 269A Financial Status Report (short form) be submitted quarterly. We decided to substitute the short form for the form previously required. The short form is more appropriate for Tribes and Tribal organizations and requires less information than the proposed form. The requirements for reporting on the OCSE 34A, "Quarterly Report of Collections," previously found in proposed § 309.140 were also moved to this section of the final rule. As noted in the preamble to the NPRM, we revised the instructions for reporting on this form. We will modify the form to apply to Tribes and Tribal organizations operating IV–D programs through direct funding.

Section 309.130(c) outlines the Federal share of program expenditures. During the period of start-up funding, a Tribe or Tribal organization will receive Federal funds equal to 100 percent of the approved and allowable expenditures made during that period. It is important to note that this is a change from the NPRM. Previously, a non-Federal match was required for Tribes applying for start-up funding. In recognition of the fact that Tribes just beginning title IV–D child support enforcement funding may have very limited funds for this activity, we have eliminated the requirement for non-Federal match for start-up tribes. During the initial three years of full program operation, a Tribe or Tribal organization will receive 90 percent Federal funding and 80 percent thereafter.

Section 309.130(d) outlines the non-Federal share of program expenditures. This subsection states that the non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23. This is a change from the NPRM, which stated that 45 CFR part 92 was applicable to the administration of Tribal IV–D programs. We have amended the rule and changed each reference from 45 CFR part 92 to 45 CFR part 74, because the language in 45 CFR part 92 clearly states that title IV–D programs are not required to comply with part 92.

Based on comments and experience with currently operating Tribal IV–D programs, we revised the section on waiver provisions at § 309.130(e). Under certain circumstances, the Secretary may grant a temporary waiver of the non-Federal share of expenditures. If a Tribe or Tribal organization anticipates that it will temporarily be unable to contribute part or all of the non-Federal share of funding, it must submit a written request that this requirement be temporarily waived. A request for waiver must be sent to ACF, and included with the submission of SF 424A, no later than 60 days prior to the start of the funding period. If, after the start of a funding period, an emergency situation occurs that necessitates the grantee to request a waiver of the non-Federal costs, it may do so as soon as the adverse affect of the emergency situation giving rise to the request is known. The request must include a statement of the amount the Tribe is requesting be waived; a narrative statement describing the circumstances and justification for the waiver; portions of the Tribal budget to demonstrate that any funding shortfall is not limited to the Tribal IV–D program and any uncommitted funds are insufficient to meet the non-Federal funding requirement; copies of any additional financial documents in support of the request; a detailed description of the attempts made to secure the necessary funding from other sources; and any other documents the Secretary may request to make this determination.

In its request for a temporary waiver of the non-Federal share of expenditures, the Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it lacks sufficient resources to provide the required non-Federal share of costs; has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and has provided all required information requested by the Secretary. All statements must be supported by evidence including a description of how the Tribe or Tribal organization has the capacity to provide child support enforcement services even though it lacks the financial resources to provide its required non-Federal share of program costs. The following statements are insufficient to merit a waiver without documentary evidence satisfactory to the Secretary: funds committed to other budget items; a high rate of unemployment; a generally poor economic condition; a lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources; a small or declining tax base; little or no economic development.

A Tribe or Tribal organization may consider requesting a waiver if, for example, it has experienced a natural disaster, extreme weather conditions, or other calamities (*e.g.,* hurricanes, earthquakes, and fire) whose disruptive impact is so significant and unpredictable that the applicant is temporarily unable to satisfy the non-Federal share requirement; or isolated, unanticipated economic hardship, beyond the control of the applicant, which makes it temporarily impossible for the applicant to satisfy the non-Federal share requirement. The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV–D waiver request. Applications must be submitted to the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a copy to the appropriate regional office and must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

We added language that the temporary waiver will expire on the last day of the funding period for which the waiver was approved. If the Tribe is unable to meet the non-Federal share in subsequent years, the Tribe must submit a new request with its next budget submission. It should also be noted that if a request for a waiver is denied, the denial is not subject to administrative appeal.

Section 309.130(f) addresses increases in an approved budget, which may be requested by submitting a revised copy of the SF 424A with an explanation of why additional funds are needed. Any approved increase in the Tribal IV–D budget will include a requirement for a proportional increase in the non-Federal share. Tribes and Tribal organizations will obtain Federal funds on a draw-down basis from the Department's Payment Management System.

Section 309.135 specifies the requirements that apply to funding, obligating and liquidating IV–D grant funds. This section outlines the funding period, obligation period, liquidation period, funding reductions and extension requests. This section was broken into subsections for ease of understanding.

Proposed § 309.140 required Tribes to submit a Financial Status Report, SF 269, quarterly. Tribes must also submit the Child Support Enforcement Program: Quarterly Report of Collections (Form OCSE 34A) on a quarterly basis. A report on the

liquidation of obligations must be submitted using the SF 269A. While these requirements must still be met, they have been moved to § 309.130(b)(3) and (4), as we felt these requirements made more sense in the funding portion of the rule.

Section 309.145 outlines the allowable costs for Tribal IV–D programs carried out under § 309.65(a). This list is similar to the list of allowable costs in the State IV–D program.

Section 309.150 outlines costs that are allowable for start-up programs carried out under § 309.65(b). Federal funds are available for the costs of developing a Tribal IV–D program meeting Federal requirements, provided that such costs are reasonable, necessary and allocable to the program. Federal funding for program development generally may not exceed a total of $500,000 except in very unusual or extraordinary circumstances. Allowable start-up costs and activities include: planning for the initial development and implementation of a program; developing Tribal IV–D laws, codes, guidelines, systems and procedures; recruiting, hiring, and training Tribal IV–D program staff; and any other reasonable, necessary and allocable costs with a direct correlation to the development of a Tribal IV–D program, consistent with the cost principles of OMB Circular A–87, and approved by the Secretary.

Section 309.155 outlines costs that are not allowable, which are basically the same as those costs that are not allowable under the State IV–D program. Funds may not be used for activities related to administering other programs including those under the Social Security Act; construction or major renovations; expenditures that have been reimbursed by fees collected, including any fee collected from a State; jailing of parents in Tribal IV–D cases; the cost of legal counsel for indigent defendants in Tribal IV–D actions; the cost of guardians ad litem or any other costs that are not reasonable, necessary and allocable to the Tribal IV–D program.

Subpart E—Accountability and Monitoring

Section 309.160 indicates that OCSE will rely on audits required by OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," and 45 CFR part 74. The Tribal IV–D program will be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

Section 309.165 provides that the recourse for a Tribe or Tribal organization to dispute a determination to disallow program expenditures is governed by the procedures in 45 CFR part 16.

Subpart F—Statistical and Narrative Reporting Requirements

Section 309.170 requires Tribes to submit information and statistics for program activities and caseload for each funding period. The required information includes: (1) Total number of cases, and of those, the number that are State or Tribal TANF and non-TANF; (2) total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged; (3) total number of cases and the total number of cases with an order; (4) total amount of current support due and collected; (5) total amount of past-due support owed and total collected; (6) a narrative report on activities, accomplishments, and progress of the program; (7) total costs claimed; (8) total amount of fees and costs recovered; and (9) total amount of laboratory paternity establishment costs.

The requirements found in proposed § 309.175 were moved to § 309.170 for clarity.

Part 310—Comprehensive Tribal Child Support Enforcement (CSE) Programs

Part 310 establishes provisions, procedures, funding, monitoring and reporting for Tribes currently operating a Tribal IV–D system under the Interim Final Rule. Section 310.1(c) is added indicating that on the effective date of these regulations, part 310 will become time-limited for Tribes operating a Tribal IV–D program under the Interim Final Rule. For Tribes operating under the Interim Final Rule, 45 CFR part 310 will be applicable to grants covering the period up to the first day of the quarter beginning six months after the date of publication of this final rule. In order to continue to receive funding, Tribes currently operating under 45 CFR part 310 must make changes to their current program to comply with this final rule not later than the first day of the quarter beginning six months after the date of publication of this final rule.

Discussion of Regulatory Provisions and Response to Comments

The following is a discussion of the regulatory provisions included in this final rule. The discussion follows the order of regulatory text, describes each subpart and section and addresses all relevant comments.

Comments were received from 14 Tribes and Tribal organizations, 15 State IV–D agencies and 10 other interested parties. A discussion of the comments received and our responses follows:

Subpart A—Tribal Child Support Enforcement (IV–D) Program: General Provisions

Section 309.01 describes the general parameters of the final regulation, § 309.05 defines key terms, and § 309.10 establishes threshold eligibility criteria.

Section 309.01—What Does This Part Cover?

1. *Comment:* Two Tribal commenters suggested a provision be added allowing the Secretary to waive any conditions of these regulations as long as the statutory requirements are met, and good cause is shown by the Tribe or Tribal organization.

Response: The statute directs the Secretary to establish requirements necessary to operate a Tribal child support enforcement program capable of meeting the program objectives of title IV–D. The final rule establishes the minimum elements, which we have determined to be critical to the basic framework for operation of Tribal IV–D programs meeting the objectives of title IV–D. After consideration of comments received on regulatory waivers, we are persuaded to permit limited waivers. We believe that Tribes should be given an opportunity to request a waiver of certain specific requirements in this regulation. However, we believe that the care taken to limit Federal regulatory requirements and to recognize Tribal sovereignty has resulted in regulations that are essential to a successful Federally-funded Tribal IV–D program. We have established criteria under which we will consider requests for waiver of the following regulatory requirements: § 309.10(a) (100-child minimum) and § 309.130(d) (non-Federal share of program expenditures). Waivers of any other regulatory requirements are not included because we have determined that these are essential to the administration of successful Tribal child support enforcement programs.

2. *Comment:* We received positive comments from States, Tribes, and national organizations affirming that the best way for Tribal IV–D programs to be administered is through a direct government-to-government relationship and direct funding. One State commented that it supported limiting the direct funding of Tribal IV–D programs to *current* Federally-recognized Tribes, and a Tribal organization affirmed its view that the basic eligibility for funds under section 455(f) of the Act was limited to

Federally-recognized Tribes, as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

Response: Consistent with the government-to-government relationship between the Federal government and Indian Tribes, eligibility for direct IV–D funding of Tribal IV–D programs is extended to all Federally-recognized Indian Tribes. The list of such Tribes is found in the annual list of Federally-recognized Indian Tribes, which the Secretary of the Interior publishes in the **Federal Register** pursuant to 25 U.S.C. 479a–1. Any Tribe that successfully completes the Federal recognition process is eligible to apply for direct funding, regardless of its status at the time of publication of this final rule. If a Tribe is not Federally-recognized at the time of the publication of the final rule, but is subsequently recognized, we will consider such Tribe eligible to apply for direct funding.

3. *Comment:* Two Tribal commenters criticized the proposed regulations as significantly different from the document drafted by the joint Tribal/Federal workgroup.

Response: We worked in close consultation with Tribes prior to publication of the NPRM. The proposed regulation was the result of a significant amount of effort which included not only input from the joint Tribal/Federal workgroup, but also consultation from other stakeholders (including Tribes) and from within the Department. While the draft document submitted by the Tribal/Federal workgroup was significant to the development of the proposed regulation, the Department's obligation to fulfill its statutory mandate to efficiently administer the IV–D program necessarily required broader consultation. The NPRM published in August 2000 reflected wide consultation and collaboration. This final regulation reflects that input as well as careful consideration of all relevant comments received in response to the proposed rule. The end result reflects the Federal government's determination of the minimum requirements necessary for the successful administration of child support programs capable of meeting the objectives of title IV–D.

Section 309.05—What Definitions Apply to This Part?

1. *Comment:* One State commented that IV–D services as defined by the NPRM do not include services that a program may provide in addition to those listed in the definition. The State also stated that the definition does not include services that may be prohibited.

Response: It is not the intention of this final regulation to set forth an exhaustive list of specific services that may be provided under the IV–D program; thus, we do not list in the regulation every service that may be provided and attributed to child support enforcement. However, §§ 309.145, 309.150, and 309.155 establish parameters for allowable costs that may be submitted for funding at the established rate. We believe the regulations establish an appropriate framework for Tribal child support enforcement services that may be provided under title IV–D.

2. *Comment:* One State commenter noted that "competent jurisdiction" is used in the definition of "child support order" and "child support obligation" but is not defined.

Response: As used in the definition, competent jurisdiction is used in its common legal sense and refers to the legal authority to take actions in child support matters.

3. *Comment:* One State commenter suggested that because the definition of "location" refers to "other sources of income and assets," a definition of "assets" should be added to indicate assets would include "in-kind" child support.

Response: We believe the definition of "location" appropriately describes the term as it is used in the context of child support enforcement and that the word "assets" does not require additional elaboration. In-kind support is not within the meaning of assets.

4. *Comment:* One State commented that the definition of child support order and child support obligation is incorrect when it says it includes "* * * a judgment * * * for the support and maintenance of a child * * * or of the parent with whom the child is living." The commenter noted that the definition would conform to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) by deleting "of the parent with whom the child is living."

Response: We disagree that the regulatory definitions are incorrect. The proposed definitions track the definition of support found in 45 CFR part 301 governing State IV–D plans and do not conflict with any provision of FFCCSOA. We have therefore retained such definitions in the final regulation.

5. *Comment:* One Tribe thought the definition of "Indian" found in the Indian Civil Rights Act would alleviate confusion that enrollment might be required. Another thought the Pub. L. 93–638 definition of Indian Tribes and Tribal organizations should be used.

Response: This final Tribal child support enforcement regulation does not in any way link the definition of "Indian" to any Federal standard or rule governing Tribal enrollment. The regulatory definition of "Indian" is not intended to affect a Tribe's inherent ability to determine enrollment standards or to affect the ability of any other Federal agency to appropriately exercise authority in this area. We agree that enrollment and membership are internal Tribal matters and not the concern of the Federal Office of Child Support Enforcement. The final rule defines "Indian" as a person who is a member of an Indian Tribe. "Indian Tribe" and "Tribe" mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally-recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.We have determined that this definition of "Indian" is sufficient and reference to the Indian Civil Rights Act is not necessary.

Eligibility for direct IV–D funding under section 455(f) of the Act is limited to Federally-recognized Indian Tribal governments because child support enforcement necessarily requires at least delegated governmental authority. Because the definition of "Indian Tribe" in Pub. L. 93–638 includes some entities that are not Tribal governments, to avoid confusion we have not adopted that definition of "Indian Tribe."

6. *Comment:* One State commenter thought the definition of Tribe was insufficient in defining persons and circumstances that fall under the jurisdiction of Tribes.

Response: We disagree. For purposes of these final regulations, we have determined that it is not appropriate or necessary to define "Tribe" in terms of the limits of Tribal jurisdiction. The regulatory definition of "Tribe" is appropriately related to Federal recognition of governmental entities eligible for Federal funds. Such definition is not intended to have any effect on the exercise of Tribal or State jurisdiction.

7. *Comment:* One State commenter suggested that definitions for "Tribal resident," "reservation" and "Indian Country" be added. A Tribal commenter suggested that the regulations overlooked the special circumstances of Alaska's Tribes when employing the term "Indian Country."

Response: We have determined that it is not appropriate or necessary in this regulation to define the territorial limits of a Tribe's authority by defining "Tribal resident" or "reservation." The parameters of "Tribal resident" and "reservation" are more appropriately

determined by Tribal law, the jurisdiction of the Tribe's courts or administrative process and by applicable Federal law, not by child support enforcement regulations.

We are aware of the special circumstances in Alaska related to the term "Indian country" as a consequence of the Supreme Court's decision in *Alaska* v. *Native Village of Venetie Tribal Government,* 522 U.S. 520 (1998). For clarification, except where specifically noted, throughout the preamble "Indian country" is replaced with the term "Tribal territory" in consideration of the special circumstances in Alaska. The final regulatory definition of "Indian Tribe and Tribe" encompasses all Indian Tribes and Alaska Native entities enumerated in the Department of the Interior's listing of Federally-recognized entities such that each is eligible to apply for direct IV–D funding.

8. *Comment:* One Tribal commenter suggested that the term "agency" is likely to be misunderstood because "agency" refers to a geographical entity delineated by a Department of the Interior Administration area.

Response: We believe the context of these regulations make the definition of Tribal IV–D agency clearly distinguishable from any other type of agency and will not result in confusion.

Section 309.10—Who Is Eligible To Apply for Federal Funding To Operate a Tribal IV–D Program?

1. *Comment:* Twenty-nine Tribal and State commenters opposed the requirement that a Tribe have at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribe to be eligible to apply for direct funding.

Response: The main purpose of establishing the 100-child minimum is to assure that Tribal IV–D programs will be cost effective. We also believe this threshold eligibility requirement is a reasonable indication of necessary IV–D program infrastructure. Any Tribe that has at least 100 children subject to its jurisdiction clearly meets this requirement. However, in response to comments received, we have amended the final rule to permit waiver of the requirement that a Tribe has at least 100 children under the age of majority subject to its jurisdiction to be eligible for direct funding. Section 309.10(c) has been added and specifies that a Tribe or Tribal organization with less than 100 children subject to its jurisdiction may apply for direct funding provided it can make the required showing. The new subsection requires justification for waiver of the § 309.10(a) requirement to ensure that a Tribe or Tribal organization has the required administrative capacity to undertake a child support enforcement program.

Subpart B—Tribal IV–D Program Application Procedures

Section 309.15 describes what must be included in a Tribal IV–D application; §§ 309.20–309.30 establish procedures for submitting an application for funding; § 309.35 describes procedures for approval of applications and Tribal IV–D plan amendments; and §§ 309.40–309.50 describe procedures related to disapproval actions.

1. *Comment:* We received comments from two Tribal entities suggesting that provision be made in the regulation for voluntary retrocession of a IV–D program similar to the retrocession provisions in the Tribal TANF and Indian Self-Determination and Education Assistance Act (ISDEA) regulations.

Response: The concept of "retrocession" relates to transferring authority from one governmental authority to another and is not appropriate for these Tribal child support enforcement program regulations. In the case of both the Tribal TANF program and contracts under the ISDEA, retrocession describes the process under which a Tribe voluntarily terminates its administration of a program and cedes back (or returns) the program to the State or Federal government. If a Tribe or Tribal organization administering a Tribal IV–D program decides not to continue to operate a child support enforcement program, it may not cede back the program to either a State or to the Federal government. Therefore we have determined that retrocession provisions are incompatible with the Tribal child support enforcement program. If a Tribe or Tribal organization decides not to continue administration of a Tribal IV–D program, it is not required to do so. Under the statute, administration of Tribal IV–D programs is undertaken voluntarily by Tribes and Tribal organizations. Should they decide to do so, applicants on Tribal lands can apply for IV–D services from the State as they always could.

Section 309.15—What Is a Tribal IV–D Program Application?

1. *Comment:* One commenter stated that the use of existing forms SF 424 and SF 424 A was helpful as Tribes are already familiar with those forms.

Response: We appreciate that comment. We have attempted to use existing procedures to ease the application process and alleviate undue administrative burden.

Section 309.20—Who Submits a Tribal IV–D Program Application and Where?

We received no comments on this section.

Section 309.25—When Must a Tribe or Tribal Organization Submit a Tribal IV–D Application?

We received no comments on this section. The requirements in this section were moved to § 309.16, "What rules apply to start-up funding?"

Section 309.30—Where Does the Tribe or Tribal Organization Submit the Application?

We received no comments on this section. This section was combined with § 309.20.

Section 309.35—What Are the Procedures for Review of a Tribal IV–D Program Application, Plan and Plan Amendment?

1. *Comment:* One Tribal commenter stated that the application process and requirements should be the same as those outlined in the Indian Self-Determination and Education Assistance Act (ISDEA), (Pub. L. 93–638).

Response: The differences between programs eligible for contracting under Pub. L. 93–638 and child support enforcement programs funded under title IV–D are so significant that we have determined it would be inappropriate to adopt similar substantive requirements. Programs are eligible for contracting under Pub. L. 93–638 because they are programs, services, or functions otherwise provided by the Federal government under Federal statute. The ISDEA is fundamentally different from Tribal IV–D programs which are operated by Tribal governmental entities under section 455(f) of the Social Security Act. In addition, we have determined that an effective program that efficiently delivers needed child support services to all families, including the effective processing of inter-jurisdictional cases, must be governed by the requirements and objectives of the IV–D program rather than those of Indian-related programs.

2. *Comment:* One Tribal commenter objected to § 309.35(a), stating that allowing the Secretary or designee to "determine whether the Tribal IV–D program application or plan amendment conforms to the requirements of approval" subjects the applications to arbitrary standards.

Response: We disagree that Tribal IV–D applications or plan amendments are subject to arbitrary standards by requiring such applications and plan amendments to conform to section 455(f) and final Tribal child support enforcement regulations. We believe we have established in these regulations appropriate and balanced standards for the administration and operation of Tribal child support enforcement programs that are responsive to the needs of Tribes and Tribal organizations. The statute states clearly that the Secretary must "promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization" to be eligible for a direct grant under title IV–D. These final regulations establish such requirements and are the standards against which all applications will be considered. The rule is also issued under the authority granted to the Secretary by section 1102 of the Act authorizing the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. The Tribal child support enforcement regulations are the product of a deliberative and collaborative process under which all relevant input was fully considered. The result is a final regulation that we believe is necessary for the efficient administration of the national child support enforcement program; one which balances the needs of Tribes and Tribal organizations with the need for a predictable administrative framework.

3. *Comment:* Four Tribal respondents stated that the regulations should provide a 45-day approval time rather than the 90-day timeframe. One Tribal respondent stated that the Federal timeframe for response to Tribal IV–D plans is appropriate.

Response: We have decided to retain the 90-day deadline for review of applications, plans and plan amendments with an additional 45 days to consider all additional necessary information requested from the applicant. We have reviewed Tribal IV–D applications under 45 CFR part 310 and have determined, based on this experience, that the 90-day deadline assures that due consideration is given to every Tribal IV–D application. Our experience in reviewing Tribal IV–D applications under the Interim Final regulations demonstrated that the complexity of the documents, the technical assistance that was required, the coordination of requests for additional information, and the consideration of such information required a realistic timeframe. Every Tribal IV–D application submitted to the Department under 45 CFR part 310 was unique and many raised complex issues requiring consideration. For these reasons, we decided that 90 days was a realistic timeframe to complete application and plan amendment review with an additional 45 days to consider all necessary information requested from the applicant.

4. *Comment:* One State suggested that copies of approved Tribal IV–D plans be provided to the State. Another State commenter suggested that States be notified of Tribal IV–D plan approval where the Tribe may be using a State's automated system to provide services.

Response: While we will not routinely provide copies of approved Tribal IV–D plans to States or Tribes, we will notify IV–D Directors of newly approved Tribal IV–D programs in the form of a Dear Colleague Letter. We encourage Tribes and States to stay in communication with one another because such communication is essential to the successful delivery of IV–D services to children and families. In support of that goal, we are available to provide technical assistance.

Section 309.40—What Is the Basis for Disapproval of a Tribal IV–D Program Application, Plan or Plan Amendment?

1. *Comment:* One Tribal commenter criticized the proposed rule as not providing specific grounds for plan disapproval.

Response: We have revised § 309.40 to clarify the specific grounds upon which Tribal IV–D plans will be disapproved. We believe the final regulation adequately specifies requirements which will ensure that the objectives of title IV–D are met. These regulations balance the needs of Tribes and Tribal organizations with the need for a predictable administrative framework so that Tribal child support programs successfully accomplish the outcomes specified in the statute. Section 309.40 makes clear that Tribal IV–D applications, IV–D plans, and plan amendments will be disapproved if applicable statutory and regulatory requirements are not met, required procedures are not in place, or the plan amendment is incomplete.

2. *Comment:* Five Tribal commenters stated that the proposed rule imposes requirements not included in section 455(f) of the Act. The added elements are not required by statute and should be deleted.

Response: Section 455(f) of the Act authorizes direct funding for Tribal IV–D programs which have the capacity to "operate a child support enforcement program meeting the objectives of this part." "[T]his part" refers to part D of title IV of the Social Security Act. The statute specifies the mandatory objectives of title IV–D programs: establishment of paternity, establishment, modification and enforcement of support orders, and location of noncustodial parents. While the statute specifies mandatory objectives, it is left to the Secretary to promulgate Tribal regulations necessary to accomplish these objectives. We have determined that these final regulations fulfill the statutory mandate to "promulgate regulations establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for direct IV–D funding. After consideration of all issues raised in comments, we have established the minimum requirements which we have determined are necessary to reasonably support the statutory objectives of Tribal child support enforcement programs.

3. *Comment:* Eleven Tribal commenters stated that § 309.40(a)(2) goes beyond the statute by specifying that the Secretary review the Tribe's laws, code, regulations and procedures. Some also stated that although a Tribe may be required to submit a copy of its laws, approval of a Tribal IV–D plan or plan amendment should not be based on the Secretary's approval of such laws.

Response: In response to Tribes' requests for clarification, we have revised § 309.40(a)(2) to more clearly reflect that Tribal IV–D plans and plan amendments may be disapproved if required laws, code, regulations, and procedures are not in effect. While it is necessary to ensure that the appropriate statutes and laws are in place, we do not intend to ratify or otherwise approve Tribal law. While the Secretary is not approving the Tribal laws, Tribal IV–D plans must contain enough information so that the Secretary can determine that relevant required Tribal law, regulations and procedures are in place to operate a IV–D program.

4. *Comment:* Four Tribal commenters stated the proposed regulations provide that an application *will* be disapproved under certain circumstances. The section should provide flexibility by replacing "will" with "may."

Response: Section 309.40 establishes the bases for disapproval of an application. We have not adopted the suggestion to replace "will" with "may." As a practical matter, deficiencies in Tribal IV–D plans do not inevitably lead to formal Tribal IV–D plan disapproval under these regulations. An incomplete plan, for example, is not automatically disapproved. Instead, we will communicate with Tribal applicants

and request needed information. We added § 309.40(c) to clarify that if the application or plan amendment is incomplete and does not provide sufficient information for HHS to make a determination to approve or disapprove, HHS will request additional information. However, at some point, final action must be taken on a Tribal IV–D plan or plan amendment and § 309.40 specifies the circumstances under which an application, plan or plan amendment will be disapproved.

Section 309.45—When and How May a Tribe or Tribal Organization Request Reconsideration of a Disapproval Action?

1. *Comment:* Two Tribal commenters recommended that the Tribe, not the Secretary, should have the option to request a meeting. One commenter stated that conference calls and face-to-face meetings provide a critical forum for interaction, communication and dialogue and another endorsed the reconsideration process.

Response: Tribes have the option to request a meeting. However, we have amended the language at § 309.45(c) by deleting "at the Department's discretion," to eliminate any confusion.

Section 309.50—What Are the Consequences of Disapproval of a Tribal IV–D Program Application, Plan or Plan Amendment?

We received no comments on this section.

Subpart C—Tribal IV–D Plan Requirements

Section 309.55—What Does This Subpart Cover?

1. *Comment:* One Tribal commenter stated that the Tribal IV–D plan requirements go beyond the specific requirements in the statute and that they are overly burdensome to Tribal governments.

Response: Section 455(f) of the Act requires the Secretary to determine the minimum requirements necessary for the administration of Tribal child support programs capable of meeting the objectives of title IV–D. The objectives of title IV–D include the establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. We have promulgated regulations that we believe contain the minimum procedures and processes necessary for successful administration of IV–D programs, which are capable of establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents.

We recognize that Tribal IV–D programs are in the early stages of development. In Subpart C we have established requirements for Tribal IV–D programs which accommodate the unique characteristics and circumstances of Tribes. At the same time these regulations incorporate a framework which has proven effective in delivering needed child support services to families.

2. *Comment:* Five State commenters stated that the proposed regulations did not sufficiently address issues of standardization and coordination between Tribes and States. They suggested that the lack of comparability among Tribal and State IV–D programs could limit the ability of these programs to effectively and efficiently provide IV–D services to families.

Response: We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation. We recognize that Tribal and State child support programs necessarily will interact with one another and may do so through a variety of mechanisms. Subpart C is intended to establish Tribal IV–D program requirements, which will enhance these interactions and inter-jurisdictional effectiveness. While Tribal IV–D programs are not required to meet all requirements that apply to State IV–D programs, nothing precludes them from adopting any and all of the techniques proven successful for States. In fact, we encourage them to do so, but remain convinced that additional mandates at this time are inappropriate.

Section 309.60—Who Is Responsible for Administration of the Tribal IV–D Program Under the Tribal IV–D Plan?

1. *Comment:* Several State commenters suggested that the regulation clarify a State's responsibility in complying with the provisions of approved Tribal IV–D plans under agreements where a State is providing services under an approved Tribal IV–D plan.

Response: Both §§ 309.60(c) and 309.145((a)(3) authorize Tribal IV–D programs to enter into cooperative arrangements with States. Under these provisions, child support enforcement services must be provided in accordance with the approved Tribal IV–D plan in order for Tribes to be eligible for Federal reimbursement. Rules governing the negotiation of agreements between Tribes and States and other entities are not the subject of this regulation. However, § 309.60(c) makes clear that Tribes, not States, will be held accountable for the proper operation of Tribal IV–D programs, including all actions undertaken on behalf of such programs. The language at § 309.60(c) clearly states that if the Tribe or Tribal organization delegates any of the functions of operating a program to another Tribe, State or any other agency, the Tribe is responsible for compliance with the approved Tribal IV–D plan.

2. *Comment:* One commenter stated that contracting with the State would be viable for many individual Alaska Tribes, rather than delegating functions to a regional consortium.

Response: The unique circumstances and challenges faced by child support enforcement programs in the State of Alaska require recognition and accommodation so that arrangements may be made for the provision of needed services. Alaska and Alaska Native Tribal entities are encouraged to find local solutions to meet the challenges they face. Contracting with the State or with other Native entities is one mechanism for delivery of IV–D services on terms that are in accordance with title IV–D requirements and which will enable families to receive needed support.

Section 309.65—What Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan in Order To Demonstrate Capacity To Operate a Tribal IV–D Program?

Section 309.65(a) establishes requirements under which a Tribe or Tribal organization may receive direct funding by submitting a Tribal IV–D plan which meets specified criteria. We received many comments from Tribes and States—some of them general and some specific—on this provision which raised many complex and cross-cutting issues.

1. *Comment:* Tribal and State commenters provided positive comments on this portion of the rule establishing Tribal IV–D plan requirements. They stated that the rule clearly allows for Tribal values, customs and traditions. Two Tribal commenters stated that the rule is simple and provides needed flexibility.

Response: We appreciate the acknowledgment of the responsiveness to the needs of Tribes and Tribal organizations in these first regulations for Tribal IV–D programs and are encouraged by the positive response to our efforts to accommodate the unique circumstances of Indian Tribes.

2. *Comment:* One Tribal commenter stated that during the early years of the IV–D program, the specifications for State programs were recommendations, not requirements and it should be the same for new Tribal IV–D programs. The

commenter suggested this rule is much more prescriptive than those initially promulgated for States.

Response: We disagree. The final rule implementing the initial Child Support Enforcement program established by Part B of Pub. L. 93–647 was published in the **Federal Register** on June 26, 1975. This publication added 45 CFR Parts 301 (State Plan Approval and Grant Procedures), 302 (State Plan Requirements), 303 (Standards for an Effective Program) and 304 (Federal Financial Participation). These are not recommendations. States are required to operate child support enforcement programs under a specific statutory and regulatory framework. As State programs evolved, requirements were expanded. With this rule we have set forth minimum requirements for Tribes to ensure effective Tribal IV–D programs that are capable of delivering child support enforcement services to families.

3. *Comment:* One Tribal commenter stated that OCSE must encourage Tribes to develop their own policies to achieve program directives, defer to Tribes to establish standards and limit the imposition of Federal standards in deference to Tribal authority.

Response: We believe these initial regulations implementing the Tribal IV–D program provide the appropriate recognition of Tribal sovereignty and culture. Tribes may develop culturally-appropriate policies to conform to the requirements of these regulations and are encouraged to do so. We have established a minimum administrative framework for all Tribal IV–D programs. We recognize that individual Tribes may establish IV–D programs within this framework through various means.

4. *Comment:* One State commenter stated that it is not reasonable to expect Tribes to be immediately accountable for the many requirements that have evolved over 25 years for State IV–D programs, but that it is reasonable to expect that State and Tribal IV–D programs will move in the same direction.

Response: We agree that State and Tribal IV–D programs should move in the same direction. As stated earlier, title IV–D has been amended over the years to mandate specific case processing actions and timeframes for State action as the program has evolved and become more automated. We have determined that it is premature to consider such specific requirements with respect to Tribal IV–D programs. Like States, Tribes need adequate time to develop their programs and determine appropriate approaches, levels of automation, and processes for delivering services before it would be appropriate to consider the need for more specific requirements. Tribes need to have sufficient time to operate and automate programs and we need to understand how much time it takes Tribal IV–D programs to carry out various functions before we can consider specific actions, timeframes and processing standards or whether such standards are necessary. These regulations strike a balance between including requirements for specific, proven, and critical components and aspects of a child support program, while leaving implementation details up to the Tribes.

5. *Comment:* One State commenter stated that each Tribe should be required to have a Central Registry and use CSENet (an automated system for interstate case processing), or as an alternative, be required to adopt the Uniform Interstate Family Support Act (UIFSA). Another State commenter appreciated the efforts to allow Tribes flexibility to develop and administer programs consistent with Tribal laws and traditions, but thinks that the lack of comparability among Tribal and State programs will limit efficiency and effectiveness.

Response: The specific State requirements raised by the commenter related to the Central Registry and CSENet evolved over time and were not among the initial set of State IV–D regulatory requirements. This Tribal regulation will allow Tribes to begin planning for building appropriate automated data processing systems and procedures over time and does not mandate links to systems to which Tribes do not presently have access.

As previously stated, we have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

Where needed for effective and efficient programs, we have established Tribal IV–D requirements that are comparable with State IV–D requirements while bearing in mind that the statutory provision authorizing direct funding to Indian Tribes was enacted to provide much-needed services where, historically, no services were available. As to the suggestion that Tribes be required to adopt UIFSA, we address this issue in the discussion of § 309.120.

6. *Comment:* Twenty-three Tribal commenters objected to this section stating that the regulations do not match the statute and impose unnecessary burdens. They stated that the 14 elements in § 309.65(a) far exceed the five core functions listed in the statute at section 455(f) and that Tribes should not have to include procedures for each of the 14 criteria.

Response: We agree with the commenters that section 455(f) of the Act specifies five core program objectives. However, we disagree that the elements enumerated in § 309.65(a) go beyond these objectives. The statute specifies functions which must be performed and explicitly delegates to the Secretary of HHS the authority to promulgate regulations "establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for funding under title IV–D. While, as a matter of law, the Secretary is not limited in the number of requirements which may be promulgated, these regulations in fact establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the objectives of title IV–D. Every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV–D programs capable of meeting the specific program objectives enumerated in the statute. This determination was made after careful and deliberate consideration of comments received on the proposed regulation as well as experience administering Tribal IV–D programs under the interim final regulation.

7. *Comment:* One Tribal commenter stated that the regulations will not facilitate establishment and collection of support for Native American children because they are too process-oriented and prescriptive for Tribal entities to achieve over the short term.

Response: These regulations establish only the minimum requirements we have determined necessary for the operation of Tribal child support enforcement programs meeting the mandatory objectives of title IV–D: establishing paternity, establishing, modifying and enforcing support orders, and locating noncustodial parents. Every requirement established by this rule as a condition for Federal funding is intended to ensure that Tribal IV–D programs meet the objectives of title IV–D while at the same time recognizing the unique status and circumstances of Indian Tribes.

8. *Comment:* Five Tribal commenters stated that there are too many requirements in the rule and these prevent Tribes from designing programs to meet their needs. The design and implementation of Indian programs by Indian Tribes has proven that the most effective way to deliver services is with programs designed by the Tribes themselves.

Response: While this regulation is responsive to the needs of Tribes and Tribal organizations, the statute itself limits the scope of this flexibility. The authorization for direct Federal IV–D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV–D program objectives. As we have stated in response to other comments, every element specified at § 309.65(a) was determined to be necessary to the operation of Tribal IV–D programs capable of meeting the program objectives enumerated in the statute. In this rule we have worked hard to ensure flexibility and recognize the status of Indian Tribes and accommodate the operational realities faced by Tribes. We agree that section 455(f) of the Act allows for flexibility, but such flexibility must be exercised within the parameters established in the statute. Under this regulation we are confident that Tribes will be able to design and implement Tribal IV–D programs that meet local needs.

9. *Comment:* Nine Tribal commenters stated that, while IV–D regulations should have some areas of commonality, respect for Tribal sovereignty and recognition of the unique aspects of Indian Tribes require accommodation for such characteristics and appropriate flexibility in Federal regulations. These commenters suggested that forcing Tribal IV–D programs into the existing State model violates the law recognizing the unique legal status of Indian Tribes and generally stated that Tribes were not States and should not be forced to function as States.

Response: We agree that the final regulation should accommodate the unique status of Indian Tribes and incorporate as much flexibility as possible while ensuring effective and efficient Tribal IV–D programs. In particular, we emphasize that one of the key underlying principles of these final Tribal IV–D regulations is recognition of and respect for Tribal sovereignty and the unique government-to-government relationship between Indian Tribes and the Federal government. We have determined that the statute does not mandate that requirements imposed on Tribal IV–D programs be the same as those imposed on State IV–D programs as prerequisites for funding. Moreover, there is nothing to suggest either in the original authorization for Tribal IV–D programs or in a subsequent amendment, that Congress intended to limit the Secretary's rulemaking discretion to the rules already established for State IV–D programs. While Tribal IV–D programs must assure that assistance in obtaining child support is available to all who request services or are referred to the Tribal IV–D program, the rules for such programs must also take into account the unique legal status of such Tribes. We believe that these final Tribal IV–D regulations strike the appropriate balance.

10. *Comment:* One State commenter stated that current IV–D regulations do not allow States to refuse services to particular applicants, no matter where they reside. If the State where the request for services is made had no jurisdiction, the State can refer the applicant to an agency in the appropriate jurisdiction. The same commenter suggested that a referral process be specified in Federal regulation for case referral among Tribes and between States and Tribes.

Response: Under these regulations, Tribes are not permitted to refuse services to any applicant. Tribal IV–D programs must take all applications and open a case for each application. We know there may be circumstances under which the only appropriate service will be to request assistance from another Tribal or State IV–D program with the legal authority to take actions on the case. We address these comments more fully in the discussion of § 309.120, which deals with intergovernmental coordination and cooperation.

11. *Comment:* One commenter stated that Tribes should be permitted to develop their own program operation criteria and service areas.

Response: As stated above, the statute authorizing direct IV–D funding for Tribal programs limits the flexibility that can be established to permit Tribes to individually create program requirements. The authorization for direct Federal IV–D funding of Indian Tribes requires that Tribes demonstrate to the satisfaction of the Secretary a capacity for accomplishing specific IV–D objectives. We have determined that every element specified at § 309.65(a) is necessary to the operation of Tribal IV–D programs capable of meeting the objectives enumerated in the statute.

Section 309.65(a)(2) requires evidence that a Tribe or Tribal organization has in place procedures for accepting all applications for IV–D services and providing IV–D services as required by law and regulation. A Tribe, when describing the population subject to its laws, may include geographical descriptions of the area over which such authority is exercised. However, as noted above, Tribal IV–D programs must take all applications and open cases for each application, and there may be instances in which the appropriate services will be to request assistance from another Tribal or State IV–D program. Since these regulations provide for reimbursement of all allowable costs of administering a Tribal IV–D program at the appropriate match rate, it is expected that a Tribe will exercise authority over Tribal members and others on Tribal lands to the maximum extent legally permitted and that Tribes will also provide services to all applicants.

12. *Comment:* One Tribal commenter stated that Tribes are not public agencies and access to Tribal IV–D services should be limited to reservation residents and Tribal members.

Response: As stated earlier in the preamble, these final regulations require that Tribal child support agencies accept all applications for services and require that the child support agency provide all appropriate services. This is to ensure that IV–D services are available to all who need them.

13. *Comment:* One Tribal commenter suggested that the wording in § 309.65(a)(2) be changed to allow Tribal IV–D agencies to refer customers without having to go through the application process. Two other Tribal commenters stated that ensuring access to services is not a requirement of the statute and should be removed from the regulation.

Response: As a practical matter, we think the instances in which a Tribal IV–D agency has no authority to take action in a particular case will be few, but in those instances the Tribal IV–D agency will refer the case to the appropriate IV–D agency. There will be instances in which States and Tribes must work together to ensure families receive the support they deserve. Under these regulations Tribes are not permitted to refuse services to any applicant. Taking all applications, determining what services are needed or may be provided and providing those services either directly or through another IV–D agency are activities that are included in categories of costs eligible for Federal reimbursement at the appropriate funding rate. We require that all IV–D programs accept all applications so that families receive assistance in reaching the appropriate IV–D program and no family is denied services which are legally available.

Tribes may not merely refer someone to another IV–D agency without accepting an application because everyone needs to be served. However, we recognize that as Tribal IV–D programs begin to operate, States and Tribes may need to work out cooperative agreements to deal with cases in specific instances, *e.g.*, a Tribe has authority to provide certain services

while only a State IV–D agency may provide others. We will provide guidance governing referral of cases in specific instances, as needed.

14. *Comment:* One State commenter recommended that we provide Federal guidance to ensure that an individual does not apply for IV–D services at both the local State IV–D program office and the Tribal IV–D program office. The commenter suggested that this portion of the rule be rewritten to clarify that services by a Tribal IV–D program can only be provided to an individual who is not receiving services from a State IV–D program.

Response: There is nothing to preclude an individual from applying for and receiving services from more than one IV–D agency. The fact that a custodial parent and child may reside within a Tribe's jurisdiction while the noncustodial parent may reside or work within a State's jurisdiction highlights the importance of Tribal-State communication and coordination. We encourage States and Tribes to work together to provide needed services and coordinate those services.

15. *Comment:* One State commenter asked if the Tribal IV–D program must charge an application fee as is required of State programs.

Response: Application fees are not required of Tribal IV–D programs at this time. However, Tribes may, at their option, provide that an application fee will be charged to individuals who apply for services under the Tribal IV–D plan (with stated exceptions). We have added paragraph (e) to § 309.75, governing administrative and management procedures, which reflects this option and which provides that any application fee charged must be uniformly applied, be a flat amount not to exceed $25.00, or be an amount based on a fee schedule not to exceed $25.00. This is the same cap placed on State IV–D programs.

16. *Comment:* One Tribal commenter stated that it was unclear what "due process" means in § 309.65(a)(3). This language offended another Tribal commenter who stated that Tribes provide due process. Two other Tribal commenters stated that assuring due process is not a requirement of the statute and should be removed.

Response: The term "due process" in the context of § 309.65(a)(3) refers to legal proceedings according to rules and principles which have been established by the Tribe or Tribal organization for the protection and enforcement of individual rights. The required statement of assurance is intended to ensure that the procedural and substantive protections of individuals are in place and is not meant to suggest that Tribes do not provide due process. Requiring this assurance is not indicative of a judgment as to whether a Tribe's due process is adequate. While we do not define for Tribes what due process is, we have determined that all IV–D programs should have due process protections in place and we require an assurance to that effect.

17. *Comment:* Three Tribal commenters stated that because the statute does not require it, OCSE may only suggest that a Tribe include performance targets in its plan. Another Tribal commenter stated that some Tribes do not utilize standard performance measurements and that measuring success by numerical or monetary targets does not allow for intangible successes to be taken into account (such as family reconciliation.)

Response: The Federal statute specifically authorizes the Secretary to establish requirements which must be met in order to be eligible for funding under title IV–D. We have determined that in order to fulfill our responsibility to ensure the effective and efficient administration of Federally-assisted Tribal child support enforcement programs, it is essential that Tribes and Tribal organizations consider and articulate performance targets or goals for their programs. In response to comments, we have revised § 309.65(a)(14) to clearly reflect that the performance targets should be based on the particular needs and circumstances of Tribal IV–D programs. In addition to submission of targets for paternity and support order establishments, targets on total amount of current collections, and targets on total amount of past due collections, we encourage Tribes and Tribal organizations to include Tribally-defined measures of success that go beyond numerical or monetary description. These optional measures could include, for example, family reconciliation or other indications of improved quality of life for Indian families. We believe that performance targets are essential for ensuring that Tribes focus on maintaining efficient and effective child support services because such targets assist us and Tribes in ensuring that Tribal IV–D programs can increase their efficiency and effectiveness over time.

18. *Comment:* One Tribal commenter objected to the imposition of a performance-based incentive and penalty system for Tribal grantees. Another asked if we were proposing to withhold sanctions from Tribal and State programs while performance standards are sorted out and one commenter said that heavy penalties for failure to meet program requirements will drive away a lot of Tribes.

Response: The proposed rule did not impose a performance-based incentive or penalty system for Tribal IV–D grantees and we have not imposed such systems in this final regulation. Tribal IV–D plans must include performance targets, but funding is not contingent upon the targets being met. In the statistical and narrative reports required under § 309.170, grantees must report on their success in reaching their performance targets. We are not setting performance targets because we believe that Tribes are in the best position to set performance targets in the initial years of the Tribal IV–D program and to estimate the targets that they can reasonably attain. Tribal IV–D performance targets have no effect on State IV–D programs.

Sections 309.16 and § 309.65(b)—Start-Up Funding

1. *Comment:* Thirteen Tribal commenters stated that a two-year start-up time frame is not sufficient. Some suggested that extensions be permitted.

Response: We were persuaded by commenters to re-evaluate the regulatory framework for start-up funding and have added a new § 309.16 to reflect provisions related to applications and approval of start-up funding. Section 309.16(a) lays out the requirements for an application for start-up funding including the standard application forms SF 424, "Application for Federal Assistance", and SF 424A, "Budget Information—Non-Construction Programs", a quarter-by-quarter estimate of expenditures for the start-up period, notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs, and a narrative justification for each cost category on the form. If the Tribe or Tribal organization requests funding for indirect costs as part of the application for start-up funds, estimated costs may be submitted either by a documentation of the dollar amount of indirect costs allocable to the IV–D program, including the methodology used to arrive at the amounts, or submission of the current indirect costs rate negotiated with the Department of the Interior and a dollar amount of estimated indirect costs. The amount of indirect costs must be included within the $500,000 limit for start-up funds. The Tribe or Tribal organization must also submit a description of the requirements a Tribe currently meets and, if the Tribe does not currently meet the requirements in § 309.65(a), a program development

plan detailing actions to be taken to meet the Tribal plan requirements. Section 309.16(c) describes under what circumstances the Secretary may consider extending the period of time during which start-up funding will be available or increasing the amount of start-up funding provided. An unfavorable decision to extend the period of time during which start-up funding is available or to increase the amount of start-up funding provided is not subject to an administrative appeal.

Based on the experience of Tribes of varying sizes and circumstances that are currently operating IV–D programs, we believe that the amount of time specified at § 309.16(a)(5) will provide Tribes and Tribal organizations with reasonable and necessary support to complete the start-up phase necessary for comprehensive child support enforcement programs. However, in extraordinary circumstances, we will consider extending the period of time during which start-up funding will be available to a Tribe or Tribal organization or increasing the amount of start-up funding provided.

2. *Comment:* One commenter stated that "demonstrate satisfactory progress" towards a fully operational Tribal IV–D program in proposed § 309.65(c) is vague and suggested that it be more clearly defined.

Response: The language at proposed § 309.65(c) has been reworded and moved to 309.16(a)(5) for clarity. Under § 309.16(a)(5), Tribes must develop a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization will have a IV–D program meeting the requirements of § 309.65(a) within a specific period of time, not to exceed two years. In order to demonstrate satisfactory progress toward a fully-operational Tribal IV–D program, a Tribe would have to show it is meeting specific goals established in the program development plan within the timeframes established in the plan. In response to comments, we have revised § 309.65(b) to make clear that the Secretary may terminate start-up funding if the Tribe or Tribal organization fails to satisfy any provision or milestone described in its program development plan within the timeframe specified in the plan. A decision to terminate start-up funding is not subject to administrative appeal.

Section 309.65(d)—Delayed Program Requirements

1. *Comment:* Thirty-nine Tribal and State comments were received on this section that outlined future requirements for Tribal IV–D programs. While a few of the commenters thought that the requirements for enforcement services should be the same for Tribes as for States, the majority of the commenters recommended eliminating § 309.65(d). Most expressed concern about how Tribes will access the Federal automated systems. They also stated that if Tribes are mandated to enter into cooperative agreements with States to access these systems, it would infringe on Tribal sovereignty.

Response: Based on comments, we are persuaded that it is not appropriate at this time to impose future requirements for additional procedures which Tribes and Tribal organizations must implement within two years after the Secretary issues guidelines for these requirements. These requirements were removed from the final rule. If, after experience and consultation, additional regulations become necessary, we will propose rules at that time. Some of the advanced child support enforcement techniques require a minimal level of automation, and it would not be appropriate to mandate the phase-in of such techniques in advance of understanding more clearly the issues related to Tribal IV–D automation. We have begun consideration of appropriate minimum Tribal systems automation specifications with stakeholders.

Section 309.65(e)—Certification of Compliance With the 100-Child Minimum Requirement

1. *Comment:* One commenter suggested the requirement to certify compliance with the 100-child minimum be deleted except for initial applications or when a member Tribe drops out of a consortium.

Response: One of the basic eligibility requirements—that a Tribe is eligible to apply for funding if it has at least 100 children under the age of majority in the population subject to its jurisdiction is found at § 309.10(a). This requirement may be subject to a waiver under § 309.10(c). We deleted the language from proposed § 309.65(e) and moved it to § 309.70. The Tribe must certify that there are at least 100 children under the age of majority in the population subject to its jurisdiction. The requirement that a consortium demonstrate authorization of two or more Indian Tribes with at least 100 children under the age of majority subject to its jurisdiction remains applicable even if a member of the consortium drops out. If, during the funding cycle, a member of a consortium drops out, the assurance that the consortium will continue to serve at least 100 children must be resolved by the beginning of the next funding cycle.

Section 309.70—What Provisions Governing Jurisdiction Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Seven Tribal commenters supported the fact that the regulation did not address jurisdiction. Several State commenters stated that jurisdiction is not adequately addressed in the regulation and that guidance is needed.

Response: Jurisdiction is the legal authority which a court or administrative agency has over particular persons and over certain types of cases. Issues related to jurisdiction are central to intergovernmental cooperation for the provision of child support enforcement services to families. Without proper jurisdiction, a tribunal cannot proceed to establish, enforce, or modify a support order or determine paternity. The legal authority to undertake these functions is essential to the ability of both State and Tribal child support enforcement programs to meet the statutory objectives of title IV–D of the Social Security Act. Lack of jurisdiction does not excuse a Tribal IV–D program from the responsibility of providing services when asked, including seeking assistance from another IV–D program.

Section 309.75—What Administrative and Management Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One commenter suggested that the word "promptly" should be replaced with a 20-calendar day time frame for opening a case as required for State IV–D agencies by 45 CFR 303.2(b).

Response: We disagree that it is necessary at this time to require a specific time frame for opening a Tribal IV–D case. We are satisfied that § 309.65(a)(2) is sufficient to ensure that all applications for IV–D services are accepted and acted upon. We expect that all applications for Tribal IV–D services will be acted upon in a prompt and efficient manner. A Tribal IV–D agency must open a case for each application. In some of these cases, the proper action will be to refer the case for enforcement by a State or another Tribe with access to enforcement tools the Tribe may not access directly, *e.g.* State income tax refund offset; in others it will be to refer the case to a State or another Tribe because the Tribe has no jurisdiction over the parties. We have eliminated the language originally proposed in § 309.75(c) related to opening IV–D cases since it was duplicative of language in § 309.65(a)(2).

2. *Comment:* One Tribal commenter suggested deleting the requirement for bonding in paragraph (d), as most Tribes are not able to afford bonding. Nine other Tribal commenters suggested eliminating the language at paragraph (d)(3) under which the requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal IV–D agency's program because it implies the Tribe has liability and it could be construed as a waiver of Tribal sovereignty.

Response: We reviewed the proposed requirement for the bonding of employees in light of Tribal comments that such a requirement would cause financial hardship. In response to the concerns raised, we have revised § 309.75(b) so that taking out a bond is not the only means of satisfying the requirement for protection against loss. Under the revised provision, Tribal IV–D programs must submit documentation that establishes that every person who receives, disburses, handles, or has access or control over funds collected under the Tribal IV–D program is covered by either a bond or insurance sufficient to cover all losses. Because the bond or insurance will cover all losses, it is not necessary to address liability. In addition, we have eliminated as unnecessary the language in former § 309.75(d)(3) related to the ultimate liability of Tribes.

3. *Comment:* One Tribal commenter objected to the requirement at proposed paragraph (e) to provide notice of all support collections to families and noted that States only have to provide notice of assigned support. The proposed requirement is more stringent. Another Tribal commenter stated that until a Tribe has a sophisticated computer system to track individual accounts, providing a notice will be time-consuming and the agency should provide such information only on request.

Response: As indicated earlier in this preamble, we have determined that all regulations applicable to State IV–D programs need not apply to Tribal IV–D programs. State IV–D programs are required to provide monthly notice of support payments for each month to individuals who have assigned their rights of support to the IV–A agency. However, we believe that notices of support collections should be provided to all families receiving services from the program. In order to recognize the level of automation currently available to Tribal IV–D programs, we have revised § 309.75(c) to require that notice of collections be provided to families receiving services under the Tribal IV–D program at least once a year. This is less cumbersome than a requirement to provide notices on a monthly basis. In addition to the annual notice, a notice must be provided at any time to either the custodial or noncustodial parent upon request. In this way families will receive regular notices of collections made on their behalf.

4. *Comment:* One commenter recommended that we require that for each of the first three program years, the Tribe should obtain an evaluation every six months as well as a yearly external evaluation.

Response: We have not imposed these additional evaluation requirements on Tribes in these final regulations. We have determined that the required audits under § 309.75(d) and the authority to conduct Federal audits as the need arises are sufficient to ensure accountability and additional evaluations are not necessary.

Section 309.80—What Safeguarding Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One Tribal commenter stated that because the statute does not require it, OCSE may only suggest that the Tribal IV–D plan include safeguarding information in its plan. Another commenter stated that it is critical for Tribal grantees to describe safeguarding procedures.

Response: We disagree that because the statute does not explicitly direct the Secretary to establish safeguarding regulations, that the Secretary may not do so. As we noted above, the statute explicitly delegates to the Secretary the authority to promulgate regulations "establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for funding under title IV–D. We have determined that safeguarding confidential information is critical to individual rights to privacy as well as to effective Tribal child support programs, and that implementation of safeguarding procedures is necessary to meet IV–D program objectives and to ensure that data and information received from State IV–D programs are safeguarded in accordance with statutory and regulatory requirements. Therefore, we require minimum but critical safeguarding procedures at § 309.80 to ensure that confidential information is protected from improper disclosure.

2. *Comment:* Two Tribal commenters indicated concern about confidential information on Tribal members going into a national database system that will be shared with States. Tribes do not want to make their enrollment records accessible. Another Tribal commenter did not like the proposed requirement in § 309.65(d) and related safeguarding requirements in § 309.80(b) that the Tribal IV–D agency will have to report new hires to States, which in turn would report them to the National Directory of New Hires (NDNH).

Response: These final regulations do not require Tribes to submit any information to a national or State database and there is nothing in this final rule that requires Tribes to provide enrollment records to any entity. The requirement at § 309.80(b) is necessary because Tribes may receive information from Federal sources including the NDNH from States as well as information about state cases and must meet Federal statutory and regulatory confidentiality requirements. In response to comments, the requirements at proposed § 309.65(d) were eliminated.

3. *Comment:* One State commenter stated that Tribes have no authority to access the FPLS or other Federal databases to locate individuals for IV–D purposes. Another State commenter stated that if Tribes have direct access to statewide systems, confidentiality would be a concern.

Response: Tribes are legally precluded from direct access to the FPLS. However, they could receive FPLS data from a State in an intergovernmental case. The technical requirements for access to the FPLS will be the subject of future guidelines and program instructions. All IV–D case record information is confidential, whether a State or Tribal IV–D program maintains it and both entities are required to treat the information as confidential and are bound by safeguarding requirements. State and Tribal safeguarding requirements are not in conflict. If Tribes and States enter into agreements for reciprocal access to each other's databases for location or other child support purposes, such agreements must not conflict with Federal safeguarding and other regulations and must comply with the Internal Revenue Service (IRS) rules governing the disclosure of tax return information.

4. *Comment:* One commenter asked who would be prosecuted if a State contracts with a Tribe and a violation of confidentiality of IRS material occurs. The commenter suggested that States have hold harmless regulations regarding release from liability of prosecution.

Response: Current Federal law does not allow a State to release tax information to a Tribal IV–D agency.

When an entity directly receives tax return information from the IRS, it has the legal responsibility to safeguard such information. Any agreement negotiated between a Tribe and a State must address safeguarding and comply with all applicable Federal law and regulations.

Section 309.85—What Records Must a Tribe or Tribal Organization Agree To Maintain in a Tribal IV–D Plan?

1. *Comment:* One State commenter stated that the regulations do not address reporting of collections made by States on behalf of families who are receiving Tribal IV–A assistance.

Response: State reporting requirements are not addressed in this regulation. Information about any collection received by a Tribal IV–D program from a State IV–D program must be included in the Tribal IV–D program's records under § 309.85(a)(4) and must be reported under § 309.170.

2. *Comment:* We received five State comments suggesting that Tribal IV–D programs use all the standard Federal forms that State IV–D programs use.

Response: State IV–D programs have been in operation for almost 30 years and are required to use a variety of standard Federal forms. The requirements related to these standard forms have evolved over time and some of them were developed or amended recently. At this initial stage in the development of Tribal IV–D programs, we have determined that it is not reasonable to mandate that Tribes use all the same forms as States. Whether or not a particular standard Federal form should be required of Tribal IV–D programs depends on whether the use of such form is essential to the effective and efficient administration of Tribal child support enforcement programs. We disagree that Tribes should be required to use every standard Federal form that States currently use, especially since many of the forms were designed for automated case processing. Section 309.110 requires that Tribes use the standard income withholding notice, because we have determined that the standard use of this form by all IV–D programs is necessary for the effective and efficient enforcement of support orders.

Section 309.90—What Governing Tribal Law or Regulations Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* One State commenter noted that Tribal laws should be used in administering Tribal programs, but States should approve the Tribal laws. Three Tribal commenters responded favorably to the provision allowing Tribes to use their own laws, traditions and customs.

Response: There is no legal authority to impose a requirement that States approve Tribal laws. This would be a clear infringement on Tribal sovereignty.

2. *Comment:* One Tribal commenter noted that not all Tribal codes are written and it would be difficult to submit that kind of code or law. Another commenter appreciated the fact that the rule recognized that not all Tribes have written codes.

Response: Should a Tribe with unwritten codes and laws apply for direct funding, these final regulations require a detailed description of such codes and laws in its application. We recognize in this regulation that one of the unique characteristics of Indian Tribes is that some do not have written laws and codes, even though they have long-standing and rich legal traditions. We have added a definition of "Tribal custom" at § 309.05 to make clear that this term is not open-ended, but means unwritten law that has the force and effect of law. Section 309.90(b) permits Tribes without written laws to submit detailed descriptions of Tribal common law as evidence that procedures required by § 309.90(a) are in place. Even though Tribal custom is unwritten, it is nonetheless capable of being known and may be shown in several ways: it may be shown through recorded opinions and decisions of Tribal courts; it may be judicially noticed; or it may be established by testimony of expert witnesses who have substantial knowledge of Tribal common law in an area relevant to the issue before the Tribe.

3. *Comment:* One State commenter suggested that the language at § 309.90 be amended to require Tribal employers to comply with an income withholding order of another Tribe or State.

Response: We have not amended § 309.90 as suggested because Tribes are not required to adopt the Uniform Interstate Family Support Act (UIFSA) as all States were required to do. UIFSA compels a State employer to honor a withholding order sent directly from another State or Indian Tribe. However, the Full Faith and Credit for Child Support Orders Act (FFCCSOA) requires both Tribes and States to enforce valid child support orders. Where State or Tribal orders referred to a Tribal IV–D program include provision for income withholding, such orders must be enforced by Tribal IV–D agencies as required by FFCCSOA. Please note that § 309.110 provides that Tribal IV–D agencies are responsible for ensuring that valid withholding orders are promptly served.

Section 309.95—What Procedures Governing the Location of Noncustodial Parents Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

We received no comments on this section.

Section 309.100—What Procedures for the Establishment of Paternity Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight Tribal commenters raised concerns about the effect of paternity establishment on Tribal enrollment and membership. Seven of these commented that OCSE should not interfere with the authority of Tribal governments, Tribal enrollment committees and Tribal religious leaders in establishing paternity. They stated that determining paternity through foreign regulations would totally disrupt the way they deal with issues and they want to incorporate traditional lifestyle into child support enforcement programs through Tribal courts. Four commenters supported the provisions allowing Tribal discretion in how paternity is established.

Response: In response to concerns raised by commenters we have added § 309.100(d) to make clear that establishment of paternity under this regulation does not affect Tribal enrollment or membership. Section 309.100(a)(1) provides for paternity to be established in accordance with Tribal law, code, or custom. These regulations are not intended to override established Tribal authority.

2. *Comment:* One Tribal commenter suggested that States be required to give full faith and credit to any legal determination of paternity considered final by a Tribal court.

Response: Under the State-enacted UIFSA statutes and FFCCSOA, States are required to honor Tribal paternity orders when they are the basis for child support orders pursuant to Tribal law, in the same manner that a Tribe is compelled to honor States' paternity orders when they are the basis for child support orders. We have determined that it is not necessary to further regulate in this area.

3. *Comment:* One State commenter suggested that parents should have the option to request genetic testing.

Response: We are persuaded that genetic testing should be provided upon request and have added § 309.100(a)(3) to require the Tribal IV–D plan to provide procedures under which the Tribal IV–D agency is required, in a

contested paternity case (unless otherwise barred by Tribal law), to require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. As stated in an earlier section of the preamble, the phrase "otherwise barred by Tribal law" is intended to cover situations where, either by action of one or both of the parties or the application of Tribal law, or both, paternity has already been conclusively determined and may not be reconsidered. In such cases, genetic testing to challenge the paternity determination would not be authorized. Examples of such a paternity determination would include a voluntary admission of paternity or circumstances under which the Tribe has other means of recognizing paternity under Tribal law. A Tribe, through its own custom, tradition or procedure, may recognize a man as the father or may preclude a man who holds himself out to be the father from challenging paternity. Similarly, a Tribe may have a conclusive presumption of paternity when a child is born to married parents or if a noncustodial parent has been validly served in a paternity proceeding and failed to contest paternity in such proceeding. A uniquely Tribal means under Tribal law that was used to establish paternity would be acceptable as precluding the need for genetic tests. In such cases, because paternity had already been determined, genetic testing would be "otherwise barred by Tribal law". This language is consistent with the language found at section 466(a)(5)(B) of the Act, which mandates genetic testing in contested cases to ensure that the rights of both parties are protected.

4. *Comment:* One commenter stated that the due process rights of individuals must be protected. States should give full faith and credit to paternity determinations made by Tribal law/ordinance but not to processes that result in a person with whom the mother has had no relation (either sexual or marriage) being established as the legal father.

Response: The regulations at § 309.65(a)(3) require due process assurances and § 309.100(a)(1) makes clear that such assurances encompass paternity establishment. In light of these requirements, we have determined that it is not necessary to mandate further paternity establishment procedures. States and Tribes are required to recognize and honor valid determinations of paternity.

5. *Comment:* One commenter said that the voluntary paternity requirement does not go far enough. Voluntary paternity acknowledgement services should operate in all birthing hospitals located under the Tribe's jurisdiction.

Response: This rule is flexible enough to allow voluntary acknowledgement of paternity at birthing hospitals as determined appropriate by Tribes. This practice has proven to be highly effective for States and has resulted in a record number of paternity acknowledgements.

6. *Comment:* Four commenters said that the requirement at § 309.100(b) should be omitted, and Tribes should determine the exceptions to require paternity establishment actions and the appropriate entity to make exceptions.

Response: We believe the language at § 309.100(b) accommodates the needs of Tribes to determine exceptions to paternity establishment and allows Tribes to establish the appropriate entity to make those determinations.

Section 309.105—What Procedures Governing Child Support Guidelines Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Three Tribal commenters suggested that child support guidelines are not required. One also suggested that the requirements go beyond what Congress intended and interfere with Tribal sovereignty.

Response: We disagree that because the statute does not explicitly direct the Secretary to establish specific minimum requirements for support guidelines, that the Secretary may not do so. As we note above, the statute explicitly delegates to the Secretary the authority to promulgate regulations "establishing the requirements which must be met by an Indian Tribe or Tribal organization to be eligible" for funding under title IV–D. Although guidelines are not specifically addressed in the statute, establishment of support orders is one of the mandatory program objectives, and we have determined that § 309.105 requirements are critical to establishing fair and consistent support orders. Implementation of the requirements specified at § 309.105 is necessary to satisfy the statutory IV–D program objective of establishing child support orders, and we believe such requirements respect Tribal sovereignty.

2. *Comment:* One State commenter stated that because there is no requirement to enact UIFSA, a Tribal child support guideline could allow the Tribal court to change or ignore a State's order, and competing orders could result. The need for UIFSA is apparent.

Response: The commenter fails to take into account that Federal law requires all tribunals to give full faith and credit to valid child support orders. FFCCSOA requires tribunals of all United States territories, States and Tribes to give full faith and credit to a child support order issued by another State or Tribe that properly exercised jurisdiction over the parties and the subject matter. A Tribe may not modify an order valid under FFCCSOA except in certain circumstances, nor may valid orders be modified under these regulations in any manner that is inconsistent with that Federal law. The grounds for modification under FFCCSOA are consistent with UIFSA.

3. *Comment:* One State commenter suggested we include requirements regarding modifications, since States have very specific requirements relating to review and adjustment, and periodic modification ensures child support obligation amounts are appropriate over time.

Response: These regulations specify that guidelines apply to both setting and modifying orders. We believe that § 309.105(a)(4) sufficiently addresses the commenter's concerns that periodic modification ensures child support obligation amounts are appropriate over time and do not believe that additional regulation is called for at this time.

4. *Comment:* Numerous State commenters stated that they did not have a clear understanding of the in-kind concept as it related to support obligations, while numerous Tribal commenters responded positively to the recognition that Tribal support orders could be satisfied with cash and non-cash resources.

Response: We were urged by Tribes to accommodate the reality of Tribal economies by recognizing that noncustodial parents could satisfy support obligations with non-cash (in-kind) support in addition to cash payments. Many reservations and Indian communities are located in remote areas with little or no industry or business; thus, there are limited opportunities for cash employment. We were persuaded by Tribes to accommodate the long-standing recognition among Indian Tribes that all resources that contribute to the support of children should be recognized and valued by IV–D programs.

In-kind (non-cash) support is support provided to a family in the nature of goods and/or services rather than in cash, but which nonetheless has a

certain and specific dollar value. Non-cash support for purposes of this regulation is support that directly contributes to the needs of a child. Non-cash support may include services such as making repairs to automobiles or a home, the clearing or upkeep of property, providing a means for travel, or providing needed resources for a child's participation in Tribal customs and practices.

In § 309.105(a)(3), we allow Tribal child support guidelines to permit support obligations to be satisfied with both cash and non-cash payments. The regulations at § 309.105(a)(3) require that a support order which permits satisfaction with non-cash resources must include, in the order itself, a specific dollar amount reflecting the amount of the support obligation. The regulation allows individual Tribes to make the determination of whether non-cash as well as cash payments can be accepted to satisfy the support order.

Since all Tribal support orders will include a specific dollar amount reflecting the support obligation, a specific monetary amount of a child support obligation is clear in every order. In this way Tribal orders contain the same information as State orders do. The only difference is that some Tribal orders may allow the support obligation to be satisfied with non-cash resources. Thus, States should be able to process support payments through their automated systems and account for support payments made under Tribal orders. Other Tribes that receive requests for enforcement assistance where there is a support order which can be satisfied with non-cash resources should similarly be able to process such support payments.

5. *Comment:* Five State commenters suggested that the specific dollar amount for non-cash support must be a part of the Tribal court order. One of these suggested that satisfaction of support obligations with non-cash payments should be limited to current support only.

Response: We agree that support orders must include specific dollar amounts and that these amounts must be expressly reflected in the Tribal order. Non-cash support merely recognizes that an obligation for a specific dollar amount of child support may be satisfied with non-cash resources. We are persuaded that this is a critical accommodation for Tribal subsistence economies. We have added language in § 309.105(a)(3) to ensure that Tribal support orders include specific dollar amounts. If non-cash payments are permitted to satisfy Tribal support orders, the support order must include both the specific dollar amount of the obligation and the types of non-cash support which may be provided to meet the obligation.

We are not persuaded that the accommodation of non-cash resources should be limited to current support obligations only. Arrears, like current support, are specific dollar amounts. Since each non-cash payment will have an associated dollar value attached to it, it can be credited toward arrears as well as current support obligations. However, non-cash support cannot be used to satisfy assigned support (including arrears). This is consistent with the language added to § 309.105(a)(3)(iii).

6. *Comment:* We received nine positive comments from Tribes on the provision allowing non-cash (in-kind) support payments. One State commenter stated that determining the amount of non-cash contributions that have been made on a newly opened enforcement case would be cumbersome and require intensive labor on the part of the State.

Response: Permitting Tribal courts to establish support orders which can be satisfied with non-cash payments is an essential accommodation made to recognize Tribal custom and circumstances. If a Tribal IV–D agency refers a case to a State IV–D agency for enforcement, the Tribal IV–D agency must provide information necessary to work the case, which would include the payment record under the order. Therefore, State IV–D agencies would not be required to determine non-cash contributions made by the obligor. Non-cash payments are merely one means by which Tribal support orders may be satisfied. For example, a Tribal support order could provide that an obligor owes $200 a month in current support and $100 a month for arrears which may be satisfied with the provision of firewood suitable for home heating and cooking to the custodial parent and child. The order could provide that a cord of firewood has a specific dollar value of $100 based on the prevailing market. In this case, the obligor would satisfy his support obligation by providing two cords of firewood every month plus $100. Such "payments" would be credited as $300 paid every month. Whenever non-cash payments are permitted, the specific dollar amount will always be known (and be reflected in the order) and can be credited and tracked. The language at § 309.105(a)(3) has been amended to indicate that should the Tribe decide that an non-cash order is acceptable, a specific dollar amount must be set in the order.

Permitting Tribal support orders to specify that support obligations may be satisfied with non-cash resources is an important recognition of the economic conditions of Indian Tribes and of the subsistence economies prevalent throughout much of Tribal territory. In addition, it recognizes that noncustodial parents without significant cash resources may nonetheless satisfy support obligations and make productive contributions to their children's lives.

7. *Comment:* One State commenter stated that in-kind orders are not compatible with States' automated systems.

Response: Tribal IV–D programs are required under § 309.105(a)(3) to include a specific dollar amount if obligors are permitted to satisfy their support obligations with non-cash payments. Since every non-cash payment will have an associated monetary value, each payment will be reducible to a specific dollar amount, which every automated system should be able to handle just like any other payment.

8. *Comment:* One Tribal commenter stated that there are many problems associated with valuing in-kind payments which Tribes themselves should address; OCSE officials should not propose regulations in areas where they do not have a good understanding.

Response: Section 309.105(a)(3) requires Tribal support orders which permit non-cash payments to establish a specific dollar amount in the order itself. We agree that the valuation of non-cash resources is the responsibility of Tribes themselves. The Tribe must establish standards for valuation of non-cash resources, should it choose to permit non-cash payments to be used to satisfy support obligations.

9. *Comment:* Two State commenters suggested that we clarify how assignments to offset public assistance to a State will be handled when the noncustodial parent is making in-kind payments and suggested that where assignments are made to a State the obligor must pay a cash equivalent specified within the Tribal order.

Response: Where non-cash payments are permitted to satisfy support obligations, they are required to be represented as a specific dollar amount which can be credited just like any other child support payment. Where assignments of support rights are made to the State as a condition of receipt of public assistance, any non-cash payment made by the noncustodial parent can be credited to the family as a cash payment would be. As specified in § 309.105(a)(3)(iii), if there is an

assignment to the State or another Tribe, the specific dollar amount must be paid.

10. *Comment:* One commenter said that the term "cash equivalents" has subsistence and public assistance implications and may make the term unworkable in Alaska. The term "cash alternatives" would be more acceptable.

Response: We have revised the regulation at § 309.105(a)(3) to eliminate the phrase "cash equivalents" to clarify the meaning of terms and to eliminate confusion.

11. *Comment:* Two State commenters suggested that the obligee be required to provide a written receipt to the obligor acknowledging a non-cash payment.

Response: If the Tribal IV–D program decides to permit non-cash resources to be used to satisfy a support order, the Tribe is responsible for recording payments to ensure obligors receive credit for meeting their child support obligations. At this time, we do not believe the alternatives suggested by the commenters are necessary.

12. *Comment:* One State commenter suggested that we establish numeric and descriptive guidelines for in-kind payments. If there is a deviation due to in-kind support, the tribunal should make a specific finding justifying departure from cash support and establishing that such departure is in the best interest of the child. The Tribal IV–D plan should specify how the noncustodial parent receives credit for in-kind payment.

Response: We have determined that § 309.105 adequately provides for consistent and predictable support guidelines which take into account the needs of the child and are not persuaded that the suggestions of the commenter are necessary.

13. *Comment:* One State commenter stated that if a Tribe's guidelines allow in-kind credits, then it should be the burden of the obligor to raise the issue and prove the entitlement to such credits. The in-kind support must directly benefit the child. This same commenter stated that there is an issue of equal protection.

Response: As explained above, allowing Tribal orders to specify both a specific dollar amount of support due and an equivalent non-cash resource that can be used to satisfy the obligation is an important accommodation for Indian Tribes. Such an accommodation permits noncustodial parents who can provide non-cash resources which are needed by families to meet their child support obligations even when they do not have cash available to make cash payments. Section 309.105(b) requires Tribal child support guidelines to take the needs of the child into account, and we do not believe it is necessary to require any additional finding in order to allow non-cash resources to be used to satisfy a Tribal support order. As long as the Tribal support order indicates the specific dollar amount of the support obligation and the dollar amount of the non-cash resource, the support can be collected whether or not it is made in cash or non-cash resources. Allowing non-cash support in Tribal IV–D programs recognizes Tribal tradition and custom appropriate to Tribal IV–D programs and consistent with Tribal sovereignty.

We do not believe there is any equal protection risk associated with final regulations permitting Tribal support orders to be satisfied with non-cash resources consistent with Tribal law and Tribal economies. Singling out Indian Tribes for different regulations from States is constitutionally sound. The United States Supreme Court has, on numerous occasions, upheld legislation and regulations that single out Indians for particular and different treatment.

14. *Comment:* Two Tribal commenters said that basing support orders on the noncustodial parent's ability to pay is not a requirement of the statute. If a parent cannot provide non-cash support because he/she no longer has access to the resource, the parents should return to Tribal court to request that the order be modified.

Response: We have determined that support guidelines that take into account the earnings and income of the noncustodial parent are essential to effective IV–D programs. Where a noncustodial parent is no longer able to provide non-cash support nor able to satisfy the support obligation with cash payments, the Tribe's procedures for modification of support orders may be applicable on a case-by-case basis. Non-cash support is not a substitute for support; it is a means of providing support. If there is a change in circumstances such that the noncustodial parent may, under Tribal law, seek modification of the support order, the fact that non-cash support is reflected in the order should not contribute to any delay or pose any particular problem.

15. *Comment:* One State commenter said that Federal child benefit programs such as Social Security Retirement or Social Security Disability provide for a benefit to be paid directly to the child or guardian and that the regulations should address how these benefits will affect the obligation of the noncustodial parent.

Response: We believe that § 309.105 adequately ensures that the needs of the child are taken into consideration while providing that the support order is appropriate and just given the particular circumstances of the case. If a particular child is receiving direct payments, such payments may be taken into consideration under these regulations.

16. *Comment:* One commenter suggested that OCSE examine whether there is a need to address Tribal responsibility when a child support order contains provisions for health care coverage.

Response: There is no requirement at this time for Tribal support orders to include medical support. However, nothing in this regulation precludes a Tribal order of support from including separate provisions for medical support and we encourage Tribes to make sure children have access to medical care through IHS or otherwise. To the extent that a Tribe is enforcing an order containing provisions for health care coverage, such an order is entitled to full faith and credit provided the underlying order is valid. Just like any other valid order, Tribal and State support orders containing provisions for health care coverage are enforceable under FFCCSOA.

17. *Comment:* We received comments from six Tribal respondents suggesting that Tribes be required to review their guidelines every four, rather than three years.

Response: We agree with the commenters. The language at § 309.105(a)(4) has been changed to require review of support guidelines at least once every four years.

18. *Comment:* One Tribal commenter disagreed that the standard of "best interest of the child" be imposed. Requiring the tribunal to make "a finding" why the application of the "guidelines" is unjust is more than sufficient.

Response: Proposed § 309.105(b)(1) and (e) used the term "needs of the child" and "best interest of the child" to reflect the requirement that the particular needs of the child be taken into consideration when support orders are established. We have maintained this language in final regulation as recodified. In order to ensure that support orders in Tribal IV–D programs are just and appropriate, we require there be a rebuttable presumption that application of a Tribe's support guidelines will result in a support order that is correct. In recognition of the possibility that particular circumstances may make application of the guidelines unjust or inappropriate, we provide for variance from such guidelines on a case-by-case basis as long as the needs of the child are taken into consideration.

Section 309.110—What Procedures Governing Income Withholding Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight Tribal commenters suggested that the requirement for income withholding be eliminated because the statute does not require income withholding. Two of these commenters stated that Tribes need to determine if income withholding is appropriate for their populations.

Response: Although income withholding requirements are not specifically addressed in the statute, enforcement of support orders is specifically required and we have determined that regulations governing income withholding are necessary to address this important IV–D program objective.

Income withholding has been one of the most effective means of collecting child support from parents who receive regular income and is especially important to ensure that the noncustodial parent does not fall into arrears. As important as income withholding is to enforcement of child support orders, we have tried to accommodate the needs of Tribes and Tribal organizations in how income withholding procedures are implemented by Tribal IV–D programs.

2. *Comment:* One State commenter said that Tribes should count allotment payments (payments made to individuals from either the Tribe or the Bureau of Indian Affairs [BIA]) or winnings from gaming as income. Two State commenters suggested that Tribes should withhold Tribal benefits (casino profits, oil and mineral rights) of all obligors and allow other entities to participate in this intercept program. A Tribal commenter suggested that the regulation should not interfere with Indian Tribal per capita payments, Individual Indian Monies (IIM), trust income or Social Security benefits. The commenter also suggested that Tribes should also have the discretion to set lower income withholding limits than the Consumer Credit Protection Act (CCPA) allows.

Response: The extent to which trust distributions, including per capita payments, may be garnished by a Tribe to satisfy its own order of support is strictly a matter of Tribal law. Garnishment of Indian trust distributions by States is prohibited under 25 U.S.C. 410. This statute states that any money accruing from any lease or sale of lands held in trust is not liable for the payment of any debt without the approval of the Secretary of the Interior. For purposes of this regulation, we have defined income at § 309.05, to mean any periodic form of payment due to an individual regardless of source, except that the exclusion of per capita, trust or Individual Indian Money (IIM) payments must be expressly decided by a Tribe. This allows Tribes the flexibility to exclude specific categories of payments from this definition, including per capita payments, trust income, and gaming profit distributions. We have not required Tribes to withhold the Tribal benefits (casino profits, oil and mineral rights) of obligors. We refer here to the businesses owned by the Tribe and the profits thereof. In respect for Tribal sovereignty, we have determined that it is not appropriate in this regulation to directly affect Tribal management of Tribes' own resources.

With respect to concerns about the CCPA limits, Tribes have the discretion to set lower income withholding limits than the CCPA. These rules only preclude income withholding beyond the upper limits set forth in the CCPA.

3. *Comment:* One Tribal commenter noted that in his village, over half of the people with child support orders lose over 50 percent of their paychecks to income withholding. The individual's only means of getting by is by receiving general assistance. Most, therefore, choose not to work.

Response: The withholding limits set by a Tribe or Tribal organization may be lower than the maximum CCPA limits, so that income withholding itself does not create a disincentive to remain employed. The limit set by a Tribe or Tribal organization may be lower, but may not be higher than those set forth in the CCPA. There is nothing to prevent a Tribe from setting the upper limit for income withholding at any amount deemed appropriate, as long as such limit does not exceed CCPA limits. The limits set forth in the CCPA are the highest percentages allowed under Federal law and apply to Tribal income withholding orders under these Tribal IV–D regulations. However, the actual income withholding limit is set by Tribes and may be lower than the maximum established in the CCPA.

When a noncustodial parent's financial circumstances change, or a default order is entered because income was not known, the noncustodial parent should go back to the appropriate tribunal to seek a modification of the order.

4. *Comment:* One Tribal commenter stated that until Tribes demonstrate substantial enforcement difficulties that can directly benefit from income withholding, this section should be eliminated. This commenter suggested that if the section is not eliminated, the requirement should be made flexible, so that Tribes may adapt income withholding to their needs. Two other Tribal commenters stated that Tribes need to determine if income withholding is appropriate for their populations.

Response: In response to the concerns raised by commenters, we are persuaded that income withholding may not be appropriate in every circumstance. Many of the comments we received from Tribes indicated that other methods of collecting support owed are more effective than income withholding. In some instances, the noncustodial parent is brought before Tribal elders and asked to explain why child support payments are not being made. This may be enough to get the noncustodial parent to make payments. Therefore, we added language to § 309.110 providing flexibility in this area. Section 309.110(h) allows for exceptions to income withholding on a case-by-case basis if: (1) Either the custodial or noncustodial parent demonstrates, and the tribunal finds good cause not to require the income withholding; or (2) a signed written agreement is reached between the custodial and noncustodial parent which provides for an alternative arrangement and is reviewed and entered into the record by the tribunal.

5. *Comment:* One State commenter suggested that § 309.110 incorporate UIFSA requirements.

Response: We disagree that it is appropriate to incorporate specific UIFSA procedures in these regulations. Section 309.110 assures that valid income withholding orders will be honored. We have incorporated procedures at § 309.110(n) which require the Tribal IV–D agency to receive and process income withholding orders issued by States, other Tribes, and other entities and promptly serve such orders on employers within the Tribe's jurisdiction.

6. *Comment:* One State commenter noted that the section is silent concerning penalties against employers to enforce compliance with income withholding orders and allocation of income withholding when there are multiple orders.

Response: Section 309.110(g) requires that Tribes have procedures under which employers are liable for the accumulated amount the employer should have withheld from the noncustodial parent's income. Section 309.110(k) requires that Tribal law must provide that the employer is subject to a fine for discharging a noncustodial parent from employment, refusing to

employ or taking disciplinary action against any noncustodial parent because of income withholding. Section 309.110(n) income withholding requires the Tribal IV–D agency be responsible for receiving and processing income withholding orders from States, Tribes and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction. Language concerning the treatment of multiple orders has been added at § 309.110(m) to provide that income that is withheld be allocated across all valid orders. We do not believe that additional regulation is required at this time.

7. *Comment:* One State commenter stated that allowing direct income withholding from another State or Tribe under UIFSA would save work for the Tribal IV–D program and that since States are already required to extend this privilege to Tribes the responsibility should be reciprocal.

Response: We have not adopted this suggestion. As noted earlier, Tribes are not required to adopt UIFSA. Tribes may choose to allow direct income withholding but it is their choice.

8. *Comment:* One Tribal commenter said that requiring that income withholding include amounts "to be applied toward liquidation of any overdue support" may affect a parent's willingness to pay.

Response: Payment of overdue support remains the responsibility of obligors. Nothing in this regulation precludes an obligor from seeking an acceptable agreement for repayment of arrearages or, in certain specific and appropriate instances, and with the agreement of the State, a compromise of arrearages owed to a State pursuant to the law which established the support obligation in the first instance. We previously issued two Policy Interpretation Questions (PIQs) on this subject. PIQ–99–03 and PIQ–00–03 provide general information concerning compromise of child support arrears. This, and other policy issued by OCSE, may be found at: *https://www.acf.dhhs.gov/programs/cse/poldoc.htm.*

9. *Comment:* Two Tribal commenters noted that including instructions for completing the standard Federal income withholding form in the rule is duplicative and perhaps conflicting with regulatory income withholding provisions.

Response: In light of the requirement that the standard Federal income withholding form be used whenever income is to be withheld, we agree with the commenter and have eliminated language in proposed § 309.110(b) which merely duplicates language and conditions specified in the instructions to the form itself.

10. *Comment:* One State commenter stated that the difference in withholding requirements for Indian and non-Indian citizens creates operational issues, including the fact that States' automated systems are not equipped to handle the different timeframes. A Tribal commenter stated that Tribes should be exempt from the immediate income withholding.

Response: We believe that the income withholding provisions in § 309.110 are sufficiently consistent with State rules and provide the minimum requirements necessary to ensure successful withholding among IV–D programs when there are valid income withholding orders in place. Use of the standard Federal income withholding form by both State and Tribal IV–D programs will ensure responsiveness of employers. All employers must recognize this form and respond immediately to this important enforcement tool. The flexibility allowed under § 309.110(h) to provide an alternative arrangement to income withholding is substantially parallel to 45 CFR 303.100(b) and we do not believe that implementation of § 309.110 by Tribes will lead to operational problems for States.

These regulations do not require immediate income withholding, although Tribal IV–D programs may choose to impose withholding immediately to avoid any possibility for default by obligors who are employed. Under § 309.110(i), the income of noncustodial parents is subject to income withholding on the date on which the payments the noncustodial parent has failed to make are at least equal to the support payable for one month unless a determination is made to exempt the obligor from income withholding under § 309.110(h).

Section 309.115—What Procedures Governing the Distribution of Child Support Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Five Tribal commenters stated objections to having OCSE impose a State-based distribution scheme. Instead, they suggested that the regulations permit Tribes to merely describe how they will distribute support collections.

Response: Section 457 of the Act imposes requirements which govern distribution of support collections in a IV–D case (related custodial parent, noncustodial parent and child(ren)) whenever a State IV–D program is providing services under title IV–D of the Act. In recognition of this statutory mandate, the Tribal IV–D distribution requirements must provide for distribution in accordance with section 457 rules when a Tribe receives a request for assistance in collecting support from a State IV–D agency.

Therefore, section 457 of the Act does not apply to collections under the Tribal IV–D program unless a State IV–D agency requests assistance in collecting support from a Tribal IV–D agency. Tribal IV–D programs are not required to distribute support collections using the complex section 457 distribution requirements under this final rule. Rather, we have required Tribal IV–D agencies, upon receipt of a request from a State IV–D agency for assistance in collecting support under § 309.120, which specifies required intergovernmental procedures for Tribal IV–D programs, to either: (1) Forward collections to the State IV–D agency for distribution using the section 457 requirements, or (2) contact the State IV–D agency to determine appropriate distribution under section 457 and distribute the collections accordingly. The latter option would be appropriate, for example, if the Tribal IV–D agency is providing IV–D services to the family and subsequently receives a request for assistance from a State in collecting assigned support from a prior period of receipt of State TANF.

Similarly, we have required that, if a Tribal IV–D agency receives a request for assistance in a Tribal IV–D case under § 309.120 from another Tribal IV–D agency, collections must be either: (1) Forwarded to the requesting Tribal IV–D agency for distribution in accordance with § 309.115; or (2) distributed in accordance with instructions requested of, and provided by, the other Tribal IV–D agency.

2. *Comment:* One State commenter said that automation is a requirement for distribution and that the regulations must be the same for States and Tribes.

Response: Title IV–D of the Act imposes explicit distribution and automation requirements upon State IV–D agencies but does not impose such requirements on Tribal IV–D programs. As discussed above, we have revised the final rule to ensure that, when appropriate, Tribal IV–D agencies send support collections to State IV–D programs for distribution in accordance with section 457, or contact State IV–D agencies to determine the appropriate distribution, without requiring Tribal IV–D programs to adopt the complex statutory distribution requirements that apply to State IV–D programs.

We understand the importance of minimum automation standards for Tribal IV–D programs to ensure program efficiency and effectiveness. To that end, we expect to promulgate regulations establishing such minimum standards for automated systems (beyond planning provisions articulated under this rule) in the future after consultation with all stakeholders.

We also recognize that some Tribal IV–D programs do, and may continue to, contract with State IV–D programs to use the State's automation system to calculate appropriate distribution of collections. In these instances, forwarding collections to the State, or contacting the State to determine appropriate distribution would be unnecessary.

3. *Comment:* One State commenter indicated that distribution would require another programming change for State systems if collected support had to be distributed to Tribal child support enforcement programs.

Response: The impact of State IV–D program cooperation with Tribal IV–D programs and distribution by States of collections sent to or received from Tribal IV–D programs will depend on each State's automated system. Federal funding is available for 66 percent of all appropriate and allowable costs associated with any needed programming changes to State automated systems.

4. *Comment:* One Tribal commenter said that because Tribes do not have the same economic base as State governments, Tribes should not be required to reimburse the Federal government from IV–D collections.

Response: This final rule does not require Tribal IV–D agencies to reimburse the Federal government using retained Tribal IV–D collections in Tribal TANF cases, or otherwise share a portion of retained Tribal IV–D collections with the Federal government. The Federal government by statute is entitled to a share of collections assigned to a State by a family as a condition of receipt of assistance under titles IV–A, IV–E, or XIX of the Act. No parallel requirement applies to Tribes.

5. *Comment:* One Tribal commenter said that part of child support enforcement has to do with helping children and their families, while the other has to do with retrieving funds that have been paid out in public assistance. This commenter stated that the latter function has a very negative impact on some Tribal children because so many Tribal members have been on public assistance.

Response: These final regulations must be consistent with existing Federal statutory law governing assignment of rights to support to States as a condition of receipt of certain State assistance, and distribution of support collections assigned to States. There are no corresponding Federal assignment requirements as a condition of receipt of assistance under Tribal assistance programs, although some Tribal TANF programs have adopted a requirement for assignment of support as a condition of receipt of Tribal TANF. To the extent that Federal law requires States to retain assigned support collections as reimbursement for receipt of State public assistance, these regulations cannot undermine that requirement. Any changes to or simplification of the distribution process in State IV–D programs must come about as a result of statutory changes. The Administration has urged the Congress to adopt simplified distribution requirements for State IV–D programs that would ensure more support is paid to families to help them attain or maintain their self-sufficiency.

6. *Comment:* One State commenter said that the regulations should address offset of previously provided TANF benefits and priority of distribution, especially when a family may have received State and Tribal benefits in varying sequences throughout a significant period of time. Another State commenter said that a hierarchy for collection and distribution is necessary.

Response: We have revised and clarified § 309.115 governing distribution of collections in a Tribal IV–D case by Tribal IV–D programs in response to this comment and concerns that Tribal IV–D programs not be responsible for complex distribution requirements that apply to State IV–D programs. Section 309.115 specifies distribution requirements in a Tribal IV–D case based on specific circumstances that may exist for each case. The regulation requires a Tribal IV-D agency to distribute collections in a timely manner and to apply collections first to satisfy current support.

The Tribal IV–D agency must pay all support to the family when the family receiving Tribal IV–D services has never received Tribal TANF and the Tribal IV-D agency has not received a request for assistance in collecting support for the family from a State IV–D agency or another Tribal IV–D agency under § 309.120. A Tribal IV–D agency may receive a request for assistance in securing support from a State if the custodial parent resides in that State and has applied for or been referred to the State IV–D agency for IV–D services. Or a State may refer a case to the Tribal IV–D agency for assistance in collecting support assigned to the State for some prior period of receipt of assistance from the State.

Section 309.115 then addresses distribution requirements if a family receiving Tribal IV–D services is currently receiving or formerly received Tribal TANF and there is an assignment of support rights to the Tribe.

A further distinction is made with respect to families who have assigned support rights as a condition of receipt of Tribal TANF from another Tribe. The Tribal IV–D agency may have received a request for assistance in collecting support from a State or another Tribal IV–D agency. If the family is currently receiving Tribal TANF, there is an assignment to the Tribe, and the Tribal IV–D agency has received from a State or another Tribal IV–D agency a request for assistance in collecting support previously assigned to that State or Tribe, the regulation allows the Tribal IV–D agency to retain assigned support up to the amount of Tribal TANF paid to the family. The Tribal IV–D agency must then send any remaining collections to the requesting State or Tribal IV–D agency for distribution, as appropriate, or contact the State or other Tribe to determine accurate distribution and distribute the amount of the collection in excess of the Tribal TANF reimbursement accordingly. The hierarchy for distribution in different case circumstances is illustrated in a chart that appears later in the discussion.

If the family formerly received Tribal TANF from another Tribe, there is an assignment of support to that Tribe, and the Tribal IV–D agency has received a request for assistance on behalf of the family from a State or that other Tribal IV–D agency, the regulation requires the Tribal IV–D agency to send all collections to the State or other Tribal IV–D agency for distribution. The requesting State or Tribal IV–D agency, as appropriate, is then responsible for distribution in accordance with State IV–D program requirements at section 457 of the Act or 45 CFR 302.51 or 302.52, or in accordance with these Tribal distribution requirements in § 309.115. Alternatively, the Tribal IV–D agency may contact the State or other Tribal agency to determine appropriate distribution of the collection as explained above.

The requirement to send all collections to a State or other Tribal IV–D program that has requested assistance on behalf of a family under certain circumstances addresses a number of

possible scenarios. For example, the family may have applied for IV–D services from a State or another Tribal IV–D agency and not directly with the Tribal IV–D agency making the collection. Or the family may be receiving or may have formerly received TANF or other public assistance from the requesting State or Tribal IV–D agency. As long as the family is not currently receiving Tribal TANF from the same Tribe as the Tribal IV–D agency making the collection, under a program that requires an assignment of support rights, we believe the only entity in a position to determine appropriate distribution is the requesting State or Tribal IV–D agency. We have, however, included an option that allows Tribal IV–D agencies to determine appropriate distribution by contacting the requesting State or Tribe and to then distribute the collections as directed. State and Tribal IV–D program requirements for timely distribution and disbursement of collections will ensure collections owed to families reach them in a timely manner.

The rules for distribution in cases involving each of these circumstances are included in § 309.115, as well as clarification that any collection as a result of Federal income tax refund offset that is distributed by a Tribal IV–D agency must be applied to satisfy arrearages. The following chart should be of assistance to Tribal and State IV–D agencies.

Tribal IV–D case type	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6	Case 7	Case 8	Case 9
Current Tribal TANF case w/assignment				X	X				
Current Tribal TANF case w/o assignment		X						X	
Never Tribal TANF case	X		X			X			
Former Tribal TANF w/assignment							X		X
Request for services from State IV–D agency			X		X			X	X
No request for services from State IV–D agency	X	X		X		X	X		
Request for services from another Tribal IV–D agency						X			
No request for services from another Tribal IV–D agency	X	X	X	X	X		X	X	X

Distribution: The Tribal IV–D agency:

Cases 1 and 2: Must send all collections to the family.

Case 3: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 4: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the family.

Case 5: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 6: Must send all collections to the other Tribal IV–D agency for distribution under § 309.115.

Case 7: Must pay current support to the family, may retain excess collections up to the total amount of Tribal TANF paid to the family and pay excess collections to the family.

Case 8: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

Case 9: Must send all collections to the State IV–D agency for distribution under section 457 of the Act.*

*For cases 3, 5, 8 & 9: The Tribal IV–D agency may, rather than send collections to the State IV–D agency for distribution, contact the State IV–D agency to determine appropriate distribution, and distribute the collections as directed.

These regulations attempt to address the many possible combinations of Tribal IV–D case circumstances involving assignment of support rights to State and Tribal public assistance programs, and intergovernmental requests for assistance in collecting support. We encourage State and Tribal IV–D programs to work together to maximize the amount of support that is paid to families and ensure support obligations are set in an amount that is based on the obligor's ability to pay. This will reduce circumstances under which large arrearages are assigned to a State based on default support orders set without knowledge of an obligor's ability to pay. If complex distribution requirements that apply to State IV–D programs are simplified in the future to ensure more support is paid to families, State and Tribal IV–D programs, as well as the families themselves, will benefit from the changes in statute.

7. *Comment:* One State commenter said that there is no legal basis upon which a Tribe can distribute collections differently from States.

Response: By its terms, section 457 of the Act does not address distribution rules applicable to Indian Tribes or support collected by Tribal IV–D programs. However, the revised § 309.115 ensures that support collected by Tribal IV–D programs on behalf of State IV–D programs that have requested assistance under § 309.120 from the Tribal IV–D program is sent to the State IV–D program for distribution in accordance with section 457 of the Act, or the Tribe must contact the State to determine appropriate distribution and distribute the support as directed.

8. *Comment:* One State commenter said that the regulations should provide that the Tribes seek retroactive support to assist a State that has previously provided State TANF.

Response: Retroactive support is support for a prior period that is established based on an obligor's ability to pay. For example, a Tribal court may establish a support order in June for a six-month-old child going back to the date of the child's birth. The amount from January to June is considered retroactive support. While these rules do not require Tribal IV–D agencies to establish retroactive support, Tribal IV–D agencies may choose to do so. If a State IV–D agency has requested assistance from a Tribal IV–D agency, the Tribe must provide all appropriate services under its Tribal IV–D plan and forward any collections, in accordance with § 309.115, to the requesting State for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52.

9. *Comment:* One Tribal commenter suggested that we continue the practice under which child support assigned to a Tribe may be retained by the Tribe up to the amount of Tribal TANF assistance received by a family and the amount in excess of the total TANF assistance must be paid to the family.

Response: Underlying the distribution regulations at § 309.115 is the concept that all support collections must be paid to the family unless there is an assignment of support rights to a State or Tribe as a condition of receipt of assistance. Whether or not a Tribe conditions receipt of TANF assistance on assignment of support to the Tribe is

not mandated by Federal statute or regulation, but is an option that Indian Tribes may exercise at their discretion. We have made a conforming change to the Tribal TANF regulations at 45 CFR 286.155(b)(1) to remove the requirement under which amounts in excess of the total amount of TANF assistance be paid to the family. Section 286.155(b)(1) continues to require that in no case may a Tribe retain assigned collections in excess of the amount of Tribal TANF paid to the family. Distribution of support beyond the total amount of Tribal TANF assistance paid to the family is now addressed exclusively in Tribal IV–D regulations at § 309.115.

Section 309.120—What Intergovernmental Procedures Must a Tribe or Tribal Organization Include in a Tribal IV–D Plan?

1. *Comment:* Eight State commenters suggested that States would need additional resources and one stated that States will have to consider their own program needs as a priority when responding to requests for services from Tribal IV–D programs. Another State commenter said that there should be a Federal directive outlining State duties, which indicates how States will be reimbursed whenever they respond to a Tribal request for assistance. One State suggested that reimbursement be at 90 percent of the costs incurred.

Response: State IV–D programs may receive FFP at the 66 percent rate for expenditures in providing services in response to a request from a Tribal IV–D agency. Section 309.65(a)(2) requires Tribal IV–D programs to provide IV–D services required by law and regulation, including referral of cases to appropriate State IV–D agencies or to other Tribal IV–D agencies and § 309.120(a) requires Tribal IV–D programs to extend the full range of services available under their approved IV–D plans to all other IV–D programs. In addition, we have included a parallel requirement in 45 CFR 302.36(a)(2), which requires each State to extend the full range of services available under its IV–D plan to all Tribal IV–D programs, including promptly opening a case where appropriate. We encourage States and Tribes to work together to design intergovernmental procedures and look to established, proven interstate procedures that apply to State IV–D programs as a guide.

Even though State and Tribal IV–D agencies must respond to each other's requests for assistance, we recognize that Tribal and State programs are at different stages of development. We encourage, and allow time for Tribes and States to put mutually agreeable procedures in place to facilitate coordination between IV–D programs. We are committed to providing Tribes and States an opportunity to work out specific processes for cooperation without imposing more specific regulatory mandates at this time.

The characteristics of cases requiring services, the quality of the information received from the initiating agency, the amount of staff and other resources available to the responding agency, and the development of new or expanded working relationships between Tribes and States are all factors which bear on Tribal/State cooperative relationships. We are committed to fostering cooperative Tribal/State relationships. If it becomes necessary to promulgate specific regulations applicable to all IV–D programs to clarify the respective roles in an intergovernmental relationship, we will do so in partnership with Tribes and States.

State and Tribal IV–D agencies may claim Federal Financial Participation (FFP) at the applicable rate otherwise provided under applicable regulations: 66 percent of expenditures when the State responds to a Tribal request for interjurisdictional services and 90 percent of expenditures for the first three years of a fully operational Tribal program and 80 percent thereafter when the Tribe responds to a State's request for interjurisdictional services. When a case is referred for services, the responding State or Tribe must open its own case and provide the necessary services.

2. *Comment:* One State commenter noted that use of tax offset and locate functions must be done through the States because Tribes do not have direct access to necessary tools.

Response: These regulations do not require the use of tools by Tribal IV–D agencies for which there is no statutory authority. The Tribe and States may enter into agreement to refer cases to the State for submittal for Federal tax refund offset and any such access would currently require request for services from the State. It is premature to regulate specific procedures governing requests for services which Tribes are legally unable to perform directly at this time. At some future date, if it becomes necessary to establish specific new procedures, we will consider such rules after consultation with stakeholders.

3. *Comment:* One State commenter suggested that where a State enters into an agreement to provide services to a Tribal court, the Tribe should reimburse the State, but that a State should never be compelled to appear in a Tribal court.

Response: When a State and Tribe enter into an agreement, the agreement should be mutually agreeable to both parties.

4. *Comment:* One State commenter suggested the Federal government should reach agreements with Tribes on issues that affect all States; otherwise, uniformity will be sacrificed. Another State suggested that we should establish basic rules on negotiation procedures between States and Tribes.

Response: We are committed to working with Tribes and States to ensure cooperation and assistance between them as necessary to ensure children receive needed support. We believe that issues raised by cooperation and coordination between States and Indian Tribes require local solutions if they are to be successful. Still, we intend to work closely with State and Tribes, issue guidance and share best practices and, if regulations are necessary to ensure cooperation, we will work with our State and Tribal partners to develop rules that appropriately balance the impact on both Tribes and States.

5. *Comment:* One Tribal commenter stated the regulations should clarify that States will not monitor or oversee Tribes.

Response: There is nothing in this final regulation which authorizes or requires States to monitor Tribal IV–D programs.

6. *Comment:* One Alaska Native commenter stated that the regulations assume there is a geographical component to the Tribes' jurisdiction and that Tribal court jurisdiction does not mesh with UIFSA or FFCCSOA. This commenter asked how controlling orders or continuing exclusive jurisdiction determinations can be made by Tribal courts, if there is no geographic region from which to determine whether the parent or child resides "in the State" for purpose of those determinations.

Response: As noted earlier in the preamble, the lack of "Indian country" in Alaska does not prevent Alaska Native villages from applying for direct funding or from exercising jurisdiction over their members. FFCCSOA does not limit the exercise of jurisdiction to a geographical area. FFCCSOA only requires a court exercising jurisdiction to have the authority to do so. UIFSA is not applicable to Tribes and is not a factor when Tribes are making jurisdictional determinations in relation to Tribal members.

7. *Comment:* One commenter observed that States recoup past assigned child support payments as a punitive measure and that a Tribal IV–

D program, in complying with § 309.120(a) requiring intergovernmental cooperation, may create a disincentive to Tribal members in remote areas from obtaining/keeping employment.

Response: The recoupment of past assigned support is not punitive, but is required by Federal law. Section 309.120(a) requires Tribal IV–D agencies to extend the full range of services available under their IV–D plans upon request from a State or another Tribal IV–D program. However, the requesting agency may not dictate the actions taken by the responding jurisdiction. The responding agency must take enforcement actions as required by Federal regulations and its own laws and procedures. We recommend that IV–D programs contact each other to determine how to most efficiently and effectively coordinate IV–D services at the local level.

We are particularly aware of Tribal concerns about support orders entered against Tribal members by default, resulting in large arrearages owed to a State that an obligor is unable to pay and which may discourage compliance. We strongly urge States and Tribes to work together in these instances to reach agreement on steps to take that will result in ongoing support payments to families, including the possibility of compromising arrearages permanently assigned to the State and/or entering into repayment agreements.

8. *Comment:* Two commenters suggested that the reporting requirements must be clarified and that States will not know how to report State/Tribal cases for purposes of completing the OCSE–157 reports.

Response: State IV–D agencies are required to submit the OCSE–157, the Support Enforcement Annual Data Report, which is to be used to report program status and accomplishments under title IV–D of the Social Security Act. There are two specific parts of the OCSE–157 which accommodate Tribal IV–D cases. At Line 1: Cases Open and the End of the Fiscal Year, "[i]nclude cases open at end of the fiscal year as a result of requests for assistance received from other States, as well as cases open in your State that you have referred to another State. Do not include on this line Native American and international cases over which the State has no jurisdiction. These cases should be reported separately on line 3." Line 3 of the OCSE–157 is provided to report on Cases Open for Which the State has No Jurisdiction. See OCSE–AT–01–09 for additional information.

We are working with States on revisions to the OCSE–157 form to more accurately reflect how Tribal IV–D cases referred to the State IV–D programs should be reported. Please note that Tribes are not required to complete the OCSE–157 reports.

9. *Comment:* One State commenter stated that Tribal IV–D plans should include assurances that the Tribe will cooperate with requests for assistance with service of process. This commenter said that Tribes should establish a central registry for receipt of incoming interstate and a Tribal information agency that maintains a list of tribunal addresses.

Response: Tribes are required to provide the full range of Tribal IV–D services upon request of another State or Tribal IV–D program. As noted above, § 309.120 requires Tribal IV–D agencies to extend the full range of services available under their IV–D plans to all IV–D programs upon request and to cooperate with States and other Tribal IV–D agencies to provide services required by law and regulation. This could include assisting with service of process or, in the alternative, bringing enforcement action in a Tribal tribunal. We have determined that additional regulation is not necessary at this time.

As to the suggestion that Tribes be mandated to establish an interstate registry, while we have not mandated such a registry, Tribal IV–D programs may determine such a registry is helpful for management purposes. Insofar as a State requires the address of a Tribal tribunal, States should request the address from the Tribal IV–D agency.

10. *Comment:* Seven Tribal and State commenters expressed concern that States did not have reciprocal obligations to cooperate with Tribal IV–D programs and observed that cooperation was key to the success of all IV–D programs.

Response: As stated in our earlier discussion of § 309.120, both Tribes and States are required to extend the full range of services available under a IV–D plan and respond to all requests received from other IV–D programs. We made a conforming change to include a parallel requirement in 45 CFR 302.36(a)(2), which requires each State to extend the full range of services available under its IV–D plan to all Tribal IV–D programs. Without more experience with cooperation between these entities, we do not believe that it is appropriate to promulgate uniform regulations governing the cooperation process. At this initial stage in the development of Tribal IV–D programs, we want to allow States and Tribes time and maximum flexibility to establish local procedures for coordination and cooperation. We are committed to assisting in those efforts, providing written guidance and sharing best practices as needed and requested. If we determine that additional regulations mandating cooperation requirements are necessary for the effective and efficient operation of IV–D programs, we will promulgate them at a later date.

11. *Comment:* One commenter asked if cooperative arrangements with States are going to be absolutely necessary for Tribes.

Response: Whether Tribes enter into cooperative arrangements with States or other entities, as well as the nature of such arrangements, is entirely at their discretion. Nothing in this regulation mandates such arrangements as a condition of receipt of IV–D funds. Service agreements, contracts, and other types of formal agreements between Tribes and States may facilitate the effective and efficient delivery of IV–D services, and we encourage them when deemed appropriate by the parties.

12. *Comment:* One State commenter asked how programming costs would be paid if Tribes enter into agreements with States to have the States' automated systems process child support monies.

Response: We expect that processing of child support monies collected by Tribal IV–D programs will be accomplished under the same framework as processing by State A of support collected by State B. Federal reimbursement is available to States at the usual match rate. The Tribe may claim allowable contract costs and the State must account for any payments under the contract as program income. At this time we are not persuaded that additional regulation is necessary.

13. *Comment:* Eight Tribal commenters criticized the requirement that Tribes recognize default paternity orders and default orders based on imputed income as a matter of course when the courts that issued such orders did not have jurisdiction in the first instance.

Response: While FFCCSOA requires orders to receive full faith and credit, nothing in that statute nor in this regulation requires that invalid orders be accorded full faith and credit. If invalid default orders are entered, they are subject to challenge under ordinary rules of State or Tribal law. See OCSE–AT–02–03 on the applicability of FFCCSOA to States and Tribes. However, when valid default orders based on imputed income create hardship on obligors because they are not based on the ability of the obligor to pay support, we urge States to modify those orders and consider compromising arrearages owed to the

State, when appropriate. As discussed earlier, we urge State and Tribal IV–D programs to work together to remove impediments to timely and consistent payment of support.

14. *Comment:* One State commenter stated that FFCCSOA applies to Tribes and that § 309.120 should require Tribes to comply with the Act in its entirety, not just the enforcement section. This commenter suggested that the word "assurance" was not strong enough. To address current enforcement problems the section should require Tribes to "recognize child support orders, including income withholding orders, issued by other Tribes and Tribal organizations and by States."

Response: All the requirements of FFCCSOA (28 U.S.C. 1738B) are applicable to States and Tribes. We are not persuaded that any change to § 309.120 as suggested by the commenter is necessary to impose this requirement. To the extent that a valid order includes provisions for income withholding, FFCCSOA applies.

15. *Comment:* Numerous commenters suggested that Tribes should be required to implement UIFSA to promote uniformity and to alleviate jurisdictional, as well as operational problems. Several Tribal commenters stated that it was inappropriate to require Tribes to adopt UIFSA.

Response: As discussed previously, States are required to adopt UIFSA as the result of an express statutory mandate. We have determined that requiring Tribes to adopt UIFSA is neither necessary nor appropriate.

Subpart D—Tribal IV–D Program Funding

Section 309.125—On What Basis Is Federal Funding of Tribal IV–D Programs Determined?

No comments were received on this section. Changes were made to the regulation, however, to specify more directly what information must be provided in order for a Tribe to receive Federal funding. We also clarified that official issuances of the Department refers only to those that specifically indicate applicability to Tribal IV–D programs. The title of the section was also modified slightly in the final rule by changing "funding in" to "funding of" for clarity.

Section 309.130—How Will Tribal IV–D Programs Be Funded and What Forms Are Required?

1. *Comment:* Several Tribal commenters stated that Tribal IV–D programs should be funded in the same manner as State IV–D programs, *i.e.*, as entitlement programs. They suggested that Tribal IV–D programs be funded continuously, with quarterly grant amounts determined, in part, by the Tribe's own quarterly estimates. The estimates would be subject to review and approval and the Tribes may be requested to submit additional supporting documentation as necessary.

Response: The Tribal IV–D program is an entitlement program. The difference between Tribal IV–D grants and State IV–D payments is that Tribal IV–D programs are funded for expenditures under an approved IV–D plan based on budget requests for a 12-month funding period. We have revised § 309.130 to provide that Tribal IV–D programs eligible for grants of less than $1 million per 12-month funding period will receive a single annual award of the total amount and Tribal IV–D programs with funding of $1 million or more per 12-month funding period will receive quarterly awards similar to State IV–D programs.

2. *Comment:* One commenter suggested clarification is required concerning whether Tribal IV–D funds will come from a different funding stream than State funds.

Response: As stated in the preamble to the NPRM, the funding for Tribal IV–D activities is completely separate from funding for State programs. A Tribe's decision to run its own IV–D program does not impact a State's IV–D program funds. Tribal IV–D funding is not apportioned from a State's IV–D funding. However, funds for the Tribal IV–D programs come from the same appropriation as the State IV–D program.

3. *Comment:* One commenter said that if Tribes are required to provide a 10 or 20 percent match, then they should be able to receive an incentive back into their programs.

Response: States receive incentive funds under section 458 of the Act, which does not extend to Indian Tribes. There is no statutory authority that provides for Tribal IV–D program incentives.

4. *Comment:* Four Tribal commenters suggested that funding should be allocated based on population, geographical area, service area, land base, isolation factors and local/national scale of economy. Funding should be put under a "special" category similar to the category used for Tribal Program Allocation law enforcement.

Response: Funding for Tribal IV–D programs is authorized by section 455(f) of the Social Security Act, which does not provide for allocation of funds on the basis described. Under title IV–D of the Act and § 309.130, Tribal IV–D funding is based upon documentation submitted by Tribes including the SF 424 and 424A and is awarded based on reasonable, necessary, and allocable expenditures of approved Tribal IV–D programs. We are not persuaded that the factors suggested by the commenters are appropriate for the IV–D program. However, in their budget requests, there is nothing to preclude Tribes from taking service area and population into account.

5. *Comment:* Numerous Tribal commenters suggested that the regulations should not require a non-Federal share and that Tribes should receive 100 percent Federal funding. Some of these commenters said that requiring a non-Federal share would penalize, rather than support, family programs. Others indicated that most Tribes do not have sufficient resources to cover the non-Federal share.

Response: Unlike other Tribal grant programs, the funding for Tribal IV–D programs are not sum certain grants. The Tribal IV–D program provides for 90 percent Federal funding for all reasonable, necessary and allocable cost associated with the administration of a IV–D program during the first three years of operation of a program, and 80 percent thereafter. The provision of Federal funding at 90 percent of program expenditures, with a concomitant non-Federal share of 10 percent, reflects our understanding of the unique and generally unfavorable fiscal circumstances that Tribes face. We have determined that a non-Federal share in expenditures is necessary, based on the principle that better programs and better management result when local resources are invested. We acknowledge that Tribes may have to split limited resources between programs and make difficult decisions concerning allocation of funds among important Tribal programs. However, we are also aware that some Tribes may face unexpected and uniquely adverse conditions that make them temporarily unable to provide the non-Federal share in a particular program year. To address these limited circumstances, we have incorporated a waiver provision at § 309.130, which allows a Tribe in this situation to request a temporary waiver of its non-Federal share, based on requirements described in paragraph (e), as discussed earlier in this preamble.

6. *Comment:* One Tribal commenter stated that the 90 percent Federal share rate is fair and adequate. This same commenter suggested that the Tribal non-Federal share requirement be fulfilled through in-kind contributions. Three other Tribal commenters

suggested the non-Federal share be in cash or in-kind.

Response: The regulation permits Tribes to satisfy their non-Federal share requirements with whatever resources may be available; *e.g.*, cash, non-cash resources provided by the Tribe, or in-kind third-party contributions, as long as the requirements of 45 CFR 74.23 and OMB Circular A–87 are satisfied. Regardless of how a Tribe chooses to satisfy the non-Federal share of program expenditures, the Federal share remains limited to the applicable rates provided in § 309.130(c), absent a waiver.

7. *Comment:* One Tribal commenter stated the assumption that certain collections a Tribal IV–D program makes will lose their identity and be able to be counted as matching. Where a Tribe has both a TANF and IV–D program, collected funds could be allowed for use as matching dollars for its IV–D program.

Response: If a Tribe has a TANF program that requires an assignment of support rights as a condition of receipt of Tribal TANF, and assigned support collections are retained by the Tribe, the TANF regulation at 45 CFR 286.155(b) applies. Section 286.155(b)(2) requires that retained collections under TANF assignments to the Tribe must be used "to further the Tribe's TANF program." This disqualifies such collections from also being used as the Tribe's IV–D non-Federal share.

8. *Comment:* One commenter asked what criteria are used to determine whether a Tribe has sufficient resources to provide the required non-Federal match. How will a Tribe's revenue from gaming be considered?

Response: We have substantially revised the non-Federal waiver provisions at § 309.130 to clarify that waivers of the non-Federal share will be limited to certain temporary circumstances. In the NPRM and the interim final regulation we intended the waiver provisions to apply to atypical situations in a particular program year that make it impossible for a Tribe to cover its share of program expenditures. Such situations were expected to represent difficulties over and above the generally poor economic conditions faced by most Tribes (*e.g.*, high unemployment rate, lack of economic development) which we already have taken into account by providing for Federal funding for up to 90 percent of program expenditures in the first three years of full funding. The final rule governing waiver requests makes more explicit the limited availability of waivers of the non-Federal share and the general agreement and understanding that a Tribe or Tribal organization receiving funds under this part is expected to share in the financial costs of the program.

In addition, the regulation makes clear that the Secretary must make specific findings in order to grant a waiver request. The availability of gaming or other Tribal resources is a legitimate factor that the Secretary may consider under § 309.130 in granting a waiver, but the absence of gaming or similar revenue does not necessarily entitle a Tribe to a waiver. Finally, § 309.130 states that Tribes and Tribal organizations are responsible for the non-Federal share unless notified in writing that the Secretary has approved a request for waiver. There should be no uncertainty as to liability for the non-Federal share; a Tribe or Tribal organization is liable for the non-Federal share unless it has received a written approval of a waiver request.

9. *Comment:* One Tribal commenter suggested that we allow Tribes to request a budget increase by submitting SF 424 and/or SF 424A with an explanation 60 days before the funds are needed. Another three commenters indicated that the provision for Tribes to request a mid-year increase in their approved budgets is a positive feature.

Response: Regulations at § 309.130(f) permit Tribes and Tribal organizations to request budget adjustments by submitting the SF 424 and/or SF 424A forms with an explanation of why an adjustment is necessary. We also revised this subsection to make clear that increases in a Tribal IV–D budget will result in a proportional increase in a Tribe's non-Federal share.

10. *Comment:* One Tribal commenter opposed the application of 45 CFR part 95 to Tribal IV–D programs, saying that such regulation was not appropriate for Tribes. As Tribes begin to operate IV–D programs, the Department will gain knowledge and experience with Tribal system development. Tribes will be able to provide technical assistance to one another on the processes and models that they have developed.

Response: In the proposed regulation, we solicited comment on investments in Tribal IV–D automation and specifically asked for consideration of 45 CFR part 95 as a model. We are not regulating Tribal IV–D automation at this time beyond allowable expenditures for office automation and planning under § 309.145, but will take the suggestions into consideration as we deliberate in this area for the future. Of course, no final automation requirements will be imposed on Tribal IV–D programs without feedback from all stakeholders.

Section 309.135—What Requirements Apply to Funding, Obligating and Liquidating Federal Title IV–D Grant Funds?

1. *Comment:* We received five positive Tribal comments on the time allotted for obligating and spending IV–D grant funds. One commenter criticized requiring Tribes to revise their financial systems.

Response: There are no provisions in § 309.135 that require Tribes to revise their financial systems. The requirements in § 309.135 are consistent with requirements in other Federal programs. To be as clear as possible about the provisions of this section, however, we have broken up the two long paragraphs in the proposed rule into three shorter paragraphs and added topic headings. In addition, to smooth the transition from start-up grant to initial IV–D program funding grants, we have added new paragraphs (a) and (b) to this section. Paragraph (a) specifies that IV–D program grant awards will be made for 12-month periods that coincide with the Federal fiscal year (October 1 to September 30). Paragraph (b) provides for an initial IV–D program funding period of 6 to 17 months, in order to bring the funding cycle in line with the Federal fiscal year. This is necessary for an efficient grant process and does not affect the Tribal financial system or processes.

2. *Comment:* Two commenters suggested that the rule allow carry-forward of funding to the following fiscal year.

Response: Since quarterly adjustments can be made to the Tribal IV–D grants based on actual expenditures, carry-forward of grant funds is not necessary. However, in the interest of providing Tribes with the maximum flexibility, under our program regulations at § 309.135, we allow Tribes to liquidate obligations no later than the last day of the 12-month period following the funding period for which the funds were awarded.

Proposed Section 309.140—What Are the Financial Reporting Requirements?

We eliminated § 309.140 and moved all financial reporting requirements to § 309.130, which already contained some of the same material and is discussed earlier in this preamble. This places all financial reporting requirements in one place in the regulations and should make the regulations easier to use.

1. *Comment:* Two Tribal commenters were concerned that heavy penalties for failure to meet program deadlines will drive away a lot of Tribes.

Response: Financial Status Reports are required on a quarterly basis and are essential to the on-going Tribal IV–D funding process. They are required under the terms and conditions of annual IV–D grant awards. However, to lessen the burden on Tribes, we have determined that they may report on the SF 269A (Short Form) to provide the minimum necessary information.

Financial Status Reports are due not later than 30 days following the end of each of the first three quarters and no later than 90 days following the end of the fourth quarter of each annual funding period and of the subsequent 12-month liquidation period. Failure to meet these deadlines will result in possible delays in Federal Tribal IV–D funding. If Tribes require technical or other assistance to meet the Financial Status Report deadlines, we encourage them to contact us immediately to avoid any undue delay in Federal IV–D funding.

2. *Comment:* Five Tribal commenters supported less frequent financial reporting for Tribal IV–D agencies that meet requirements.

Response: Because the information provided on the quarterly Financial Status Reports is so essential to the Tribal IV–D funding mechanism, especially adjustment for the prior quarter's actual obligations, less frequent reporting is not feasible. However, we have lessened the reporting burden to the minimum required by the SF 269A (Short Form), rather than the SF 269 (Long Form) that was proposed. If any aspect of financial reporting raises a concern for a Tribe, we encourage that Tribe to contact us immediately.

Section 309.145—What Costs Are Allowable for Tribal IV–D Programs Carried Out Under § 309.65(a) of This Part?

1. *Comment:* We received numerous comments on automation in Tribal IV–D programs. A majority of the comments indicated that automation was necessary and that without the automation, it would be impossible for Tribes to accurately and efficiently process child support collections. Many commenters said that States would not be able to bear the burden of manual processing, and that the regulations should require that Tribal automated systems be compatible with State systems. Other commenters suggested that OCSE develop a skeletal automation system for Tribal IV–D programs, and some stated that it was inappropriate to require a specific level of program automation. One commenter stated that Tribes need to be wary of vendors and should evaluate vendors for reliability.

Response: Under § 309.145, Federal funds are available for costs of operating a Tribal IV–D program carried out under § 309.65(a), provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. While we agree that automated data processing systems are helpful for record keeping, monitoring and high speed processing in child support enforcement cases, such automated systems are not presently required for Tribal IV–D programs and therefore are not necessary to operation of such programs. As stated earlier in this preamble, we have begun consideration with stakeholders of appropriate minimum Tribal systems automation specifications in anticipation of Tribal IV–D programs moving toward high-speed automated data processing by convening a workgroup. Factors such as compatibility, scale, functionality and cost, among others, are issues being considered by this workgroup.

Section 309.145(h) states that among those Tribal IV–D costs that are allowable are costs for "planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution," for the "operation and maintenance of existing Tribal automated data processing computer systems," as well as for "essential office automation capability," and the "[e]stablishment of intergovernmental agreements with States and Tribes for use of an existing automated computer data processing system." We have determined that these categories of costs, in lieu of guidance regarding the need for or scope of Tribal IV–D automation, are reasonable at this time. Since high-speed automated data processing systems are not currently required under these regulations, the costs of designing, developing and implementing such systems are not allowable at this time.

2. *Comment:* Ten Tribal commenters supported the extensive list of allowable costs. One commenter indicated that this gives the Tribes the opportunity to continue to develop the necessary infrastructures. One commenter suggested that in determining whether costs are reasonable, the Secretary must realize that costs vary by geographic area.

Response: Section 309.145 makes Federal IV–D funds available for costs of operating a Tribal IV–D program provided such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Determinations as to whether or not costs are reasonable are governed by OMB Circular A–87 and will take all relevant factors into consideration.

3. *Comment:* One Tribal commenter indicated that it is unclear whether Tribes are eligible for Federal assistance for the costs of bad debts. Another commenter noted that bad debts are unallowable costs for States and asked if they will be allowed for Tribes.

Response: OMB Circular A–87, Attachment B, establishes principles to be applied in establishing the allowability or unallowability of certain items of cost. With regard to "bad debts," it states that "[a]ny losses arising from uncollectible accounts and other claims, and related costs are unallowable unless provided for in Federal program award regulations." We encourage States and Tribes who have questions about allowable IV–D costs to contact us with specific information. These final regulations make no provision for the costs of bad debts as allowable expenditures.

4. *Comment:* Ten Tribal commenters requested clarification on how indirect cost rates would be treated.

Response: Section 309.145 provides that Federal IV–D funds are available "for the costs of operating a Tribal IV–D program under an approved Tribal IV–D application." The use of a negotiated indirect cost rate could result in recovery of costs unrelated to the IV–D program, which is prohibited by Section 451 of the Act that expressly limits the Congressional appropriation for the IV–D program funds. OCSE is allowing Tribes and Tribal organizations the option to use the negotiated indirect cost rate as a mechanism for the recovery of allowable indirect costs. However, use of this method does not guarantee allowability of costs, which must still be attributable to the IV–D program. Because the title IV–D program is an uncapped entitlement program, the funds allocated are closely scrutinized. Actual indirect costs—just like actual direct costs—must be demonstrably attributable to operation of the IV–D program. This means that Tribal grantees must be able to demonstrate that whatever costs are claimed under the IV–D grant are reasonable, necessary, and allocable to the IV–D program.

As stated earlier in the preamble, if a Tribe or Tribal organization's budget request includes indirect costs as part of its request for Federal funds, such requests may be submitted in one of two ways. For applications which include indirect costs, we have determined that an applicant may, at its option, submit either documentation of the dollar

amount of indirect costs allocable to the IV–D program, or submit its current indirect cost rate negotiated with the Department of the Interior and a dollar amount of indirect costs based on that rate. Whichever option an applicant chooses, the applicant's obligation remains the same: Tribal IV–D grantees are responsible for ensuring that actual expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.*, all actual costs claimed under the IV–D grant must be allocable to the IV–D program. The Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether such costs are characterized as "direct" or "indirect" costs.

If a Tribe's application includes a budget request for indirect costs as well as direct costs, such request must either calculate the estimated indirect cost by documenting the dollar amount of indirect costs allocable to the IV–D program, or include the indirect cost rate and the estimated indirect costs using the negotiated indirect cost rate. If the Tribe elects to submit the actual estimated costs attributable to the Tribal IV–D program, the methodology used to arrive at the dollar amount must be included with the application.

Whichever option a Tribe choose, the Tribe's obligation is the same: Tribal IV–D grantees are responsible for ensuring that expenditures of Federal IV–D funds are directly, demonstrably attributable to operation of the IV–D program, *i.e.*, all costs claimed under the IV–D grant must be allocable to the IV–D program. Tribal IV–D grant funds may be used for both direct and indirect costs. However, only such actual costs that are directly, demonstrably attributable to operation of the IV–D program are allowable under the Federal statute.

We remind Tribal grantees that even if the Tribe has an approved indirect cost rate agreement, any indirect costs must be allowable under the program statute, regulations, OMB circulars and Federal appropriations law. Any unallowable costs that are recovered under any agreement are also unallowable and subject to disallowance. The indirect costs must be reasonable, necessary, allocable and in compliance with statute, rules, regulations and OMB circulars.

In addition, under § 309.160 of this final regulation, Tribal IV–D programs will be audited as a major program in accordance with section 215 (c) of OMB Circular A–133. The annual A–133 audits will be used to reconcile the grant award. Adjustments will be made for any differences between estimated and actual costs attributable to the program. The Department may supplement these required audits through reviews or audits conducted by its own staff.

We caution Tribes that there is some risk involved in using the negotiated indirect cost rate agreement. As stated earlier, the Federal statute at 42 U.S.C. 651 limits the use of Federal IV–D funds to the purposes enumerated in that section, whether such costs are characterized as "direct" or "indirect" costs. Tribes will want to be careful with charges to the indirect cost rate so as not to build up a large audit exception or debt. A Tribe that initially chooses to use the negotiated indirect cost rate to get its program operational, may at a later date choose to document program specific indirect costs in subsequent years to avoid a large pay-back to the Federal government, disrupting program services to families in need.

5. *Comment:* One commenter stated that it is not equitable that the salaries of chief executives are allowable costs for Tribes.

Response: OMB Circular A–87, Attachment B, Section 23.b, states, "For Federally-recognized Indian Tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable. "Following this guidance, we have determined that Federal IV–D funds may be used for that portion of the salaries and expenses of a Tribe's chief executive and staff which are directly attributable to managing and operating the Tribal IV–D program.

6. *Comment:* Five Tribal commenters supported the provision that the portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal IV–D case program activities is an allowable cost because Tribal IV–D programs create additional and unprecedented workload increases for Indian tribunals. Six State commenters stated that it is not equitable to fund Tribal court costs but not those of State courts.

Response: We have revised § 309.145(k) to permit Federal IV–D funds to be used for the portion of salaries and expenses of tribunals and staff directly related to required Tribal IV–D program activities. We recognize that, at this initial stage of Tribal IV–D programs, operation of programs and associated program requirements will result in increased workloads for some Indian tribunals. Unlike States, Tribes may not have a tax base or the resources to enable them to fund these activities of the Tribal court. Child support may not be a normal function that the court would perform. Therefore, as provided in OMB Circular A–87, Attachment B, section 23.a.(5), we have determined that the costs associated with such circumstances are allowable.

7. *Comment:* One State commenter suggested that States receive direct Federal funds to cover costs associated with providing technical assistance to Tribes. Another commenter suggested that the expenses for technical assistance should be borne by the funding agency and that the costs should not be part of the funds awarded to a Tribe.

Response: If a State enters into an agreement to provide services which are not part of the operation of its IV–D plan, the State may bill the Tribe or Tribal organization at rates negotiated between the two parties. If the services provided under such purchase of service agreements are reasonable, necessary, and allocable to the Tribal IV–D program, the Tribe could claim the associated costs it has incurred in obtaining the services and would be required to participate in those costs, consistent with the required Tribal IV–D share.

8. *Comment:* Several Tribal commenters said that unless funds awarded to States under section 469B of the Act, which addresses grants to States for access and visitation programs, are opened up to Tribal child support grantees, access and visitation activities should be identified as allowable fundable activities.

Response: Grants under section 469B of the Act are limited by the terms of the statute to States. We do not consider access and visitation activities to be allowable child support activities and therefore, expenditures related to access and visitation are not eligible for IV–D funding under § 309.145.

Section 309.150—What Start-Up Costs Are Allowable for Tribal IV–D Programs Carried Out Under § 309.65(b) of This Part?

1. *Comment:* Seven Tribal commenters said that a ceiling should not be placed on start-up expenses and that in some instances the limit will be inadequate. One commenter suggested that exceptions to this limit be allowed if a Tribe can prove reasonable need.

Response: Based on the experiences of currently operating Tribal IV–D programs, we continue to believe that a Tribe or Tribal organization that receives start-up funding can generally be expected to be ready to operate a full Tribal IV–D program within two years and that the Federal share of start-up

costs should generally not exceed $500,000. However, to accommodate extraordinary and limited circumstances we have provided, at § 309.16(c), an opportunity for Tribes and Tribal organizations to request additional time and/or funding for start-up Tribal IV–D programs.

2. *Comment:* Three Tribal commenters suggested that the $500,000 limit should be exclusive of indirect costs.

Response: We have determined that the $500,000 limit for start-up funding is not exclusive of indirect costs. Section 309.150(d) provides that Federal funds are available for reasonable, necessary, and allocable costs with a direct correlation to the initial development of a Tribal IV–D program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary. As stated earlier in the preamble, if a Tribe or Tribal organization's budget for start-up funding includes a request for indirect costs, a mechanism parallel to that described at § 309.15(a)(3) must be used. Applicants for start-up funding should submit such estimates of indirect costs as either a product of documentation showing the dollar amount of indirect costs specifically allocable to the IV–D program or as a product of their current negotiated indirect cost rate. The methodology used to arrive at these amounts must be included with the application.

3. *Comment:* One commenter asked if "start-up" monies are an "add-on" to the amount a Tribal IV–D program will receive in direct funding or if they are stand-alone funds for the first two years.

Response: Sections 309.16, 309.65(b) and 309.145 address funding available for initial Tribal IV–D program development. Tribes that are operating comprehensive child support enforcement programs under § 309.65(a) have moved beyond the initial start-up stage and are not eligible for start-up funds. The fact that a Tribe may have received start-up funding under § 309.65(b) has no bearing on any subsequent application for funding under § 309.65(a) for the operation of a comprehensive IV–D program. Thus, start-up funds are stand-alone funds.

4. *Comment:* One commenter suggested that the requirement for a match should be waived during the start-up phase.

Response: The final regulation does not require a non-Federal share for Tribal IV–D start-up grants under §§ 309.16 and 309.65(b). These grants are for the initial development of Tribal IV–D programs. Because the purpose of the start-up grants is to assist Tribes in the development of programs that will eventually satisfy the requirements of § 309.65(a), we have determined that requiring a non-Federal share would not be productive.

Subpart E—Accountability and Monitoring

Section 309.155—What Uses of Tribal IV–D Program Funds Are Not Allowable?

1. *Comment:* Three Tribal commenters said that Tribes should be allowed to use IV–D funds to build offices for their programs where none are available. One of those commenters said a certain percentage should be allowed for major renovation.

Response: Grant funds can be used for construction and major renovations only if Congress specifically authorizes such use. The child support statute does not provide for this use.

Although we don't believe it is necessary to include the definition of construction in the regulation we thought it may be useful to provide the definition here. It has been our experience that current grantees sometimes include unallowable construction costs in budget requests. The following definitions should be helpful.

Construction means the construction of new buildings or the modernization of, or completion of shell space in existing buildings (including the installation of fixed equipment, but excluding the cost of land acquisition and off-site improvements). A trailer or modular unit is considered construction or real property when the unit and its installation are designed or planned to be installed permanently at a given location so as to seem fixed to the land as a permanent structure or appurtenance thereto.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

2. *Comment:* One Tribal commenter said that the Tribes need financial supplements for the cost of jailing noncustodial parents.

Response: If jail is the penalty for violations of Tribal law, associated expenses are considered general Tribal expenses for which Federal IV–D funding is not available. Establishment and operation of penalties for violations of Tribal law is solely the responsibility of Tribal governments. These are governmental costs incurred as part of administering a Tribal government and are not appropriately borne by the Federal IV–D funds.

3. *Comment:* One commenter said that is it critical that Tribes are able to cover legal counsel for indigent defendants and guardian ad litem costs with IV–D program funding.

Response: To the extent that parties to IV–D cases incur legal costs, such costs are personal and not reasonable, necessary, or allocable to the IV–D program itself. Similarly, costs associated with *guardian ad litem* are not reasonable, necessary or allocable IV–D program costs, but are costs appropriately absorbed by the Tribal government or the individuals involved.

Subpart F—Statistical and Narrative Reporting Requirements

Section 309.170—What Statistical and Narrative Reporting Requirements Apply to Tribal IV–D Programs?

1. *Comment:* Two Tribal commenters pointed out that statistical and narrative reporting is not required by statute.

Response: Although statistical and narrative reporting is not expressly mandated in section 455(f) of the Act, we have determined that the requirements in § 309.170 are essential to ensuring that Tribes and Tribal organizations operate IV–D programs that meet the mandated program objectives specified in the statute, *i.e.*, establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents. Efforts were made to minimize the reporting requirements to those considered critical for program tracking, evaluation and monitoring.

List of Subjects

45 CFR Part 286

Administrative practice and procedure, Day Care, Employment, Grant programs—social programs, Indian Tribes, Loan programs—social programs, Manpower training programs, Penalties, Public Assistance programs, Reporting and recordkeeping requirements, Vocational education.

45 CFR Part 302

Child Support, grant program—social programs. Reporting and recordkeeping requirements.

45 CFR Part 309

Child support, grant program—social programs, Indians, Native Americans.

45 CFR Part 310

Child support, grant program—social programs, Indians, Native Americans.

(Catalog of Federal Domestic Assistance Programs No: 93.558 TANF Programs—Tribal Family Assistance Grants; 93.563 Child Support Enforcement Program)

Dated: August 29, 2003.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved December 19, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

■ For the reasons discussed in the preamble, title 45 chapters II and III of the Code of Federal Regulations are amended as follows:

PART 286—TRIBAL TANF PROVISIONS

■ 1. The authority citation for part 286 continues to read as follows:

Authority: 42 U.S.C. 612.

■ 2. In § 286.155, paragraph (b)(1) is revised to read as follows:

§ 286.155 May a Tribe condition eligibility for Tribal TANF assistance on assignment of child support to the Tribe?

* * * * *

(b) * * *

(1) Procedures for ensuring that assigned child support collections in excess of the amount of Tribal TANF assistance received by the family will not be retained by the Tribe; and

* * * * *

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

■ 4. The heading and paragraph (a) of § 302.36 are revised to read as follows:

§ 302.36 Provision of services in interstate and intergovernmental IV–D cases.

(a) The State plan shall provide that:

(1) The State will extend the full range of services available under its IV–D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter; and

(2) The State will extend the full range of services available under its IV–D plan to all Tribal IV–D programs, including promptly opening a case where appropriate.

* * * * *

■ 5. A new part 309 is added:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D) PROGRAM

Subpart A—Tribal IV–D Program: General Provisions

Sec.

Subpart B—Tribal IV–D Program Application Procedures

Subpart C—Tribal IV–D Plan Requirements

Subpart D—Tribal IV–D Program Funding

Subpart E—Accountability and Monitoring

Subpart F—Statistical and Narrative Reporting Requirements

Authority: 42 U.S.C. 655(f), 1302.

Subpart A—Tribal IV–D Program: General Provisions

§ 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act. Section 455(f) of the Act authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f) of the Act. They establish requirements for: Tribal IV–D plan and application content, submission, approval, and amendment; program funding; program operation: uses of funds; accountability; reporting; and other program requirements and procedures.

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

IV–D services are the services that are authorized or required for the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents under title IV–D of the Act, this rule, the Tribal IV–D plan and program instructions issued by the Department.

ACF means the Administration for Children and Families, U.S. Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the Office of Child Support Enforcement.

Child support order and *child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The *Department* means the U.S. Department of Health and Human Services.

Income means any periodic form of payment due to an individual regardless of source, except that a Tribe may expressly decide to exclude per capita, trust, or Individual Indian Money (IIM) payments.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and *Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally-recognized Indian Tribal governments as published in the **Federal Register** pursuant to 25 U.S.C. 479a–1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Non-cash support is support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.

Notice of Disapproval refers to the written notification from the Department that the Tribal IV–D application, IV–D plan, or plan amendment fails to meet the requirements for approval under applicable Federal statutes and regulations.

OCSE refers to the Federal Office of Child Support Enforcement.

Program development plan means a document detailing the specific steps a Tribe or Tribal organization will take to come into compliance with the requirements of § 309.65(a), and the timeframe associated with each step.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services or designee.

TANF means the Temporary Assistance for Needy Families program as found at section 401 *et seq.* of the Social Security Act (42 U.S.C. 601 *et seq.*).

Title IV–D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal IV–D agency means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising the Tribal IV–D program under section 455(f) of the Act.

Tribal custom means unwritten law having the force and effect of law within a particular Tribe.

Tribal organization means any legally established organization of Indian Tribes which is sanctioned or chartered as a single governing body representing two or more Indian Tribes.

§ 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV–D program?

The following Tribes or Tribal organizations are eligible to apply to receive Federal funding to operate a Tribal IV–D program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that has been designated by two or more Indian Tribes to operate a Tribal IV–D program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal laws or codes, in the population of the Tribes subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

(c) A Tribe or Tribal organization that can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a program with less than the minimum number of children may be granted a waiver of paragraph (a) or (b) of this section as appropriate.

(1) A Tribe or Tribal organization's request for waiver of paragraph (a) or (b) of this section must include documentation sufficient to demonstrate that meeting the requirement is not necessary. Such documentation must state:

(i) That the Tribe or Tribal organization otherwise complies with the requirements established in subpart C of these regulations;

(ii) That the Tribe or Tribal organization has the administrative capacity to support operation of a child support program under the requirements of this part;

(iii) That the Tribal IV–D program will be cost effective; and

(iv) The number of children under the jurisdiction of the Tribe or Tribal organization.

(2) A Tribe or Tribal organization's request for a waiver may be approved if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it can provide the services required under 45 CFR part 309 in a cost effective manner even though the population subject to Tribal jurisdiction includes fewer than 100 children.

Subpart B—Tribal IV–D Program Application Procedures

§ 309.15 What is a Tribal IV–D program application?

(a) *Initial application.* The initial application for funding under § 309.65(a) may be submitted at any time. The initial application must include:

(1) Standard Form (SF) 424, "Application for Federal Assistance;"

(2) SF 424A, "Budget Information—Non-Construction Programs," including the following information:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method under paragraph (a)(3) of this section to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and either:

(iv) A statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or

(v) A request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate.

(3) If the Tribe or Tribal organization requests funding for indirect costs, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV–D program; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the estimated amount of indirect costs calculated using the negotiated cost rate.

(4) The Tribal IV–D plan. The initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part and that describes the capacity of the Tribe or Tribal organization to operate a IV–D program which meets the objectives of title IV–D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Additional application requirement for Tribal organizations.* The initial and subsequent annual budget submissions of a Tribal organization must document that each participating Tribe authorizes the Tribal organization to operate a Tribal IV–D program on its behalf.

(c) *Annual budget submission.* Following the initial funding period, the Tribe or Tribal organization operating a IV–D program must submit annually Form SF 424A, including all the necessary accompanying information and documentation described in paragraphs (a)(2) and (a)(3) of this section.

(d) *Plan Amendments.* Plan amendments must be submitted in accordance with the requirements of § 309.35(e).

§ 309.16 What rules apply to start-up funding?

(a) The application for start-up funding under § 309.65(b) must include:

(1) Standard Form (SF) 424, "Application for Federal Assistance';

(2) SF 424A, "Budget Information—Non-Construction Programs," including the following information:

(i) A quarter-by-quarter estimate of expenditures for the start-up period;

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and, if so, an election of a method to calculate estimated indirect costs under paragraph (a)(3) of this section; and

(iii) A narrative justification for each cost category on the form;

(3) If the Tribe or Tribal organization requests funding for indirect costs as part of its application for Federal start-up funds, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV–D program including the methodology used to arrive at these amounts; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the amount of estimated indirect costs using that rate.

(iii) The amount of indirect costs must be included within the limit of $500,000 specified in paragraph (c) of this section.

(4) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(5) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization does not currently meet, a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization has the capacity and will have in place a Tribal IV–D program that will meet the requirements outlined in § 309.65(a), within a reasonable, specific period of time, not to exceed two years. The Secretary must approve the program development plan. Disapproval of a program development plan is not subject to administrative appeal.

(b) The process for approval and disapproval of applications for start-up funding under this section is found in §§ 309.35, 309.40, 309.45, and 309.50. A disapproval of an application for start-up funding is not subject to administrative appeal.

(c) Federal funding for start-up costs is limited to $500,000, which must be obligated and liquidated within two years after the first day of the quarter after the start-up application was approved. In extraordinary circumstances, the Secretary will consider a request to extend the period of time during which start-up funding will be available and/or to increase the amount of start-up funding provided. Denial of a request to extend the time during which start-up funding will be available or for an increase in the amount of start-up funding is not subject to administrative appeal.

(1) The Secretary may grant a no-cost extension of time if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that the extension will result in satisfaction of each requirement established in § 309.65(a) by the grantee and completion of the program development plan required under § 309.65(b)(2).

(2) The Secretary may grant an increase in the amount of Federal start-up funding provided beyond the limit specified at paragraph (c) of this section and § 309.150 if—

(i) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that a specific amount of additional funds for a specific purpose or purposes will result in satisfaction of the requirements specified in § 309.65(a) which the Tribe or Tribal organization otherwise will be unable to meet; and

(ii) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it has satisfied every applicable reporting requirement.

(d) If a Tribe or Tribal organization receives start-up funding based on submission and approval of a Tribal IV–D application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan must be submitted with the next annual refunding request.

§ 309.20 Who submits a Tribal IV–D program application and where?

(a) The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV–D program application.

(b) Applications must be submitted to the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a copy to the appropriate regional office.

§ 309.35 What are the procedures for review of a Tribal IV–D program application, plan or plan amendment?

(a) The Secretary will promptly review a Tribal IV–D program application, plan or plan amendment to determine whether it conforms to the requirements of the Act and these regulations. Not later than the 90th day following the date on which the Tribal IV–D application, plan or plan amendment is received by the Secretary, action will be taken unless additional information is needed. If additional information is needed from the Tribe or Tribal organization, the Secretary will promptly notify the Tribe or Tribal organization.

(b) The Secretary will take action on the application, plan or plan amendment within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

(c) Determinations as to whether the Tribal IV–D plan, including plan amendments, originally meets or continues to meet the requirements for approval are based on applicable Federal statutes, regulations and instructions applicable to Tribal IV–D programs. Guidance may be furnished to

assist in the interpretation of the regulations.

(d) After approval of the original Tribal IV–D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

(e) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal IV–D program, a Tribal IV–D plan amendment must be submitted at the earliest reasonable time for approval under this section. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its IV–D plan, consistent with the requirements of applicable statutes and regulations.

(f) The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan or plan amendment is submitted.

§ 309.40 What is the basis for disapproval of a Tribal IV–D program application, plan or plan amendment?

(a) A IV–D application, plan, or plan amendment will be disapproved if:

(1) The Secretary determines that the application, plan, or plan amendment fails to meet or no longer meets one or more of the requirements set forth in this part or any other applicable Federal regulations, statutes and implementing instructions;

(2) The Secretary determines that required Tribal laws, code, regulations, and procedures are not in effect; and/or

(3) The Secretary determines that the application, plan, or plan amendment is not complete, after the Tribe or Tribal organization has had the opportunity to submit the necessary information.

(b)(1) Except as provided in paragraph (b)(2) of this section and § 309.45(h) of this part, a written Notice of Disapproval of the Tribal IV–D program application, plan, or plan amendment, as applicable, will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of paragraph (a) of this section apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

(2) Where the Secretary believes an approved Tribal IV–D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan.

(c) If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination to approve or disapprove, the Secretary will request the necessary information.

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

(a) Except as specified under paragraphs (g) and (h) of this section, a Tribe or Tribal organization may request reconsideration of the disapproval of a Tribal IV–D application, plan or plan amendment by filing a written Request for Reconsideration to the Secretary within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application, plan or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application, plan or plan amendment conforms to the requirements for approval specified in applicable Federal statutes, regulations and office issuances; and

(3) Whether or not the Tribe or Tribal organization requests a meeting or conference call with the Secretary.

(c) After receiving a Request for Reconsideration that includes a request for a conference call or meeting, OCSE will determine whether to hold a conference call or a meeting with the Tribe or Tribal organization to discuss the reasons for disapproval of the application, plan, or plan amendment as well as the Tribe or Tribal organization's response. The Secretary will notify the Tribe or Tribal organization of the date and time of the conference call or meeting.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless both parties agree in writing to another time.

(e) The Secretary will make a written determination affirming, modifying, or reversing disapproval of a Tribal IV–D program application, plan, or plan amendment within 60 days after the conference call or meeting is held, or within 60 days after the request for reconsideration that does not include a request for a meeting. This determination shall be the final decision of the Secretary.

(f) The Secretary's determination that a Tribal IV–D application, new plan or plan amendment is not approvable remains in effect pending the reconsideration under this part.

(g) Disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal.

(h) Where the Secretary believes an approved Tribal IV–D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan. If the Tribe waives its right to reconsideration under this section, the Tribe may request a pre-decision hearing with 60 days of the date of the Notice of Intent to Disapprove the plan. The hearing will utilize the procedures at 45 CFR part 213.

§ 309.50 What are the consequences of disapproval of a Tribal IV–D program application, plan or plan amendment?

(a) If an application or plan submitted pursuant to § 309.15 is disapproved, the Tribe or Tribal organization will receive no funding under § 309.65(a) or this part until a new application or plan is submitted and approved.

(b) If a IV–D plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application, plan or plan amendment has been disapproved may reapply at any time.

Subpart C—Tribal IV–D Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal IV–D plan provisions that are required to demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV–D of the Act and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is responsible for administration of the Tribal IV–D program under the Tribal IV–D plan?

(a) Under the Tribal IV–D plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal IV–D plan. That agency shall be referred to as the Tribal IV–D agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV–D program. Except where otherwise provided in this part, the Tribal IV–D agency need not perform all the functions of the Tribal IV–D program, so long as the Tribe or Tribal organization ensures that all

approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal IV–D program to another Tribe, a State, and/or another agency or entity pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal IV–D plan by such Tribe, State, agency or entity. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV–D plan any agreements, contracts, or Tribal resolutions between the Tribal IV–D agency and a Tribe, State, other agency or entity.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal IV–D plan in order to demonstrate capacity to operate a Tribal IV–D program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV–D program meeting the objectives of title IV–D of the Act and these regulations by submission of a Tribal IV–D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:

(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV–D services and promptly providing IV–D services required by law and regulation;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV–D program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Tribally-determined performance targets for paternity establishment, support order establishment, amount of current support to be collected, amount of past due support to be collected, and any other performance measures a Tribe or Tribal organization may want to submit.

(b) If a Tribe or Tribal organization currently is unable to satisfy any or all of the requirements specified in paragraph (a) of this section:

(1) It may demonstrate capacity to operate a Tribal IV–D program meeting the objectives of title IV–D of the Act and these regulations by submission of an application for start-up funding as required by § 309.16(a) of this part.

(2) The Secretary may cease start-up funding to a Tribe or Tribal organization if that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan.

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the population subject to the jurisdiction of the Tribe in accordance with § 309.10 of this part and subject to § 309.10(c).

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan the administrative and management provisions contained in this section:

(a) A description of the structure of the IV–D agency and the distribution of responsibilities within the agency.

(b) Evidence that all Federal funds and amounts collected by the Tribal IV–D agency are protected against loss. Tribes and Tribal organizations may comply with this paragraph by submitting documentation that establishes that every person who receives, disburses, handles, or has access to or control over funds collected under the Tribal IV–D program is covered by a bond or insurance sufficient to cover all losses.

(c) Procedures under which notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV–D program at least once a year. In addition, a notice must be provided at any time to either the custodial or noncustodial parent upon request.

(d) A certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Pub. L. 98–502, as amended) and OMB Circular A–133.

(e) If the Tribe or Tribal organization intends to charge an application fee or recover costs in excess of the fee, the Tribal IV–D plan must provide that:

(1) The application fee must be uniformly applied by the Tribe or Tribal organization and must be:

(i) A flat amount not to exceed $25.00; or

(ii) An amount based on a fee schedule not to exceed $25.00.

(2) The Tribal IV–D agency may not charge an application fee in an intergovernmental case referred to the Tribal IV–D agency for services under § 309.120.

(3) No application fee may be charged to an individual receiving services under titles IV–A, IV–E foster care maintenance assistance, or XIX (Medicaid) of the Act.

(4) The Tribal IV–D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan safeguarding provisions in accordance with this section:

(a) Procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV–D agency is limited to purposes directly connected with the administration of the Tribal IV–D program, or titles IV–A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

(b) Procedures for safeguards that are applicable to all confidential information handled by the Tribal IV–D agency and that are designed to protect the privacy rights of the parties, including:

(1) Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support;

(2) Prohibitions against the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(3) Prohibitions against the release of information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child; and

(4) Procedures in accordance with any specific safeguarding regulations applicable to Tribal IV–D programs promulgated by the Secretary.

(c) Procedures under which sanctions must be imposed for the unauthorized use or disclosure of information covered by paragraphs (a) and (b) of this section.

§ 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?

A Tribal IV–D plan must provide that:

(a) The Tribal IV–D agency will maintain records necessary for the proper and efficient operation of the program, including records regarding:

(1) Applications for child support services;

(2) Efforts to locate noncustodial parents;

(3) Actions taken to establish paternity and obtain and enforce support;

(4) Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;

(5) IV–D program expenditures;

(6) Any fees charged and collected, if applicable; and

(7) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

(b) The Tribal IV–D agency will comply with the retention and access requirements at 45 CFR 74.53, including the requirement that records be retained for at least three years.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV–D plan Tribal law, code, regulations, and/or other evidence that provides for:

(1) Establishment of paternity for any child up to and including at least 18 years of age;

(2) Establishment and modification of child support obligations;

(3) Enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(4) Location of custodial and noncustodial parents.

(b) In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a) of this section.

§ 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan the provisions governing the location of custodial and noncustodial parents and their assets set forth in this section.

(a) The Tribal IV–D agency must attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) The Tribal IV–D agency must use all sources of information and records reasonably available to the Tribe or Tribal organization to locate custodial or noncustodial parents and their sources of income and assets.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV–D plan the procedures for the establishment of paternity included in this section. The Tribe must include in its Tribal IV–D plan procedures under which the Tribal IV–D agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom in accordance with this section;

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity; and

(3) In a contested paternity case (unless otherwise barred by Tribal law) require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(i) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or

(ii) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) The Tribal IV–D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal IV–D agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal IV–D agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

(d) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

§ 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV–D plan?

(a) A Tribal IV–D plan must: (1) Establish one set of child support guidelines by law or action of the tribunal for setting and modifying child support obligation amounts;

(2) Include a copy of child support guidelines governing the establishment and modification of child support obligations;

(3) Indicate whether non-cash payments will be permitted to satisfy support obligations, and if so;

(i) Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and

(ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and

(iii) Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

(4) Indicate that child support guidelines will be reviewed and revised, if appropriate, at least once every four years;

(5) Provide that there shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established consistent with this section is the correct amount of child support to be awarded; and

(6) Provide for the application of the guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the Tribe or Tribal

organization. Such criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must include in its Tribal IV–D plan copies of Tribal laws providing for income withholding in accordance with this section.

(a) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal IV–D plan, or is being enforced under such plan, so much of his or her income, as defined in § 309.05, must be withheld as is necessary to comply with the order.

(b) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(c) The total amount to be withheld under paragraphs (a) and (b) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), but may be set at a lower amount.

(d) Income withholding must be carried out in compliance with the procedural due process requirements established by the Tribe or Tribal organization.

(e) The Tribal IV–D agency will promptly refund amounts which have been improperly withheld.

(f) The Tribal IV–D agency will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(g) If the employer fails to withhold income in accordance with the provision of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

(h) Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal.

(i) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.

(j) The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(k) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

(l) To initiate income withholding, the Tribal IV–D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.

(m) The Tribal IV–D agency must allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

(n) The Tribal IV–D agency is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must specify in its Tribal IV–D plan procedures for the distribution of child support collections in each Tribal IV–D case, in accordance with this section.

(a) *General Rule:* The Tribal IV–D agency must, in a timely manner:

(1) Apply collections first to satisfy current support obligations, except as provided in paragraph (e) of this section; and

(2) Pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency.

(b) *Current Receipt of Tribal TANF:* If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe and:

(1) There is no request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support on behalf of the family from a State or Tribal IV–D agency under § 9.120 of this part, the Tribal IV–D agency may retain collections, not to exceed the total amount of Tribal TANF paid to the family. Except as provided in paragraph (f) of this section, the Tribal IV–D agency must send any remaining collections, as appropriate, to the requesting State IV–D agency for distribution under section 457 of the Act and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV–D agency for distribution in accordance with this section.

(c) *Former Receipt of Tribal TANF:* If the family formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe and:

(1) There is no request for assistance in collecting support from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support from a State or Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must send all support collected, as appropriate, to the requesting State IV–D agency for distribution under section 457 of the Act or 45 CFR 302.51 or 303.52, or to the requesting Tribal IV–D agency for distribution under this section, except as provided in paragraph (f) of this section.

(d) *Requests for Assistance from State or Tribal IV–D Agency:* If there is no assignment of support rights to the Tribe as a condition of receipt of Tribal TANF and the Tribal IV–D agency has received a request for assistance in collecting support on behalf of the family from a State or another Tribal IV–D agency under § 309.120 of this part, the Tribal IV–D agency must send all support collected to either the State IV–D agency for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52, or to the Tribal IV–D agency for distribution under this section, as appropriate, except as provided in paragraph (f) of this section.

(e) *Federal Income Tax Refund Offset Collections:* Any collections received based on Federal income tax refund offset under section 464 of the Act and distributed by the Tribal IV–D agency must be applied to satisfy child support arrearages.

(f) *Option to Contact Requesting Agency for Appropriate Distribution:* Rather than send collections to a State or another Tribal IV–D agency for distribution as required under § 309.115 (b)(2), (c)(2) and (d), a Tribal IV–D agency may contact the requesting State IV–D agency to determine appropriate distribution under section 457 of the Act, or the other Tribal IV–D agency to determine appropriate distribution under this section, and distribute collections as directed by the other agency.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

A Tribe or Tribal organization must specify in its Tribal IV–D plan:

(a) That the Tribal IV–D agency will extend the full range of services available under its IV–D plan to respond to all requests from, and cooperate with, State and other Tribal IV–D agencies; and

(b) That the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

Subpart D—Tribal IV–D Program Funding

§ 309.125 On what basis is Federal funding of Tribal IV–D programs determined?

Federal funding of Tribal IV–D programs is based on information contained in the Tribal IV–D application. The application must include a proposed budget and a description of the nature and scope of the Tribal IV–D program and must give assurance that the program will be administered in conformity with applicable requirements of title IV–D of the Act, regulations contained in this part, and other official issuances of the Department that specifically state applicability to Tribal IV–D programs.

§ 309.130 How will Tribal IV–D programs be funded and what forms are required?

(a) *General mechanism.* (1) Tribes and Tribal organizations with approved Tribal plans under title IV–D will receive Federal grant funds in an amount equal to the percentage specified in paragraph (c) of this section of the total amount of approved and allowable expenditures under the plan for the administration of the Tribal child support enforcement program.

(2) Tribes and Tribal organizations eligible for grants of less than $1 million per 12-month funding period will receive a single annual award. Tribes and Tribal organizations eligible for grants of $1 million or more per 12-month funding period will receive four equal quarterly awards.

(b) *Financial Form Submittal Requirements.* Tribes and Tribal organizations receiving Federal funding under this part are required to submit the following financial forms, and such other forms as the Secretary may designate, to OCSE:

(1) Standard Form (SF) 424, "Application for Federal Assistance," to be submitted with the initial grant application for funding under § 309.65(a) and (b) (60 days prior to the start of the funding period);

(2) SF 424A, "Budget Information—Non-Construction Programs," to be submitted annually, no later than August 1 (60 days prior to the start of the funding period) in accordance with § 309.15(a)(2) of this part. With each submission, the following information must be included:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and for funding under § 309.65(a) either:

(iv) A statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or

(v) A request for a waiver of the non-Federal share in accordance with paragraph (e) of this section;

(3) SF 269A, "Financial Status Report (Short Form)," to be submitted quarterly within 30 days after the end of each of the first three quarters of the funding period and within 30 days after the end of each of the first three quarters of the liquidation period. The final report for each period is due within 90 days after the end the fourth quarter of both the funding and the liquidation period; and

(4) Form OCSE–34A, "Quarterly Report of Collections" to be submitted within 30 days after the end of the first three quarters and 90 days after the end of the fourth quarter.

(c) *Federal share of program expenditures.* (1) During the period of start-up funding specified in § 309.16, a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of approved and allowable expenditures made during that period. Federal start-up funds are limited to a total of $500,000.

(2) During a 3-year period, beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of the total amount of approved and allowable expenditures made during that period for the administration of the Tribal child support enforcement program.

(3) For all periods following the 3-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(d) *Non-Federal share of program expenditures.* Each Tribe or Tribal organization that operates a child support enforcement program under title IV–D and § 309.65(a), unless the Secretary has granted a waiver pursuant to § 309.130(e), must provide the non-Federal share of funding, equal to:

(1) 10 percent of approved and allowable expenditures during the 3-year period specified in paragraph (c)(2) of this section or;

(2) 20 percent of approved and allowable expenditures during the subsequent periods specified in paragraph (c)(3) of this section.

(3) The non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23.

(e) *Waiver of non-Federal share of program expenditures.* (1) Under certain circumstances, the Secretary may grant a temporary waiver of part or all of the non-Federal share of expenditures.

(i) If a Tribe or Tribal organization anticipates that it will be temporarily unable to contribute part or all of the non-Federal share of funding under paragraph (d) of this section, it must submit a written request that this requirement be temporarily waived. A request for a waiver of part or all of the non-Federal share must be sent to ACF, included with the submission of SF 424A, no later than 60 days prior to the start of the funding period for which the waiver is being requested, except as provided in paragraph (e)(1)(ii) of this section. An untimely or incomplete request will not be considered.

(ii) If, after the start of the funding period, an emergency situation such as a hurricane or flood occurs such that the grantee would need to request a waiver of the non-Federal costs, it may do so. The request for a waiver must be submitted in accordance with the procedures specified in paragraphs (e)(2), (3) and (4) of this section. Any waiver request other than one submitted with the initial application must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

(2) A request for a waiver of part or all of the non-Federal share must include the following:

(i) A statement of the amount of the non-Federal share that the Tribe is requesting be waived;

(ii) A narrative statement describing the circumstances and justification for the waiver request;

(iii) Portions of the Tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the Tribal IV–D program and that any uncommitted Tribal reserve funds are insufficient to meet the non-Federal funding requirement;

(iv) Copies of any additional financial documents in support of the request;

(v) A detailed description of the attempts made to secure the necessary funds and in-kind contributions from other sources and the results of those attempts, including copies of all relevant correspondence; and

(vi) Any other documentation or other information that the Secretary may require to make this determination.

(3) The Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it temporarily lacks resources to provide the non-Federal share. In its request for a temporary waiver, the Tribe or Tribal organization must be able to demonstrate that it:

(i) Lacks sufficient resources to provide the required non-Federal share of costs;

(ii) Has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and

(iii) Has provided all required information requested by the Secretary.

(4) All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the Tribe or Tribal organization's circumstances relate to its capacity to provide child support enforcement services. The following statements will be considered insufficient to merit a waiver under this section without documentary evidence satisfactory to the Secretary:

(i) Funds have been committed to other budget items;

(ii) A high rate of unemployment;

(iii) A generally poor economic condition;

(iv) A lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources;

(v) A small or declining tax base; and

(vi) Little or no economic development.

(5)(i) If approved, a temporary waiver submitted under either paragraph (e)(1)(i) or (ii) of this section will expire on the last day of the funding period for which it was approved and is subject to review at any time during the funding period and may be revoked, if changing circumstances warrant.

(ii) Unless the Tribe receives a written approval of its waiver request, the funding requirements stated in paragraph (d) of this section remain in effect.

(iii) If the request for a waiver is denied, the denial is not subject to administrative appeal.

(f) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV–D budget estimate results from a change in the Tribal IV–D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e) of this part, a revised SF 424 and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f) of this part. The Secretary must approve the plan amendment before approving any additional funding.

(3) Any approved increase in the Tribal IV–D budget will necessarily result in a proportional increase in the non-Federal share, unless a waiver of the non-Federal share has been granted.

(g) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System on a letter of credit system for payment of advances of Federal funds.

(h) *Grant administration requirements.* The provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to Tribes and Tribal organizations under this part.

§ 309.135 What requirements apply to funding, obligating and liquidating Federal title IV–D grant funds?

(a) *Funding period.* (1) *Ongoing funding.* Federal title IV–D grant funds will be awarded to Tribes and Tribal organizations for use during a 12-month period equivalent to the Federal fiscal year of October 1 through September 30.

(2) *Initial grant.* A Tribe or Tribal organization may request that its initial IV–D grant be awarded for a funding period of less than one year (but at least six months) or more than one year (but not to exceed 17 months) to enable its program funding cycle to coincide with the funding period specified in paragraph (a)(1) of this section.

(b) *Obligation period.* A Tribe or Tribal organization must obligate its Federal title IV–D grant funds no later than the last day of the funding period for which they were awarded. Any of these funds remaining unobligated after that date must be returned to the Department.

(c) *Liquidation period.* A Tribe or Tribal organization must liquidate the Federal title IV–D grant funds obligated during the obligation period specified in paragraph (b) of this section no later than the last day of the 12-month period immediately following the obligation period. Any of these funds remaining unliquidated after that date must be returned to the Department.

(d) *Funding reductions.* As required under § 309.130(b)(3), a Tribe or Tribal organization will report quarterly on Form SF 269A the amount of Federal title IV–D grant funds that have been obligated and liquidated and the amounts that remain unobligated and unliquidated at the end of each fiscal quarter during the obligation and liquidation periods. The Department

will reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unobligated on the report following the last day of the obligation period. The Department will further reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unliquidated on the report following the last day of the liquidation period.

(e) *Extension requests.* A Tribe or Tribal organization may submit a written request for an extension of the deadline for liquidating Federal title IV–D grant funds. Such a request must be sent to ACF, to the attention of the Federal grants officer named on the most recent grant award. The request must be submitted as soon as it is clear that such an extension will be needed; any request received after the end of the liquidation period will not be considered. The request must include a detailed explanation of the extenuating circumstances or other reasons for the request and must state the date by which the Tribe anticipates all obligated funds will be liquidated. Unless the Tribe receives a written approval of its request, the deadline stated in paragraph (c) of this section remains in effect.

§ 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

Federal funds are available for costs of operating a Tribal IV–D program under an approved Tribal IV–D application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs include:

(a) Administration of the Tribal IV–D program, including but not limited to the following:

(1) Establishment and administration of the Tribal IV–D plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR part 74. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal IV–D program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems.

(b) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal law codes, and/or custom in accordance with § 309.100 of this part, as outlined in the approved Tribal IV–D plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence, including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Actions taken by a tribunal to establish paternity pursuant to procedures established by Tribal law, and/or codes or custom in accordance with § 309.100 of this part;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal IV–D agency or to a State to establish paternity when appropriate.

(c) Establishment, modification, and enforcement of support obligations, including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable non-cash support under Tribal IV–D guidelines, if appropriate);

(3) Enforcement of a support obligation, including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support cases receiving services under the IV–D plan.

(d) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral or transfer of cases to another Tribal IV–D agency or to a State IV–D program when appropriate; and

(3) Services provided for another Tribal IV–D program or for a State IV–D program.

(e) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes.

(f) Activities related to requests to State IV–D programs for enforcement services for the Federal Income Tax Refund Offset.

(g) Establishing and maintaining case records.

(h) Automated data processing computer systems for:

(1) Planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution addressing the program requirements defined in a Tribal plan;

(2) Operation and maintenance of existing Tribal automated data processing computer systems;

(3) Procurement, installation, operation and maintenance of essential office automation capability;

(4) Establishment of intergovernmental agreements with States and Tribes for use of an existing automated data processing computer system necessary to support Tribal IV–D program operations; and

(5) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.

(i) Staffing and equipment that are directly related to operating a Tribal IV–D program.

(j) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal IV–D program.

(k) The portion of salaries and expenses of tribunals and staff that is directly related to required Tribal IV–D program activities.

(l) Service of process.

(m) Training on a short-term basis that is directly related to operating a Tribal IV–D program.

(n) Costs associated with obtaining technical assistance that are directly related to operating a IV–D program, from non-Federal third-party sources, including other Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities.

(o) Any other costs that are determined to be reasonable, necessary, and allocable to the Tribal IV–D

program in accordance with the cost principles in OMB Circular A–87. The total amount that may be claimed under the Tribal IV–D grant are allowable direct costs, plus the allocable portion of allowable indirect costs, minus any applicable credits.

(1) All claimed costs must be adequately documented; and

(2) A cost is allocable if the goods or services involved are assignable to the grant according to the relative benefit received. Any cost that is allocable to one Federal award may not be charged to other Federal awards to overcome funding deficiencies, or for any other reason.

§ 309.150 What start-up costs are allowable for Tribal IV–D programs carried out under § 309.65(b) of this part?

Federal funds are available for costs of developing a Tribal IV–D program, provided that such costs are reasonable, necessary, and allocable to the program. Federal funding for Tribal IV–D program development under § 309.65(b) may not exceed a total of $500,000, unless additional funding is provided pursuant to § 309.16(c). Allowable start-up costs and activities include:

(a) Planning for the initial development and implementation of a Tribal IV–D program;

(b) Developing Tribal IV–D laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal IV–D program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct correlation to the initial development of a Tribal IV–D program, consistent with the cost principles in OMB Circular A–87, and approved by the Secretary.

§ 309.155 What uses of Tribal IV–D program funds are not allowable?

Federal IV–D funds may not be used for:

(a) Activities related to administering other programs, including those under the Social Security Act;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a State;

(d) Expenditures for jailing of parents in Tribal IV–D cases;

(e) The cost of legal counsel for indigent defendants in Tribal IV–D program actions;

(f) The cost of guardians ad litem in Tribal IV–D cases; and

(g) All other costs that are not reasonable, necessary, and allocable to Tribal IV–D programs, under the costs principles in OMB Circular A–87.

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal IV–D program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" and 45 CFR part 74. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV–D program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal IV–D program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable.

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal IV–D programs?

(a) Tribes and Tribal organizations operating a Tribal IV–D program must submit to OCSE the *Child Support Enforcement Program: Quarterly Report of Collections* (Form OCSE–34A). The reports for each of the first three quarters of the funding period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each funding period.

(b) Tribes and Tribal organizations must submit the following information and statistics for Tribal IV–D program activity and caseload for each annual funding period:

(1) Total number of cases and, of the total number of cases, the number that are State or Tribal TANF cases and the number that are non-TANF cases;

(2) Total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged;

(3) Total number of cases and the total number of cases with a support order;

(4) Total amount of current support due and collected;

(5) Total amount of past-due support owed and total collected;

(6) A narrative report on activities, accomplishments, and progress of the program, including success in reaching the performance targets established by the Tribe or Tribal organization;

(7) Total costs claimed;

(8) Total amount of fees and costs recovered; and

(9) Total amount of laboratory paternity establishment costs.

(c) A Tribe or Tribal organization must submit Tribal IV–D program statistical and narrative reports required by paragraph (b) of this section no later than 90 days after the end of each funding period.

PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

■ 6. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f), 1302.

■ 7. Amend § 310.1 by adding a new paragraph (c) to read as follows:

§ 310.1 What does this part cover?

* * * * *

(c) The regulations in this part apply only to grants for periods prior to October 1, 2004.

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March 30, 2004

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 390, and 391

Safety Performance History of New Drivers and Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA–97–2277]

RIN 2126–AA17

Safety Performance History of New Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration amends the Federal Motor Carrier Safety Regulations (FMCSRs) to specify: The minimum driver safety performance history data that new or prospective employers are required to seek for applicants under consideration for employment as a commercial motor vehicle (CMV) driver; where, and from whom, that information must be sought; and that previous employers must provide the minimum driver safety performance history information. This action will enable prospective motor carrier employers to make more sound hiring decisions of drivers to improve CMV safety on our nation's highways.

EFFECTIVE DATE: April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. David Goettee, (202) 366–4097, Office of Policy, Plans and Regulation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Outline

Background

Current § 391.23 of Title 49 of the Code of Federal Regulations (CFR), "Investigations and Inquiries," sets forth each motor carrier's responsibilities to inquire into the driving record and investigate the employment history of each prospective new driver. The investigations are to obtain the driver's employment history from the driver's previous employers [1] during the preceding three years. The inquiries are to obtain the driver's driving records from each State in which the driver held a motor vehicle operator's license or permit during the preceding three years.

These investigations and inquiries must be completed within 30 days of hiring the new employee, or the employer must have documentation of a good faith effort to complete them. Currently, there is no specification in the FMCSRs for what minimum information must be investigated, nor is there a requirement for previous employers to provide that information to prospective motor carrier employers when requested. Consequently, many former employers decline to respond to employment investigations, while others—for fear of litigation—merely verify that the driver worked for the carrier and provide the driver's dates of employment.

The Hazardous Materials Transportation Authorization Act of 1994 was signed into law on August 26, 1994 (Pub. L. 103–311, 108 Stat. 1677) (HazMat Act), partly codified at 49 U.S.C. 5101 through 5127. Section 114 of the HazMat Act directed the Secretary of Transportation (Secretary) to amend § 391.23 to specify the minimum safety information to be investigated from previous employers as part of performing the required safety background investigations on driver applicants. Section 114 of the HazMat Act requires a motor carrier at minimum to investigate a driver's accident record and alcohol and controlled substances history from all employers the driver worked for within the previous three years. All previous employers are required to respond to the investigating employer within thirty days of receiving the investigation request.

The agency published a Notice of Proposed Rulemaking (NPRM) for implementing driver safety performance history regulations in the **Federal Register** on March 14, 1996 (61 FR 10548) and a Supplemental Notice of Proposed Rulemaking (SNPRM) on July, 17, 2003 (68 FR 42339).

Summary of the NPRM

In response to the requirement at section 114 of the HazMat Act of 1994, the agency (then the Federal Highway Administration (FHWA), FMCSA's predecessor agency) issued an NPRM on March 14, 1996. It proposed changes to 49 CFR part 391 (Qualification of Drivers), with proposed conforming amendments to parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties), and 390 (Federal Motor Carrier Safety Regulations; General). The agency proposed under § 391.23 that motor carriers investigate the following minimum safety information for the previous 3-year period from all employers who employed the driver during that time: (1) Hours-of-service violations that resulted in an out-of service order; (2) accidents as defined under § 390.5; (3) failure to undertake or complete a rehabilitation program recommended by a substances abuse professional (SAP) under § 382.605; and (4) any "misuse" of alcohol or use of a controlled substance by the driver after he/she had completed a § 382.605 SAP referral.

The existing § 391.23(b) requirement to make an inquiry for a driver's driving record(s) from the State(s) was retained. In addition, to harmonize the proposed § 391.23(e) with then current alcohol and controlled substances regulations under § 382.413, the agency proposed the conforming amendment that the motor carrier must obtain the driver's written authorization to investigate the required alcohol and controlled substances information. Current and former employers will be required to respond to an investigating employer within 30 days of receiving an investigation request. The investigating motor carrier would have to afford the driver a reasonable opportunity to review and comment on any information obtained during the employment investigation, and would have to inform the driver of his/her right to review the investigation information received at the time of application for employment. Conforming changes were also proposed to §§ 383.35(f) and 391.21(d) to reinforce the driver notification requirement.

Further, the agency proposed under § 390.15 to change the required retention period for the accident register maintained by motor carriers from one year to three years, and to begin requiring motor carriers to provide information from the accident register in response to all prospective employer investigations pursuant to § 391.23. These provisions would facilitate the required investigation of accident information by prospective employers by expanding a source of accident data that was already being collected and maintained by motor carriers for other purposes.

When the NPRM was published in 1996, FMCSA's alcohol and controlled

[1] As noted below, FMCSA's definition for the term "previous employer" includes a current employer of the driver applicant.

substances regulations (codified at 49 CFR part 382) required employers to investigate: (1) Alcohol tests with a result of 0.04 or greater alcohol concentration, (2) verified positive controlled substances test results, and (3) refusals to be tested. Section 382.413(a)(2) then allowed a previous employer to pass along alcohol and controlled substances test information received from other previous employers (as long as the information covered actions occurring within the previous two-year period). Under then § 382.413(b), if an employer found that it was not feasible to obtain the alcohol and controlled substances information prior to the first time a driver performed a safety-sensitive function for the employer, that employer could only continue to use the driver in a safety sensitive function for up to 14 calendar days. After that time period, the employer could not use the driver in a safety-sensitive function unless the requisite information was obtained, or the employer documented having made a good faith effort to obtain it.

In its 1996 NPRM, the agency also proposed numerous conforming amendments to expand the type of alcohol and controlled substances information that should be sought under § 382.413(a). Employers would be required to investigate whether, in the past 3 years, a driver had: (1) Violated the prohibitions in subpart B of part 382 or the alcohol or controlled substances rules of another DOT agency, and (2) failed to undertake or complete a SAP's rehabilitation referral pursuant to § 382.605 or pursuant to the alcohol or controlled substances regulations of another DOT agency.

Beyond incorporating the HazMat Act requirements into part 382, the violations enumerated in § 382.413 would also have been included in the alcohol and controlled substances regulations of "all DOT agencies." The FHWA believed that some drivers might apply for positions that require driving a CMV after having violated the alcohol or drug use prohibitions of another DOT agency. Therefore, the agency included a requirement for an employer to investigate information from all past employers for which a driver had worked in a position covered by the alcohol and/or drug prohibitions and testing requirements of another DOT agency. That could ensure that persons applying for positions that involved operating a CMV would have all of their relevant records of violations investigated. It would also have ensured that a SAP evaluated persons who test positive, and that violators completed a recommended rehabilitation program before returning to perform safety-sensitive functions.

The proposed revision to § 382.413(a)(2) making it a requirement to pass along alcohol and controlled substances information received from other previous employers, when responding to a prospective employer's investigation required by then § 382.413(a)(1), was previously incorporated into the FMCSRs by a technical amendment published in the **Federal Register** on March 8, 1996 (61 FR 9546). However, because it was later determined that change to § 382.413(a)(2) constituted a substantive change, which should have been subject to public notice and comment before becoming a final rule, the agency included it in the March 14, 1996 NPRM. It was also subsequently included in the notice and comment that led to revision of part 40 in 2000.

In a related conforming amendment proposed to then § 382.405, disclosure of the information pursuant to then § 382.413(a) would have required the driver's written authorization, and responding employers would have been required to reply within 30 days of receiving the investigation request. Under § 382.413(b), the agency proposed extending the time period a new employer would be allowed to use a driver in a safety-sensitive function without having received the requisite alcohol and controlled substances information from 14 days to 30 days. After 30 days, the employer would have been prohibited from continuing to use the driver to perform safety sensitive functions without having received, or documented a good faith effort to obtain, the driver's alcohol and controlled substances history.

Summary of the SNPRM

Comments received on the NPRM were summarized in the SNPRM. One significant issue was concern on the part of motor carriers that they would be subjected to considerable costs through litigation if they furnished background information and it was used to deny employment to drivers. In section 4014 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107, 409, (June 9, 1998)), Congress created a limitation on liability to protect motor carriers, their agents and insurers from being found liable because they supplied and used driver safety performance history records in the hiring decision process, but also established restrictions intended to protect the rights of drivers and their privacy from misuse of such investigative information.

Another significant concern was that the proposal would impose significant new recordkeeping and reporting burdens on previous motor carriers, especially small entities. Commenters, including the Small Business Administration (SBA), requested that the agency include considerably more discussion of possible burdens to foster more informed comments from the public.

FMCSA responded to the requirements of section 4014 of TEA–21, now codified at 49 U.S.C. 508, and the requests to provide more discussion of the possible burdens on previous employers. The agency published an SNPRM on July 17, 2003 (68 FR 42339). The FMCSA revised the proposals through the SNPRM to include the new employer liability limitation and driver protections mandated by section 4014 of TEA–21. It also refined the safety performance history data list of items prospective employers must request for new applicants in response to comments to the NPRM, and related changes to agency alcohol and controlled substances regulations made by rulemakings since the 1996 NPRM. In addition, an enhanced regulatory flexibility analysis, Paperwork Reduction Act analysis, and a detailed regulatory evaluation required by the new designation as a significant rulemaking, were added addressing comments to the docket from the SBA and others.

The SNPRM specified minimum safety performance history data that a motor carrier must investigate from previous employers under the proposed § 391.23(d) and (e). It differed from the NPRM by: (1) Refining the list of what information is to be investigated from previous employers, (2) establishing employer liability limitation for providing and using the driver safety performance history information, (3) clarifying drivers' rights to review, correct, or rebut information provided, (4) providing enhanced Regulatory Flexibility Act and Paperwork Reduction Act analyses, (5) providing a detailed Regulatory Evaluation, and (6) dropping conforming amendments to part 382 because they were previously addressed under separate rulemakings. The SNPRM provided 45 days for public comment, which closed on September 2, 2003.

Discussion of Comments to the SNPRM

As of October 1, 2003, the FMCSA had received 38 written comments on the SNPRM. Commenters include motor carriers, corporations, associations, individuals, an insurance company, a

union, and a public interest organization.

General Support and Opposition

Fifteen commenters including motor carriers, associations, public interest groups, and a union generally support the SNPRM and state that the proposed rule is a long overdue step in the right direction.

Many of those same commenters, and others, criticize various proposals in the SNPRM. For example, American Trucking Associations, Inc. (ATA) writes—

> Generally, there is consensus [among their membership] that the proposal to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require previous employers to respond to employment and safety history inquiries will be beneficial and will enhance the ability of motor carriers to obtain specific, objective information on important aspects of prior safety performance of driver applicants beyond what is now generally furnished. * * * Despite our general support, the intended safety gains will not be realized unless several fundamental changes are made in the proposed rule.

The opposition to the proposals set forth in the SNPRM generally center around the process for obtaining driver safety performance history information, the limited liability of employers, the burden placed on motor carriers to provide and obtain the employee information, and FMCSA's cost/benefit analysis. For example, Con-Way Transportation Services (Con-Way) comments that the rule would "delay the hiring of drivers, increase paperwork and [administrative burdens] with little or no benefit" and "[t]he cost assumptions made by the FMCSA are insufficient." In addition, one individual writes that the burden should not be on the motor carriers to enforce alcohol and controlled substances rules, but rather on the State to suspend a driver's license.

Owner Operator Independent Drivers Association, Inc. (OOIDA) also states that "The requirements for motor carriers to investigate the safety background of truck drivers as part of the hiring process has always been a good idea in theory but a dubious practice under the FMCSA rules." OOIDA continues, "Beyond a carrier's duty to determine whether a driver is qualified under the rules to drive a truck, the existing rule does not require a carrier to take any particular action or make any particular decisions based on the driver information it receives."

OOIDA also expresses a unique concern to this proposed rule. OOIDA comments that—

> It is important for the FMCSA to create rules that are fair on their face and comport with the legal rights and responsibilities of the parties under the law. But FMCSA should also keep in mind that professional drivers have little or no bargaining power with motor carriers. Carriers set the driver's agenda through every step of the hiring process and during the length of their relationship. Drivers who do not accede to a carrier's demands, no matter what they are, usually face one result, termination. Drivers who try to assert their rights, including the kind of rights proposed in this rule, are told to be quiet if they want to keep their job.

FMCSA Response: The FMCSA appreciates the thoughtful comments and many specific suggestions received from commenters on both the NPRM and SNPRM. As discussed under the following topics, the FMCSA has carefully considered these comments and has incorporated many of the suggestions into the final rule.

Timetable To Obtain Safety Performance History for New Drivers

Several commenters discuss the timetable for prospective employers to obtain safety performance histories for driver applicants outlined in the proposed rule. Those commenting from the perspective of being a prospective hiring motor carrier commonly suggested reducing the allotted time. Those commenting from the perspective of being a previous employer providing driver safety performance history information, commonly suggested increasing the allotted time.

Several commenters are opposed to the overall length of time the proposed rule, in their view, would permit for obtaining, providing, and refuting employee history information. Under the proposed rule, past employers would have 30 days to respond to prospective employers' investigation requests. There are up to two additional days for providing copies of the investigations to a driver wanting to review his or her record, and possibly another 30 days for the rebuttal process. Truckload Carriers Association (TCA) states that "assuming that FMCSA intends for the prospective employer to delay its hiring decision pending the running of the appeal time, it would be possible under the proposed rule for carrier hiring decisions to be forced to be delayed for as long as sixty (60) days."

The length of time, write other commenters, forces motor carriers to hire drivers conditionally. As Con-way writes, "most carriers, would not want to hire someone until the investigation is complete. Hiring a driver and then terminating his employment after receiving information from previous employers is not an acceptable practice." Another general concern with the time allowed to obtain a driver's safety performance history is that such a delay in the hiring decision process will compel drivers to look for jobs outside the industry.

Con-Way recommends an alternative timetable. Con-Way suggests a 5/5/2/5 business day structure where: (1) The prospective employer has five business days to request the driver safety performance history investigation data, (2) the previous employer has five business days to respond to the request for information, (3) the applicant must send corrections to the previous employer within two business days, and (4) the previous employer must respond to the request for corrections within five business days.

FMCSA Response: Because this is a rather complex process with numerous possibilities, each component of the time line is discussed below in detail as a separate topic. FMCSA has carefully considered these comments and has incorporated many of the suggestions into the final rule, while balancing the need for large truck and bus safety on our nation's highways.

30-Day Investigation Period (§ 390.15 and § 391.23 (g))

Seven commenters answered from the perspective of a hiring motor carrier and recommend reducing the time period allowed for previous employers to respond to requests for new driver safety performance history information. One of those commenters proposes that the response time period be ten days. Most of those seven commenters suggest reducing the time period allowed for the investigation from 30 days to five days.

Commenters cite various reasons for recommending the reduction in response time. For example, the TCA explains from the perspective of the truckload sector, "the trucking industry has been experiencing a driver shortage for years and this shortage is not expected to end any time soon. Because of the shortage, carriers have a critical need to be able to screen prospective drivers in the shortest time possible." Commenters express concern that the length of time would force some drivers to look for employment outside the motor carrier industry. In addition, Consumer Energy remarks, a lesser amount of time "should be ample time to gather information that would already be assembled in order to not delay a potential employer's hiring decision." Finally, commenters express concern that the length of time will force conditional hiring of drivers while the process is completed. As TCA explains,

A major safety drawback of the 30-day time frame proposed is that many carriers will find themselves being forced to hire drivers on a conditional basis instead of waiting as long as thirty days to receive and review the required information beforehand, only to later find out that one or more of the drivers they hired should not have been hired because of the safety risk they pose. Clearly, such an outcome unnecessarily puts the public at risk and could easily be prevented if the 30-days were reduced to five.

The International Brotherhood of Teamsters (IBT) offers no objection to reducing the time period as long as employers can provide accurate information in compliance with the regulations in that time frame.

Two commenters answered from the perspective of a previous employer providing information. One recommends increasing the time period for a previous employer to respond. This commenter suggests increasing the time period to 60 days in order to reduce the burden on small businesses. Another commenter proposes a 15-day hardship extension if the prospective employer agrees.

FMCSA Response: The length of time allowed for previous employers to respond to an investigation is specified in the HazMat Act as within 30 days. Although FMCSA could specify a shorter response time, the agency is cognizant that the majority of motor carriers that will now be required to provide this information for the first time are small businesses. FMCSA believes that the implied 30 days in the existing regulation for provision of this data continues to be the most considerate for the majority of impacted entities. The regulation at § 391.23 (b) and (c) has for many years said "* * * must be made within 30 days of the date the driver's employment begins." The text proposed in the SNPRM for § 391.23(c) was slightly revised to conform to the language set forth in 49 CFR 40.25(d) as "* * * must be completed within 30 days of the date the driver's employment begins."

FMCSA notes that it has always been up to the motor carrier whether to immediately employ an applicant and have that person operate a commercial motor vehicle for that motor carrier during the 30-days allowed for the motor carrier to obtain the required inquiry and investigation information. This final rule still leaves that decision to the motor carrier and its insurer.

Two-Day Response to Driver (§ 391.23(i)(2))

The SNPRM proposed that the prospective employer be required to provide the driver with his or her previous employer-provided records within two days of the driver's written request, or within two days of having received the information if the driver request is presented before the investigation information arrives. Five commenters recommend increasing the time that a prospective employer has to respond to a driver's request for copies of the information received from previous employers. Recommendations were for five, seven, or ten days. Commenters cite the proposed 2-day requirement as an unreasonable burden especially during concentrated hiring periods, stating that the time to retrieve records, especially if records are kept off site, and limited staff resources are reasons to increase the time period. Most commenters mention that an increase in this time period should not unduly disrupt prospective employer hiring operations.

One commenter agrees with FMCSA's proposal of two business days for the prospective employer to provide a copy of the investigative data to the driver.

FMCSA Response: FMCSA asked whether a longer time period should be allowed, and suggested 5, 7 and 10 days. Comments to the docket, especially in regard to small business concerns, appear to generally favor lengthening the time allowed for a prospective motor carrier to provide previous employer information to a driver who requests a copy of that investigation information. Therefore in the final rule FMCSA has increased the proposed 2 days for that function to 5 days. The agency believes this will provide carriers a greater degree of flexibility without detrimentally impacting driver rights.

30-Day Driver Correction and Rebuttal Period (§ 391.23(j)(3))

Almost no commenters directly addressed this issue. Two commenters recommend reducing the time the previous employer has to send the corrected or rebutted information to the prospective employer from 30 days to 20 days. Another recommends 5 days. The commenters suggest this change in order to significantly reduce the time both the applicant and the prospective employer are awaiting a decision on the applicant's employment.

OOIDA is concerned that drivers have no leverage to get previous employers to correct driver safety performance history, and a disgruntled previous employer might deliberately delay responding as long as allowed, thus leaving the driver unemployed for that period of time. Both TCA and National School Transportation Association (NSTA) are concerned about the total time that could elapse before a hiring decision could be made.

FMCSA Response: The few commenters who addressed this question are in favor of shortening the time period allowed for the driver and a previous employer to resolve differences, or include a rebuttal from the driver in the previous employer's information. There was no opposition to shortening the time allowed from any of the commenters to the docket in response to this question in the SNPRM. After reviewing these comments, FMCSA believes a shorter response period is warranted.

Therefore, the final rule is revised to reduce the proposed 30 days for a previous employer to respond to a request for correction to 15 days. This still allows the previous employer the time and opportunity to review the driver's record to determine if the previous employer agrees the correction is warranted.

The final rule further clarifies that if the driver chooses to submit a rebuttal, the previous employer has 5 days to forward the rebuttal to the prospective motor carrier employer and to append a copy of the rebuttal to any other information in the driver's safety performance history record. The agency believes that drivers will have somewhat of a disincentive to submit a rebuttal first, if a correction is possible. This is because a rebuttal presents a conflicting story to a prospective motor carrier employer, whereas a correction represents agreement between the parties involved. Upon receiving a rebuttal, the previous employer must forward a copy of it to the prospective motor carrier employer and append it to the driver's safety performance history record.

There are two scenarios that could occur when the driver applicant receives a copy of the previous employers' safety performance history information. Under the first scenario, the driver could first request a correction. The previous employer could agree to the correction and forward the corrected information to the prospective motor carrier employer within 15 days. However, if the previous employer disagrees with the driver that a correction is warranted, the previous employer could decline to correct and notify the driver within 15 days of its decision not to do so. The driver could then submit a rebuttal, and the previous employer would have five (5) days to forward the rebuttal to the prospective motor carrier employer, and include the rebuttal in the driver's safety performance history record.

Under the second scenario, the driver could simply submit a rebuttal as a first step, with no request for correction of

the data. The previous employer would then have five days to forward a copy of the rebuttal to the prospective motor carrier employer.

Thus, the 30 day time period is reduced to a minimum of 5 days and a maximum of 20 days. FMCSA believes this responds to commenters concerns, while not detrimentally impacting the drivers or employers involved.

Review Time

Under the proposed rule at § 391.23(i)(2), a driver may submit a written request to the prospective employer to review his or her safety performance histories received by that motor carrier. OOIDA suggests that, rather than the driver needing to request his or her previous employer information to review, the prospective employer should automatically give the driver a copy of any background information it receives. OOIDA supports the driver's right to access his or her record, and believes this recommendation will lead to quicker corrections, streamline the investigation process, and eliminate unnecessary burden on the driver to submit a request.

American Truck Dealers Division of the National Automobile Dealers Association (ATD) states that as proposed, employers would have two days to provide an employee access to information upon request, and prior employers would have 30 days to respond to a driver's concerns. They point out that the rule does not appear to set a time limit for the driver's review itself. ATD recommends that we allow drivers 3 days after receipt of requested information to request corrections.

FMCSA Response: In response to OOIDA's point, FMCSA believes it is important to minimize the cost of regulations. However, it is also necessary that a reasonable opportunity be provided drivers to review, correct and rebut previous employer safety performance history information. Thus, any driver must be able to request that prospective motor carrier employers provide information received from previous employers. To minimize the potential for such requests to be frivolous actions taken by some drivers, FMCSA requires this request to be in writing. FMCSA believes that it would be overly burdensome for prospective employers to provide information not requested or frivolously requested by the driver.

FMCSA can not address ATD's recommendation in this final rule on setting a limit on how long a driver has to respond to a previous employer seeking correction or rebuttal, since this is not addressed in the SNPRM. Moreover, the agency believes this is likely to be self-regulating, since it is in the driver's interest to request correction or rebuttal as quickly as possible.

Prospective Employer Responsibilities

3-Year Requirement (§ 390.15(a); § 391.23(d))

Under the proposed rule, motor carriers must contact all the previous DOT regulated employers of the applicant driver from the last three years. Seven commenters address this requirement. Several commenters mention the ineffectiveness and paperwork burden of this requirement. Two commenters state that with the high level of driver turnover involved in their sector of the industry [truckload], requesting information from prior employers in the last three years could involve numerous inquiries. Also, the potential for gaps in employment history poses problems in complying with this requirement. Another commenter mentions the paperwork burden on small businesses and that this requirement forces motor carriers to keep employment records longer than the six months now required for hours-of-service record of duty status logs.

A few commenters discuss more specifically the requirement that three years of employment history must be investigated. One commenter recommends that all DOT modes be consistent in the time period required for the background investigations. For example, the length of background investigations is specified as 2-years in part 40, and 3-years in part 391. Another commenter submits that no requirement in the rules should create longer retention periods than those currently applicable. For example, records relating to the collection process for alcohol and controlled substances testing programs must be retained for two years (§ 382.401(b)(2)), whereas records of negative and cancelled controlled substances test results must be maintained for a minimum of one year (§ 382.401(b)(3)). Finally, commenters suggest that only the immediate former employer needs to be contacted or that a valid commercial driver's license should be sufficient evidence of a prospective employee's driving record.

OOIDA expresses concern that if "FMCSA requires former carriers to turn over all safety employment history in the carrier's possession, then in many instances it will be requiring more than three years of records to be transmitted." OOIDA continues by saying that "FMCSA does not give guidance in the SNPRM as to whether the previous carrier should be required to delete any information older than three years from its own records or from the records it received from other carriers." OOIDA is concerned that older information would be less reliable and less accurate.

AT&T observed that driving is a minor part of at least some of their jobs. They asked whether the inquiries and investigations must be made for every job applicant or only for candidates who are actually being extended a job offer, and when must they be made?

FMCSA Response: The requirement to investigate all former employers of the past 3 years is specified in the HazMat Act. FMCSA therefore has no latitude, and must specify in the final rule that the background investigation cover the prior three years. The problem with possible gaps in employment history based on this process is well known. It includes former employers that have gone out of business, as well as those not listed by the driver applicant when applying for a job. The alcohol and controlled substances regulations at 49 CFR 40.25(c) and 40.333(a)(2) attempt to mitigate such possible gaps in previous employer information by requiring an employer to retain for 3 years any § 40.25(b) specified information that any previous employer furnished and to pass the most recent 2-years of it along to prospective employers performing an investigation of the driver applicant.

The retention period specified for data in the driver qualification file in § 391.51(d) has been 3-years since at least 1971. The data retention period specified for hours-of-service records of duty status logs in § 395.8(k) has been 6-months since 1982. No changes to these retention periods were proposed in the SNPRM, and therefore none are being made in this final rule.

Parts 40 and 382 currently specify making investigations to previous employers for a minimum of 2-years regarding alcohol and controlled substances data. However, the HazMat Act requires all safety performance history investigations, including those for alcohol and controlled substances information, to be made to all employers of the driver for the previous three years, which is what was proposed in the SNPRM. A motor carrier that is in compliance with the new 3-year investigation requirement in § 391.23 will automatically be in compliance with the 2-year background investigation requirements of parts 40 and 382.

The 2-year requirement for data retention found at § 382.401(b)(2) refers to information about the processes used

by the employer to collect the alcohol and controlled substances information, not the actual results that are considered driver safety performance history information. The correct reference for data retention about positive driver test results would be § 382.401(b)(1), and it specifies 5 years as the minimum retention time. The one year requirement for data retention found at § 382.401(b)(3) refers to negative test results and canceled tests.

However, FMCSA believes the thrust of the comments is focused on the background time period that must be investigated. They are correct that § 40.25(b) specifies investigating employers from the previous 2-years. Since the HazMat Act specifies this investigation must be for 3-years, motor carriers will now be required to investigate one additional year of alcohol and controlled substances background driver safety performance history information than entities regulated by other DOT modes.

In order to clarify when the 3-year time period begins, text for the final rule is modified for § 391.23(e) to define that the three years to be investigated and reported on begins from the date of the employment application. This is the point of reference used in parts 40 and 382, and such text already exists in the proposed text at § 391.23(d) for accident data. In regard to OOIDA's concern about more than 3-years of background data being provided by previous employers, FMCSA believes most employers where allowed will choose not to retain or provide data older than the 3-year minimum requirement as a means of reducing their costs.

The requirements in parts 40 and 382 encourage the prospective employer to complete the investigations before allowing the driver to perform safety sensitive functions for that employer. However, just as in part 391, they do not require the employer to complete the investigations until 30 days from the date the driver's employment begins. Thus, an employer would be free to screen and test the driver in any way the employer chooses prior to performing the investigations required by this rulemaking, including hiring the driver. However, after 30 days from beginning employment, the employee may not be used to operate a CMV unless the responses to the investigation requests are received and placed in the appropriate file, or documentation of a good faith effort to obtain such data is placed in that file.

In regard to the question by AT&T, FMCSA is aware there are different screening processes used by different employers covered by the FMCSRs. As pointed out by AT&T, some employers physically see and screen the driver before deciding to perform the background inquiries and investigations required by § 391.23 under this final rulemaking. Some begin the § 391.23 inquiry and investigation process immediately for all records available based on phone applications for each applicant before seeing them.

Companies absolutely may perform substantial screening of potential employees on their own company job criteria that forms the major portion of the job responsibilities. The requirement contained in this final rule merely requires the company to complete the inquiries and investigations required by § 391.23 on all drivers that will operate a CMV within 30 days of that employee being hired. Such drivers have invested considerably in acquiring skills sufficient to qualify to work for companies. A similar pattern applies to a number of employers covered by the FMCSRs, but whose primary business requires the employee to have skills in addition to being a driver, plumber, electrician, etc. All such employees have much more at stake to preserve their professions, and may be less likely to have used alcohol or controlled substances or been involved in numerous accidents. It would be good business sense for such companies to only perform inquiries and investigations required by § 391.23 after they have determined the applicant passes all their other company screening requirements.

Accident Information (§ 391.23(d)(2))

The HazMat Act requires prospective motor carrier employers to investigate accident data for the prior three years, and for previous motor carrier employers to provide all accident data for that driver for the previous three years from the date of the application. As pointed out in the SNPRM, some process is needed to enable a smooth transition from the current regulation's one year retention requirement to the three year retention period required by the HazMat Act.

The SNPRM proposed a phased process whereby beginning on the effective date of the final rule, motor carriers would be required to retain all accident information then retained in their accident registers, plus all new accident information, for three years. This adds a requirement of two additional years of retention to the current one year retention requirement. Thus, the retained accident data will grow from the current one year of retained data to three years over time.

No comments were received on that phased approach to data retention. Therefore, the proposal as presented in the SNPRM is included in the final rule.

TCA states that the proposed § 391.23(d)(2) would require past employers to report and prospective employers to review the specific data related to a driver's accident record, as specified at § 390.15, for the preceding three years, and include it in the driver's investigation history file. TCA believes that, while such accident information may be relevant to FMCSA and clearly should be maintained by carriers, such information is not at all relevant to a hiring decision and should therefore not be required.

OOIDA is concerned about the definition of "accidents." OOIDA states, "It is the experience of OOIDA members that the term "accident" is sometimes used loosely in the trucking industry. * * * This casual use of the word 'accident' leaves drivers' safety histories vulnerable to interpretations that are inaccurate and could unreasonably damage their job prospects." OOIDA suggests referring to the definition of "accident" as defined in § 390.5 to help avoid this problem.

Other commenters express concern about the accident data itself. Current § 390.15(b)(1) lists six items that must appear on the accident register. ATA believes that two items from the accident register, driver's name and date of accident, along with two data elements that are not in the accident register, (1) any traffic citation(s) related to each accident and (2), if available, whether each accident was determined to be "preventable" or "non-preventable.", are necessary to make an informed hiring decision.

In contrast, J.B. Hunt expresses considerable concern about the amount of effort that would be required to deal with driver protests about carrier attribution of "preventability." It says "We deal with requests daily to change our attribution of preventability of accidents on driver's records. The burden to maintain all of the rebuttals and explanations on why every accident should be non-preventable would, in and of itself, be extremely burdensome."

FMCSA Response: The HazMat Act requires previous employers to report 3-years of accident information to prospective employers. The NPRM, SNPRM and this final rule all use the existing definition of accident as contained at 49 CFR 390.5. The only changes proposed in the SNPRM and finalized in this rule to § 390.15 are for accident data retention to allow a phase-in period from the current one year to the required three years of accident data

retention and provision. If employers choose to share information about minor accidents not included in the definition at § 390.5, there is no prohibition on them doing so. However, for purposes of making the minimum requirement clear, the phrase "as defined by § 390.5 of this chapter" is added to § 391.23(d)(2) in the final rule.

Regarding ATA's comments to change the data items/elements recorded in the existing accident register and reported in response to requests for information, FMCSA believes this would represent a substantial change in the existing definition of accident data, and is outside the scope of this rulemaking. Comments to the docket, very explicitly by J.B.Hunt, point out that attribution of "preventable" and "non-preventable" contributes to drivers contesting the carrier's accident information. Thus, FMCSA has decided not to make revision to the definition of accident as part of this final rule.

Standardized Forms and Instructions (§ 391.23(f))

The SNPRM proposed a conforming amendment in § 391.23(f) that the prospective employer provide the previous employer with the driver's written authorization to obtain his or her safety performance history information, often via a release form. Online Employment Verification Services (OEVS) states that the problem of releasing alcohol and controlled substances information is magnified because prospective employers do not know the proper verbiage to include on the driver authorization release. According to OEVS, at least 10% of the requests do not meet the requirements of DOT for driver authorization. In addition, up to 75% are vague or difficult to interpret as to whether they comply, resulting in slower turn around time for the prospective employer to receive the requested information. OEVS suggests that DOT provide standard verbiage for requestors to include in the driver authorization form they use. This would allow 3rd party providers, such as OEVS and previous employers, to process such requests without hesitation, eliminating the time and cost required to scrutinize and analyze whether the correct details are contained within the document, thus increasing the percentage of successful requests and shortening the response times.

Also, commenters suggest that the FMCSA provide outreach and standard instructions along with standardized forms. For example, Petroleum Marketers Association of America (PMAA) "believes that the way FMCSA issued its new hours-of-service regulation is an appropriate model of how to publicize any new regulations on conducting safety background checks. The brochures, pocket cards, *etc.*, explaining the hours-of-service rule were very beneficial to PMAA members."

FMCSA Response: The defining procedures for what must be investigated and what must be reported for alcohol and controlled substances are spelled out in parts 40 and 382. This rule merely adds conforming amendments for that requirement to part 391. The specification of what must be included in the driver's authorization for the previous employer to release the alcohol and controlled substances data is found at § 40.321(b). In order to clarify what authorization information must be provided, a reference to § 40.321(b) is added in this final rule at § 391.23(f). FMCSA notes that entities like OEVS are free to provide their clients with a form meeting the requirements of § 40.321(b).

Record of Compliance

The proposed rule would require employers, both prospective and previous, to maintain certain employee records. Petroleum Transportation & Storage Association (PTSA) urges the FMCSA to drop the 1-year record retention requirement for non-hired drivers. PTSA believes that this provision would make prospective employers a depository of information that is completely unrelated to their responsibility for maintaining and providing employee records under the FMCSRs. In addition, PTSA argues that there is no need for a prospective employer to keep such records, since the very same information is already on file with the driver's previous employer, and that the potential liability involved with the management of non-hire driver information is far too great when weighed against any discernable regulatory benefit that may result. Finally, PTSA stresses the burden for small businesses of maintaining records. Reusable Industrial Packaging Association (RIPA) agrees with PTSA's arguments and also does not believe it serves any purpose to require employers, who decide against hiring a driver applicant, to maintain for a year any information received from previous employers.

Two commenters specifically discuss the documentation requirement at § 391.53(b)(2) for the prospective employer to show that a "good faith" effort was made to contact previous employers. National Ready Mixed Concrete Association (NRMCA) explains that good faith "is a vague term, open to many interpretations." It asks for specific examples of "good faith" efforts to help eliminate any question about being in compliance. The other commenter states that the "current system of "good faith" checks is absolutely abysmal" and that any system of contacting former employers should be administered by a pseudo-governmental agency or contractor.

FMCSA Response: FMCSA proposed the one year retention of background investigation information for all drivers as part of its desire to establish an enhanced capability for enforcement of these requirements. However, we are persuaded that eliminating this requirement would do no harm. If the driver is not hired, it is not relevant to safety concerns whether the prospective employer performed the investigations and inquiries required by § 391.23. Further, if the driver applies and is hired by another motor carrier, that employer is required to have performed the required investigations and inquiries and to have placed the information received in the appropriate file, or documented a good faith effort to have done so. Any additional data that may have been gained regarding previous employers who are failing to provide the required information can be gained via the complaint process, as recommended in §§ 391.23(g)(3) and 391.23(j)(4).

With regard to NRMCA's request for examples of good faith efforts, FMCSA notes that this term has been used in the FMCSRs for a number of years. The agency believes that the most appropriate guidance it can give in the context of this rule is that employers document in the driver investigation history file their efforts to comply with the requirements to obtain the background investigation information. This could also include documentation of having reported previous employers to FMCSA using the procedures at § 386.12 that failed to provide the required safety performance history information.

Further, FMCSA believes the environment for verifying the "good faith" requirement will be substantially changed by this rule. There is no current requirement for previous employers to respond to investigations. Establishment of this requirement by this final rule requires previous employers to furnish the information and keep records of having done so. This will make it possible to corroborate whether a motor carrier has contacted a previous employer. Thus, the substantial change in the reporting and recordkeeping requirements of previous employers will in turn create the ability to verify

whether there was a good faith effort made by prospective motor carriers to obtain this data.

In regard to assigning the responsibility for administering driver safety background checks to a separate entity, the HazMat Act specifically requires the prospective employer, or perhaps their agent, to make the investigations to the previous employers, or their agent.

Previous Employer Responsibilities

Requirement To Respond

Several commenters express concern that the proposed rule does not impose a requirement on the previous employer to respond to the prospective employer's request. Most commenters on this issue state that there is no burden of compliance placed on the previous employer. Coach USA explains that in their experience, "many previous employers fail to respond because they are not required to keep a record as such and do not fear enforcement." In contrast, DAC Services recommends that—

> The record keeping requirements should be consistent between Parts 40.25 and 391.23. If the FMCSA has found part 40.25(g) useful, it might prove useful under the requirements of 391.23. On the other hand, if 40.25(g) has not been beneficial, it should not be required under 391.23 and the 40.25(g) requirement should be revisited, as it requires considerable record keeping efforts on the part of motor carriers.

Although the proposed rule provides previous employers with liability "limitation" regarding their response to investigations, Coach USA points out that it does not allow for any means to enforce non-compliance by previous employers that choose to ignore such requests. Coach USA believes that this rule will be ineffective unless it includes an unequivocal requirement to respond for previous employers and to maintain corresponding records.

Two commenters are specifically concerned that the rule does not place liability with former employers that do not respond to a prospective employer's request for information within 30 days. In addition to issuing the rule, one commenter suggests that FMCSA educate employers, provide standard forms (possibly via the internet), and otherwise eliminate every possible reason for not supplying a valid response.

Five commenters sought clarification of the rule's enforcement mechanism. For example, Consumer Energy states, "The SNPRM suggests taking enforcement action, but does not provide details of the action, when an employer does not provide the required information in the allotted time." Advocates for Highway and Auto Safety (AHAS)

> * * * strongly supports this rulemaking action, but we are concerned that the agency does not plan any targeted oversight actions to ensure that prospective employers are requesting safety performance information on applicant drivers or that current or previous employers are complying with requests for the appropriate information.

AHAS states that the agency needs to emphasize, with specific action items, how it intends to publicize and educate the motor carrier community about its new responsibilities under this proposed regulation, exactly what oversight actions it will carry out to ensure very high rates of compliance, and specifically what enforcement actions will be brought against non-complying motor carriers.

Dart Transit Company (Dart) comments that the enforcement procedures, if a carrier does not respond, are unclear. Dart asks, "What penalty or penalties will be imposed and how will enforcement be achieved and by whom?" OOIDA agrees that "if FMCSA expects carriers to comply with these rules, it needs to consider adopting some kind of enforcement mechanism, including monetary penalties." In addition, Dart believes some direction should be adopted in terms of the inquiring carrier. For example, Dart asks, "What is an inquiring carrier obligated to do if a response is not received?" OOIDA also remarks that whereas a driver who does not authorize release of his or her alcohol and controlled substances data cannot be hired, there are no penalties or consequences for carriers that fail to abide by this proposed rule. Finally, these commenters identify enforcement as an important issue and obstacle to the success of this rule.

Also, two commenters state that there is no requirement for previous employers to document or even maintain a log of to whom information about a previous employee was furnished. The commenters believe that, without this requirement, many previous employers may fail to respond because they are not required to keep a record as such and do not fear enforcement.

However, one commenter, concerned with the additional administrative burden, disagrees with the other commenters. It prefers that the FMCSA allow the industry some flexibility in responding to inquiries about the performance of past employees without mandating completion and retention of additional forms, especially if the driver retires, leaves the industry, or otherwise does not seek further employment.

FMCSA Response: The conforming requirement in this rule for providing the required information to the prospective motor carrier employer and keeping a record of having done so, especially for alcohol and controlled substances, is based on the provisions found at § 40.25(g). That provision states that a previous employer must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided. Thus, this previous employer recordkeeping provision is already contained in the proposed driver safety performance history requirements. Nonetheless, as clarification to avoid any possible confusion in the future, the language contained at § 40.25(g) is also added to the conforming language in the final rule at § 391.23(g)(1).

As with all violations of our regulations, FMCSA may cite and take enforcement action against carriers that do not comply with our regulatory requirements. Carriers who fail to maintain the records required by this rule may be cited and are subject to the fines and penalties prescribed in Appendix B paragraph (a)(1) to Part 386, Penalty Schedule; Violations and Maximum Monetary Penalties; Recordkeeping, which says "a person or entity that fails to prepare or maintain a record required by parts 385 and 390–399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of $550 for each day the violation continues, up to $5,500."

FMCSA is aware a number of previous employers covered by requirements in parts 40 and 382 are currently failing to provide the information specified at § 40.25(b) and required by § 40.25(h). Carriers that fail to provide the information required by §§ 391.23(g)(1) and 391.23(j) are subject to the fines and penalties prescribed in Appendix B paragraph (a)(3) to Part 386, Penalty Schedule; Violations and Maximum Monetary Penalties; Non-recordkeeping violations, which says "a person or entity who violates parts 385 or 390–399 * * * is subject to a civil penalty not to exceed $11,000 for each violation."

FMCSA has a formal process in place for drivers and carriers that wish to file a complaint against a person or entity that fails to comply with the FMCSRs. FMCSA intends for drivers and prospective motor carriers to inform the agency using the existing complaint process specified at § 386.12, entitled

"Complaint." This includes previous motor carriers that either fail to correct their records or include the driver's rebuttal, or who fail to provide the required information to prospective motor carriers. To make this clear, the FMCSA has added language to the final rule in §§ 391.23(g) and 391.23(j) pointing out that drivers and prospective employers should report information about such failures to comply with these requirements. Complaints about failures to comply will be investigated and carriers failing to comply will be cited, and in addition may be subject to civil penalties for other violations found during a carrier compliance review.

The agency believes inclusion in this rule of the requirement to record and provide the alcohol and controlled substances data, as well as accident data, may additionally create a legal liability for previous employers who fail to provide this data. Previous employers who fail to provide the required driver safety performance history information may ultimately be found liable if the requesting motor carrier hires an unsafe driver without receiving the requested history and the driver is involved in an accident.

Additionally, FMCSA believes the motor carriers who will choose to pay little attention to safety performance history information received and hire drivers with substantial adverse safety performance histories, likely are the same ones already doing this with driving behavior traffic conviction information received on the MVR from the licensing State or such predecessor States. FMCSA is in the process of analyzing a capability to enable SafeStat to better identify motor carriers who are systematically hiring drivers with poor driving records, and target them for a carrier compliance review. This is expected to also help with identifying motor carriers who continue to hire drivers with poor safety performance history. A copy of a current updated report on that analysis is included in the docket as document 85.

To ensure the effectiveness of this rule, FMCSA will undertake a number of activities, including: (1) Preparing guidance materials for enforcement of these new requirements; (2) monitoring the level of complaints received for non-compliance; (3) removing the previously issued interpretation Question and Answer 1 under § 391.23; (4) encouraging use of the FMCSA safety violation and commercial complaint hotline (1–800-DOT-SAFT) and Web site (*www.1–888-dot-saft.com*) for filing complaints; and (5) assembling a team to develop recommendations for continued improvements to the program.

With regard to the commenter concerned about recordkeeping regarding drivers that retire, leave the industry, or otherwise do not seek further employment as a driver after leaving a previous employer, there would be no requirement placed on any employer to report additional information.

Use of Third Party Providers

Two commenters ask FMCSA to add appropriate language to the final rule to specifically allow third-party providers to obtain driver safety performance history information for motor carriers. These commenters believe that third-party providers perform valuable services for motor carriers, especially during the driver-applicant screening and hiring process. The commenters state that, as written, the rule seems to imply that a motor carrier may use a third-party to perform the required investigations. The commenters believe that the rule should explicitly allow third parties to obtain information for prospective employers.

FMCSA Response: The language in the proposed rule does not address how the prospective motor carrier may obtain information from previous employers. FMCSA does not believe it is appropriate for it to specifically endorse commercial companies.

The agency has existing guidance in the form of Question and Answer 2 under §391.23, indicating that a motor carrier may use a third party provider to obtain information to meet the inquiry requirements of § 391.23. Question 2 under § 391.23 says: "May motor carriers use third parties to ask State agencies for copies of the driving record of driver-applicants?" The answer is: "Yes. Driver information services or companies acting as the motor carrier's agent may be used to contact State agencies. However, the motor carrier is responsible for ensuring the information obtained is accurate." There is similar guidance under § 391.25. FMCSA is aware that many motor carriers use third parties to obtain this information for them rather than directly dealing with many different State driver-licensing agencies.

The preamble to the SNPRM pointed out that if such a third-party party is the agent of the motor carrier, it would be covered by the limited liability implemented by this rule. If the third party is not the agent of the motor carrier, then it is not covered by these regulations, but is still operating under the provisions of the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681 *et seq.*) for performing this function.

The provision by Congress of granting limited liability to agents of the motor carriers in carrying out the requirements of the HazMat Act is an opportunity for motor carriers and their agents to take advantage of such services, but it is not a requirement. The discussion about whether previous employers may charge fees for providing the required data, talks in terms of FMCSA encouraging a competitive, open, free, efficient, market economy approach to management of the fee issue.

Driver Information To Be Reported (§ 391.23(d)(1) and (2))

Several commenters urge FMCSA to clarify and to add details on what needs to be included in the information investigated about a driver's safety performance history, and what must be provided. For example, Qwest Communications International, Inc. (Qwest) recommends that additional language be added to § 391.23(d)(1) describing the general information about a driver's employment record that should be investigated. Qwest proposes that the general information further identify employment and job responsibilities.

OOIDA agrees and asks FMCSA to revise the description of employee background information in two ways. First, the rule should limit the investigation to information directly related to a driver's qualifications under Federal or State law. Second, the rule should require that the information reported in safety background investigations be made with sufficient detail so that an accurate safety assessment of the driver can be made. OOIDA is concerned that the broad language of proposed § 391.23(d)(1) could invite the dissemination of a wide range of non-safety information. In that section FMCSA would require that a prospective employer investigate "General information about a driver's employment record." OOIDA believes that this requirement invites any and all information to be transmitted as part of a driver's safety background. OOIDA asks that FMCSA be much more specific, by listing the "facts" that make up the general background history that FMCSA proposes be transmitted, such as date of hire, safety information, and final date of employment.

FMCSA Response: FMCSA agrees that the wording contained in § 391.23(d)(1) of the SNPRM for information the prospective employer is to request of the previous employer is general in nature. What was intended for this category is for the prospective motor carrier to

provide the driver identifying data, such as name, date-of-birth, and social security number for the driver on whom it is requesting safety performance history information, and for the previous employer to provide information about that same driver, such as starting and ending employment dates and job responsibilities. However, the agency is not specifying that information in the regulatory text of this final rule, so that employers have some degree of flexibility in providing such basic information. FMCSA does not believe that this type of information will detrimentally impact drivers. All of the information requested in § 391.23 is in the context of driver safety performance history.

How To Respond Absent Any Data (§ 391.23(g))

Section 391.21(g) requires all previous employers to respond to each request for a driver's record as outlined in the rule. Safe Fleet, Inc. comments that the proposed rule does not require a response unless the previous employer has derogatory information to report; however, the new employer must have a response within 30 days from every previous employer. Safe Fleet believes the previous employers should be required to respond in every case.

FMCSA Response: All previous employing motor carriers must respond to each investigation within 30 days as specified in the HazMat Act. Responses are required even in the absence of data on accidents, or alcohol and controlled substances abuse. Accordingly, FMCSA has made this more explicit in § 391.23(g) of the final rule by adding words clarifying that a response is required even when there is no accident or alcohol or controlled substances data, by stating that no such data is on file.

Designated Contact Persons

Qwest requests that FMCSA include a provision indicating that employers must designate a person to receive requests for information from prospective employers and former employees, and clarify when the proposed time frames for required actions start. Qwest states that it is a large, national company, which routinely receives correspondence that is incorrectly or inadequately addressed, thus delaying delivery to the responsible party by up to several days. Qwest believes that compliance with time frames for required actions in the rule should be based on start times that begin when the designated responsible person within the organization receives the request for action, rather than when the request may be received by the organization.

FMCSA Response: Each employer is free to provide their contact information in any way they desire to facilitate this process, such as on its Website, or perhaps designating an agent.

FMCSA has added requirements in the final rule language at § 391.23(d) for each prospective employer to include information on a point of contact when requesting this investigative background information, and for the previous employer to provide similar contact information on its response for use by a driver who may wish to contact that previous employer.

FMCSA intends for the previous employer's 30-day response period to begin when the prospective motor carrier submits the investigation request to the previous employer or its agent.

Applicability to Current Employer

Three commenters state that the term "previous employer" does not include the current employer. If an individual is currently employed and is seeking a new position, his or her current employer should be required to provide the accident history. FMCSA has clearly stated that previous employers must respond to requests for information under the new regulations. Unaddressed however, is the issue of whether a company currently employing a driver must respond to a request from a company that may be recruiting its driver. Two commenters want the FMCSA to clarify whether a carrier that currently employs a driver must respond to a request for information from a prospective employer. A third commenter recommends that FMCSA require both previous and current employers to respond to new or prospective employer inquiries.

FMCSA Response: The HazMat Act defines previous employer as any employer that employed the driver in the preceding 3 years. From the prospective employer's point of view, a current employer is a previous employer. In accordance with the HazMat Act definition, FMCSA has added a definition for previous employer to § 390.5 in the final rule to clarify that it includes a current employer.

Appending Rebuttal (§ 391.23(j)(3))

Under proposed § 391.23(j)(3), if a driver refutes information from a previous employer, that rebuttal must be appended to, and provided with, the driver safety performance history information to each subsequent prospective employer that requests it. Commenters state that requiring previous employers to maintain rebuttals adds a significant and unnecessary burden to previous employers. For example, Coach USA requests that proposed § 391.23(j)(3) be amended to exclude the last sentence, which requires the previous employer to append the driver's rebuttal to its file information and to provide the complete file in any future requests. Coach USA believes that this specific requirement will place an undue burden on previous employers, and prejudice any response they may give to prospective investigating employers. Coach USA considers the fact that the rule allows for an applicant's rebuttal as sufficient to ensure that previous employers provide accurate information, should they choose to respond.

J.B. Hunt states that it has a concern with

> * * * the provision for requiring motor carriers to maintain and provide to prospective employers the rebuttals of former drivers when the information provided by the motor carrier is correct, complete, and factual. J.B. Hunt terminates many drivers whose only purpose in life after termination is to make anyone associated with the carrier miserable. These drivers would likely submit rebuttals of several hundred pages, just to increase the carrier's costs.

J.B. Hunt further says "It should not be the previous motor carrier's responsibility to provide the rebuttal to prospective employers."

Two commenters suggest that, in order to keep the process manageable and to be consistent with the Fair Credit Reporting Act, the rebuttal should be limited to not more than 100 words.

FMCSA Response: The HazMat Act specifies that the safety performance history data be requested from the previous employer. The TEA–21 limitation on liability requires the driver to have an opportunity to correct the data or rebut it. If the driver determines a rebuttal is needed, it is necessary for that rebuttal to be provided each time, along with the data to which the driver does not agree. Since the data is coming from the previous employer or its agent, it is necessary for the driver rebuttal information to also come from the previous employer or its agent. Without this mechanism in place, future prospective employers would not receive the driver's rebuttal as part of the information furnished.

FMCSA has not specified a limit for the length of the driver rebuttal. The agency believes it is important for drivers to have the opportunity to adequately respond to what they believe is inaccurate information. Further, the agency has no evidence demonstrating

that this would be widely abused by drivers.

Applicants—Driver Rights

Applicants Rights (§ 391.23 (i), (j), (k) and (h))

Under the proposed rule, the prospective employer must inform the driver in writing of his or her review, correction and rebuttal rights in the hiring process. DAC Services recommends that the rule explicitly state that this written notification may be given to the driver subsequent to initiating the hiring application and initial screening processes to obtain driver safety performance history data, other than alcohol and controlled substances. This clarification would allow motor carriers to accept driver applications for employment over the phone or via the Internet without written notification of due process slowing or hindering such methods of quickly obtaining information.

Similarly, PTSA wants clarification of the rule that requires prospective employers to notify driver applicants of their rights regarding previous employers' records before an application is submitted. The rule only specifies that the prospective employer must "inform" the driver of the procedures for the use and collection of safety performance records. PTSA asks, "Does the FMCSA intend that this notification, like the notice of due process rights under 49 CFR 391.23(i), be in writing?'

PTSA also wants guidance on the requirement that the previous employer "take all precautions reasonably necessary to ensure the accuracy of the records." PTSA requests that this language (and similar language contained in §§ 391.23(h) and (k)(2)) be clarified to specify the type of precautions the FMCSA has in mind.

FMCSA Response: FMCSA has added a clarifying statement to the final rule language for § 391.23(i) that says the required notification in writing of driver rights may occur anytime prior to a hiring decision being made, but it must be made in writing to all applicants, including those not hired. The SNPRM pointed out that if a motor carrier is in compliance with § 391.21(b) this could be done as part of the employment application the driver signs.

The intent is to make it clear that provisions of the Fair Credit Reporting Act can apply as part of the job application process. The FCRA allows notification of the driver by telephone (or other electronic communication) that the prospective employer will obtain the inquiry and investigation information required by § 391.23 based on that application communication. FMCSA also notes that if the driver makes the application over the Internet, the required notification in writing about the driver's due process rights to review, correct and rebut could be provided by the prospective employer as part of the application process as well.

The request by PTSA for guidance regarding how previous employers can be in compliance with the requirement to "take all precautions reasonably necessary to ensure the accuracy of the records" cannot be addressed by FMCSA. To qualify for limited liability protection set forth in the HazMat Act, Congress intends for the previous employer to furnish accurate safety performance history information. As part of that limited liability concept, Congress also established the requirement for drivers to be able to review, correct and rebut the information furnished. The test of whether an employer has taken reasonable precautions to ensure accuracy would be addressed within the context of a driver taking a previous employer to court trying to prove the information furnished is false. With this as the test, employers should have sufficient records to substantiate that any information they reported is accurate to the best of their knowledge.

Employee Access and Rebuttal

The proposed rule allows the driver to submit a written rebuttal to the previous employer when agreement cannot be reached on whether information provided to the prospective employer is erroneous. According to commenters, while the SNPRM is clear on the responsibilities of the driver and the previous employer with regard to the rebuttal, the proposal is silent on the prospective employer's responsibility when faced with conflicting information. PTSA requests "that this provision be clarified so that prospective employers fully understand their responsibilities (if in fact there are any) when faced with conflicting information relating to driver safety performance history."

Two commenters disagree with the requirement of allowing a prospective driver an opportunity to refute investigative information, citing a large burden on small businesses and slowing the hiring process with no significant benefit. Several commenters think that the driver should only be allowed to access the information if employment is denied. For example, Qwest—

> * * * proposes that access to this information be provided only if employment is denied by the prospective employer based solely on the investigative information. This will allow drivers who have been denied employment an opportunity to rebut potentially inaccurate information. It will also decrease the administrative burden on employers.

Further, ATA states that an applicant's right to review information provided by previous employers should only address those persons who are rejected for employment because of the information received. Hired drivers have the ability to review and access their personnel files, making a regulation for such drivers unnecessary. TCA agrees and states,

> The costs that such an across-the-board requirement would impose on carriers would be significant and, in the absence of a dispute over the accuracy of the information, seems entirely unnecessary and unjustified. FMCSA's final rule should only extend the right of a driver to receive the information from the prospective employer in the event that the driver is denied employment based, in whole or in part, on the information provided by a past employer.

The IBT, however, agrees with the provision that the driver should be allowed, upon request, to see his or her records obtained from previous employers. In addition, the IBT questions the other commenters' assertion that the cost of providing records to drivers would be burdensome. The IBT claims "that allowing drivers to view the information provided whether they are denied employment or not may be more efficient and result in saved costs as it will allow drivers to correct or rebut information sooner, without having to wait until they are denied jobs based on the information."

Finally, OOIDA believes that the rebuttal process leaves the driver in a distinct disadvantage because a driver can only correct his or her record during the hiring process while the carrier can make changes to the driver's record at any time. OOIDA suggests that a driver have a right of rebuttal or correction any time a carrier makes a change to the driver's record.

FMCSA Response: Congress, in the HazMat Act, requires that the previous employer provide driver safety performance history information to the prospective motor carrier employer. TEA–21 requires that all drivers have the right to a rebuttal, and that the previous employers' information may be made available to the prospective motor carrier's insurance provider. TEA–21 also requires that provisions implementing these requirements be added to § 391.23 dealing with investigations and inquiries required as part of the hiring process.

There are no requirements in the HazMat Act, TEA–21, or existing regulations regarding what a prospective employer is required to do with previous employer information. They are similarly silent regarding what to do with driver rebuttals that presumably will conflict with the previous employer information.

TEA–21, however, provides the insurer of the motor carrier requesting the data with the same limited liability as the prospective motor carrier requesting the data. FMCSA believes that by also granting insurers limited liability to gain access to the information (the final rule excludes the alcohol and controlled substances information), Congress intended for business decisions between the prospective motor carrier and the insurance provider to function as a mechanism by which this data will be evaluated. FMCSA believes there is motivation for the carrier and insurer to make good sound judgments of the relative risk of prospective drivers. Those judgments will now be based on better documentation about the driver's past safety performance history.

FMCSA believes the final rule must allow all drivers the right to submit a rebuttal, as specified in TEA–21. The request by OOIDA to allow the driver a rebuttal right at any time a motor carrier makes an entry to the driver's record is not required by the HazMat Act or TEA–21, and would be intrusive on the operating practices of motor carriers.

Appeal Process (§ 391.23(i) and (j))

Commenters express concern that the appeal process would inhibit prospective employers from hiring a driver. For example, TCA opposes FMCSA's proposed appeal process. A driver's dispute over information provided by a past employer, would require the prospective employer to delay making its hiring decision until the dispute has been resolved or the driver provides his or her rebuttal. TCA believes the impact that such a mandatory requirement would have on carriers [in the truckload sector of the industry] would be extremely impractical from an operational standpoint and also unduly burdensome and costly. TCA states, on the other hand, "* * * FMCSA's decision not to mandate such a delay in hiring decisions would have a minimal impact on drivers, since the dispute resolution process should enable the driver to cure the inaccuracy in a reasonably timely fashion and thereby limit any denial of work based on the disputed information * * *"

The IBT, however, disagrees with TCA's position. The IBT does not think it would be proper for the FMCSA to issue a regulation explicitly permitting a prospective employer to make a decision not to hire a driver before the process is complete:

FMCSA Response: There is no requirement for the motor carrier to delay putting the driver to work pending the appeal process. The proposal in the SNPRM was that the investigations "* * * must be completed within 30 days of the date the driver's employment begins." FMCSA has modified § 391.23(c) in the final rule to make it clearer that the employer is allowed to put the driver to work for up to 30 days without having completed the required safety performance history background investigation.

FMCSA desires to keep the new requirement for safety performance history § 391.23 as close as possible to current requirements so that the provisions of this rule are consistent with existing requirements. The requirement is that the inquiries and investigations must be performed and information received within 30 days or the motor carrier must not allow the driver to continue operating a CMV. In order to keep that requirement as it is, the additional new times added by this rule for completing the driver appeal process are defined as being outside of the 30 days allowed for obtaining the initial safety background information. For example, a motor carrier hires a driver and on the 29th day from the start of employment, the hiring motor carrier receives a response from a previous employer that contains accident data. If the driver requests a copy of that report from the prospective (hiring) employer, and then decides to request correction or to rebut it, the hiring motor carrier is not required by these regulations to prevent the driver from operating a CMV for the new (prospective) employer while the driver is exercising his or her rights to review, correct or rebut the information provided.

Access to Data

Insurer Access to Data (§§ 391.23 (h) and 391.53(a)(1))

The Daily Underwriters of America thinks that the regulation should be expanded to include insurers of commercial autos. It argues that "Allowing the insurance company access to the same information would enhance the decision making process and offer another professional opinion on the safety risk presented by each driver."

The TCA and ATA are opposed to allowing insurers of motor carriers access to safety performance history information. TCA argues that the provision will effectively give insurers the implicit right to direct the hiring decisions of motor carriers and may expose carriers to liability for adverse hiring decisions.

ATA points out that part 40 allows the release of alcohol and controlled substance information to anyone named on the driver's release authorization. ATA states that "* * * § 391.53(a)(1), as proposed, would be inconsistent with § 40.25."

FMCSA Response: In regard to the Daily Underwriters of America request to expand this rule to include commercial autos, the FMCSA notes it only has authority to regulate commercial motor vehicles as defined in § 390.5. Unless the autos are carrying placardable amounts of hazardous materials (thus requiring a commercial driver license (CDL) to operate them) they are not CMVs. Additionally, in part 391 FMCSA only has authority over motor carriers operating in interstate commerce. Thus, unless the commercial autos are being operated by a motor carrier in interstate commerce carrying placardable amounts of hazardous materials, FMCSA has no jurisdiction over such autos even if used commercially, such as in sales fleets.

In regard to TCA and ATA not wanting to release accident data to their insurers, FMCSA notes that Congress specified in TEA–21 that the motor carrier's insurer could have access to the safety performance history. This is one of the mechanisms by which the safety performance history data is made part of the hiring decision process.

In regard to ATA's question about whether the proposed § 391.53(a)(1) is inconsistent with § 40.25, FMCSA believes the reference should more accurately be to § 40.321. FMCSA further notes that the regulations in § 391.23 apply to what a motor carrier can do. Section 391.53(a)(1) says the prospective motor carrier cannot give the alcohol and controlled substances information to its insurer. Departmental policy in part 40 seeks to protect the privacy rights of drivers, and does not want alcohol and controlled substances information released for purposes other than intended, namely to keep drivers with positive tests from operating CMVs until they have completed the process of return-to-duty status. There is no need for insurers to have access to this data, because prospective employers are prohibited from allowing such drivers to operate CMVs.

However, as ATA points out, if a driver wishes to give authorization for their alcohol and controlled substance data to be released by the previous employer to the insurer of the prospective motor carrier, they are free to do so. However, there is no regulatory requirement for them to do so.

Access to and Use of Driver Investigation History File (§ 391.53(a))

The SNPRM contained a provision that restricts access to the Driver Investigation History file to the hiring decision process and to those persons involved. Con-Way and the ATA oppose this provision. Both commenters cite the burden of maintaining two files—a Driver Investigation History file, which can only be accessed by those involved in the hiring process, and a second Driver Qualification file with the rest of an employee's information. Both commenters recommend that the provision be amended to permit storage of all of an employee's information in one file. ATA also argues that management personnel of a motor carrier should have the right to review the information in a driver's file for any valid reason whether or not they were involved in the hiring process.

RIPA seeks guidance with regard to the agency's interpretation of the term "controlled access" as it is used in § 391.53. In this section, the proposed rule states that the Driver Investigation History file "must be maintained in a secure location with controlled access."

FMCSA Response: FMCSA does not believe it has any latitude to permit the investigation records required by the rule to be mingled with the inquiry records, nor to allow the investigation information to be used for any other purpose, even for FMCSA required reviews, such as the annual review required by § 391.25.

TEA–21, as codified at 49 U.S.C. 508(b)(1)(B), requires the prospective motor carrier to "* * * protect the records from disclosure to any person not directly involved in deciding whether to hire that individual." In addition, 49 U.S.C. 508(b)(1)(C) requires that "the motor carrier has used those records only to assess the safety performance of the individual who is the subject of those records in deciding whether to hire that individual."

In addition to the Congressional requirement at 49 U.S.C. 508(b)(1)(C), as it relates to Con-Way's and ATA's concern about the burden of maintaining an extra file, FMCSA notes that this file is customarily maintained separately for alcohol and controlled substance results. The proposal at § 391.53 was developed based on this common practice of motor carriers maintaining such files separately in order to be able to withstand driver court challenges when asked how they can prove they met the requirements of part 40 for secure and controlled access. Thus, FMCSA proposed that the Driver Investigation History file could be combined with the already separately maintained alcohol and controlled substances response file in order to minimize any additional costs imposed on motor carriers.

The terms secure and controlled-access are adopted as a conforming amendment from part 40, which has used these terms for some time.

National Database or Access to FMCSA Data Files

Instead of requesting driver information from previous employers, nine commenters advocate a national or centralized database to include information, such as driver accidents, alcohol and controlled substances test results, safety related medical conditions, citations, and out of service inspections. The arguments presented for such a database include better tracking of drivers, less expensive and easier access to the information, and less burden on the motor carriers. For example, Consumer Energy explains that a database system could eliminate the paperwork burden, limit the possibility of a driver's falsification of employment, failure to provide documentation of previous employers, and speed up the hiring process. Consumer Energy recommends modeling a database after the Nuclear Regulatory Commission's Personnel Access Data System (PADS).

J.B Hunt concurs that a database would lessen the burden to motor carriers from the thousands of requests for information gathered in the hiring process. This commenter suggests adopting a national program similar to the California Pull-Notice Program where motor carriers register new drivers in a database of safety performance indicators, such as accidents, alcohol and controlled substances test failures, and traffic convictions. The administrator of the database notifies employing motor carriers when a driver's record changes, and drivers would have access to their records to make rebuttals. The American Bus Association agrees that such a database "would solve the problem that occurs when a driver applicant 'forgets' to list a previous employer to avoid scrutiny."

TCA, ATA, and DAC Services all urge FMCSA to allow motor carriers access to driver information in the Motor Carrier Management Information System (MCMIS) database. These commenters argue that by giving access to this data, motor carriers would gain access to more information about a driver than under this rule. ATA urges FMCSA

> to immediately take the necessary action to allow prospective motor carriers to access the MCMIS database, on a real-time basis, for the purpose of obtaining driver-applicants accident data, as well as other important roadside inspection safety compliance and performance data.

Similarly, the Commercial Vehicle Safety Alliance (CVSA) states that roadside safety inspection reports include information that would allow prospective employers the opportunity to analyze the driving habits of prospective employees by reviewing their FMCSR violation histories and that of the vehicles they operated. Access to this information might be accomplished by providing access to driver specific information via SAFER [Safety And Fitness Electronic Records] and/or other databases. Access to this driver information would provide motor carriers a more comprehensive rendering on which to base their hiring decisions. While the CVSA strongly recommends motor carrier access to driver specific roadside safety inspection information, it also recognizes the fiscal implication at both the Federal and State levels. For this reason the CVSA requests that FMCSA be cognizant and sensitive to the limited resources available in regard to proposed upgrades to information systems.

The IBT strongly opposes making individual driver records publicly available via MCMIS. IBT is concerned about maintaining the confidentiality of the information and believes the rule as proposed implements the necessary precautions to protect the confidentiality of this information by making it only available to individuals involved in the hiring process.

FMCSA Response: The FMCSA recognizes the interests demonstrated by the suggestions to provide the safety performance history for new drivers using national databases rather than investigations to previous employers. For the benefit of those interested, FMCSA provides this summary of related activities in each of the suggested areas.

FMCSA has been building the MCMIS database of motor carrier information for many years. However, the agency is also aware that there are accompanying cost and individual privacy issues. As the commenters indicate, the MCMIS contains information on accidents and out-of-service orders, and is used by

FMCSA for various purposes, including prioritizing motor carriers to receive carrier compliance reviews. In any event, access to that MCMIS database or the development of another database was not proposed in the SNPRM, and is outside the scope of this rulemaking.

Regarding an alcohol and controlled substances database, section 226 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 13 Stat. 1748 (December 9, 1999)) requires a report to Congress on the feasibility and merits of an alcohol and controlled substance database capability. Work on that report is progressing. When the report is released to the public after being sent to Congress, it will be placed in docket FMCSA–2001–9664. The long title of the report is "A Report to Congress On the Feasibility and Merits of Reporting Verified Positive Federal Controlled Substance Test Results to the States and Requiring FMCSA–Regulated Employers to Query the State Databases Before Hiring a Commercial Driver's License (CDL) Holder."

Regarding medical certification information as part of the CDL process, section 215 of MCSIA requires a rulemaking to provide medical certification information as part of the CDL licensing process. Work on that rulemaking effort is progressing as well.

There were studies related to the possible value of a national database of citations. However, there is no proposal or funding to proceed with such an effort. It appears far more cost effective to instead focus on using the data about traffic convictions available from the Commercial Driver License Information System (CDLIS), and also available to motor carriers from the Motor Vehicle Record (MVR) obtained from the licensing State, and already required by § 391.23(b). For CDL drivers, the FMCSA is working with the States to improve the quality of this data in accordance with section 221 of MCSIA.

Rejection Rate and Cost/Benefits

Several commenters addressed FMCSA's rejection rate in its SNPRM cost/benefit analysis. Two commenters take issue with the FMCSA use of a 4 percent rejection rate of applicants in the SNPRM regulatory evaluation. These commenters state that the actual rate is much higher and that therefore the FMCSA underestimated the cost of the proposed rule. Con-Way states that the rejection rate is closer to 80 percent, and that therefore the cost would be $1.52 billion, not $76 million as stated in the SNPRM. Con-Way states,

> * * * there is no doubt that the proposal will result in lots of paper and administration. Not only employers but also potential applicants would be impacted, as applicants may not be hired as quickly, creating more hardship and loss of income for job seekers.

Con-Way further states that the analysis assumes, with no data to support the assumptions, that there may be a 0 percent, 10 percent, 25 percent or 50 percent reduction in accidents (what is identified as "deterrence effect"). In the opinion of Con-Way, the fact that there is a wide range in accident reductions included in the sensitivity analysis implies there is little data to support a more definitive statement of benefits. Con-Way concludes that the benefit analysis is inadequate, flawed, and based on little data and many assumptions.

The ATA contacted several motor carriers of varying sizes, presumably among their membership, to get a better estimate of the rejection rate of CMV driver applicants. ATA submitted the results of its inquiries to the docket. ATA states that the information indicates the actual driver employment rejection rate may be considerably higher than the four per cent used by FMCSA in its cost/benefit analysis. The table contained in ATA's document 83 in this docket gives the results of the ATA inquiries. It also gives a weighted mean rejection rate of 80.1 percent. ATA suggests that FMCSA needs to further investigate its rejection rate assumption and reexamine its cost/benefit analysis based on the new information.

Three commenters assert that associated and administrative costs will significantly exceed FMCSA's estimates and will cause significant economic burden on the industry. For example, AT&T estimates that its efforts to comply with these regulatory changes would result in very costly modifications to an established, well-functioning system, which would take considerable time. In AT&T's opinion, the FMCSA did not prove that the benefit of the SNPRM's proposal would outweigh these costs.

FMCSA Response: FMCSA stated in the preamble to the SNPRM, with a reference to the supporting study in the docket, that it was aware of the CDL Effectiveness focus groups study involving motor carrier safety directors who stated that there is a substantial rejection rate of CMV driver applicants. A copy of the relevant portions of that publication is included in the docket as document 41. The preamble also stated that because of limited information, that observation was not included in the regulatory evaluation. Additionally, the SNPRM requested that more information about rejection rates be provided in comments to the docket. Based on the additional information received, FMCSA has revised both the paperwork burden estimates and the regulatory evaluation, using a higher rejection rate, and thus yielding higher burden and cost. These are discussed in detail in the "Paperwork Reduction Act" and "Regulatory Evaluation: Summary of Benefits and Costs" sections later in this preamble.

Fees (Previous Employers or Third Parties Charge)

Of those commenters that addressed this issue, some do not want previous employers to be allowed to charge a fee to offset their costs of providing safety background information about their previous employees. Safe Fleet asserts that all motor carriers are both previous and new employers, so all should share the burden and help out one another with this cost. Two commenters suggest that, if previous employers can require a payment for the required safety performance history information, it should be a standard amount determined by the FMCSA. ATA specifically urges FMCSA to make a decision on whether charging a fee for safety performance history information is allowed or prohibited.

FMCSA Response: There are two distinct requirements under § 391.23, namely for "Investigations" and "Inquiries." Under "Inquiries" motor carriers are required to obtain the driving record from all States where the driver held a license or permit in the last three years. All States commercially sell this information as the Motor Vehicle Record (MVR) to authorized users. Payment of the fee set by each State is a condition of the MVR being released by the State. These fees are set by State government agencies for access to public records. FMCSA has no part in setting these fees.

Under the "Investigations" requirements of the § 391.23 "Investigations and inquiries," prospective motor carriers continue to be required to request investigatory information from previous employers, and the minimum data elements are now defined by this rulemaking. In addition, previous employers are now required by this rule to provide the specified minimum information.

Further, as pointed out in the SNPRM, it is an established practice for some motor carriers to require a driver to have driving experience before they will hire the driver. (See document 41 in this docket.) This means some carriers are hiring the inexperienced new entrant drivers, who systematically leave their employ to go to work for carriers

requiring some type of driving experience.

Those carriers hiring inexperienced new entrant drivers will systematically be subject to the costs of providing the safety performance history data, but will not equally get the advantages of this data from other previous employers. The Regulatory Evaluation section presents two possible scenarios, each indicating that some motor carriers hire drivers with no driving experience. Under scenario 1, the percent of drivers hired from outside the industry would be over 25 percent new entrants. Under Scenario 2, the percent of the drivers hired from outside the industry would be over 34 percent new entrants.

FMCSA points out that our regulations do not prevent previous employers from charging a fee for this information. If such fees are charged to offset carriers' cost of providing the required safety performance data, FMCSA encourages development of a market that establishes reasonable, predictable fees. Although FMCSA agrees any fees should be reasonable and predictable, somewhat like the State fees for the MVRs, FMCSA does not believe it has the authority to set fees for release of former driver safety performance history information to prospective employers.

However, FMCSA believes it has the authority to require previous employers to release the minimum data, for alcohol and controlled substances specified in part 382 and for accidents as defined in § 390.5, to the investigating prospective motor carrier within the time period required at § 391.23(g)(1), even if the previous employer has to initially absorb the costs for maintaining and providing this information, *i.e.*, extend credit. Previous employers may not condition release of this required investigative safety performance history information on first receiving payment of a fee by the prospective motor carrier. A copy of a corresponding FMCSA interpretation to this effect in the context of alcohol and controlled substance information was placed in the docket as document 55. This does not apply to accident data not defined by FMCSA and retained either pursuant to § 390.15(b)(2) or because the motor carrier chooses to maintain more detailed minor accident information for their own purposes.

FMCSA does not believe it has a regulatory role in establishing reasonable, predictable fees for the safety performance history information previous employers are required to provide once this rule is implemented. What such fees may be, and how they are collected, should be determined in a free, open, efficient, competitive marketplace.

Miscellaneous

Relation of Hours of Service to Safety Performance

The ATA believes that the regulatory evaluation discussion in the SNPRM did not provide the evidence showing the claimed positive relationship between hours of service violations resulting in out-of-service orders and future safety performance. ATA urges FMCSA to place appropriate proof of this claimed relationship in the public docket.

AHAS strongly disagrees with FMCSA's decision to accept the SBA request to delete the requirement for previous employers to disclose records evidencing previous driver hours of service (HOS) violations resulting in out-of-service orders. AHAS is not persuaded that the agency's rationale for excising this aspect of the proposed rule has any merit. AHAS challenges that a "failure to require employers to provide such information on driver HOS violations to any prospective new employer of that driver arguably abets ongoing HOS violations by refusing to stop their concealment from subsequent employers."

FMCSA Response: With regard to ATA's comment, the information referred to in the SNPRM was developed in a study for FMCSA. A preliminary report on this study was presented at the 2002 annual Transportation Research Board meeting in Washington, DC. A copy of a current report on that analysis is included in the docket as document 85.

More accurately, the SNPRM discussion refers to a positive and significant relationship between a measure developed by that study of traffic convictions and driver out-of-service (OOS) orders, which are largely from hours of service violations or record of duty (logbook/timecard) violations. Drivers receiving more traffic convictions for moving violations, particularly those defined as CDL serious or disqualifying convictions, are identified by the required Commercial Driver License Information System (CDLIS) recordkeeping functions.

Depending on the traffic law conviction received and the number of such convictions, the driver may be identified by the State driver licensing agency as a safety risk requiring driver improvement actions, such as suspension or revocation, in accordance with the CDL program regulations. It is an underlying premise of the CDL program that drivers with such conviction patterns are considered higher risk for being involved in accidents, and should be removed from driving CMVs, either temporarily or permanently.

The study found a significant, positive, linear correlation between the proposed carrier-driver conviction measure with OOS orders and carrier power unit crash rate. This implies that if the driver OOS information were available to prospective employers, it could also be useful in predicting future safety problems, including accidents. The relationship of driver OOS orders and future crash involvement is being further researched.

In regard to the AHAS comments, as stated in the SNPRM, FMCSA continues to believe "* * * requiring this information collection and establishing a motor carrier recording requirement would be particularly burdensome to small entities * * *" "* * * because this information is only systematically reported to FMCSA as part of the Motor Carrier Safety Assistance Program (MCSAP) enforcement activities of the States." FMCSA provides the following additional details why this would be burdensome on small entities, as well as not meet the three-year reporting requirement of the HazMat Act.

Motor carriers are not currently required by the FMCSRs to maintain a three-year record for hours of service violations resulting in an out-of-service order. Requiring motor carriers to maintain and provide three-years of such information would necessitate creating a new recordkeeping requirement for motor carriers to obtain and maintain this data, and creation of such a process could be problematic.

The following things are currently required. Drivers are required by § 395.13(d)(3) to notify their employer of having received a driver out-of-service order for an hours-of-service violation. Motor carriers are then required by § 395.8(k)(1) to retain such data as a supporting document for 6-months. Under § 396.9(d)(3), motor carriers are required to retain a copy of inspection reports they receive from the driver, some of which could include information about a driver out-of-service order, for 1-year.

Because of the known problem with drivers not providing all such information to their motor carrier, FMCSA created a capability for motor carriers to obtain a carrier profile from FMCSA for a fee. If there is information on that profile about a driver-out-of-service order the motor carrier did not receive from the driver, the motor carrier may either contact the State MCSAP agency that issued the report, or request a facsimile copy of that

information from the FMCSA for their records for a fee.

There is no requirement for the motor carrier to regularly obtain a carrier profile in order to search for possible missing driver OOS orders. However, if the carrier requests a profile from FMCSA, we require the carrier to pay a fee to the agency for both the profile and any missing facsimile data. This means there is no reliable, institutionalized process for motor carriers to be notified of all such orders received by their drivers. Even if the information were obtained, the longest the motor carrier is required to keep reports on file is 12 months for inspections.

The more reliable reporting process in place is the States' MCSAP agency reporting this data to FMCSA, using SAFETYNET [2] to place it in MCMIS. There is no requirement for the States to provide this information to motor carriers.

Broader Applicability (Non Safety Sensitive Functions)

The proposed rule requires that prospective employers investigate alcohol and controlled substance testing information for prospective drivers previously employed in safety-sensitive positions. Qwest supports this requirement. However, Qwest believes the language in § 391.23(e) should be modified to state that all prospective driver alcohol and controlled substance testing information should be investigated, not just drivers that will perform safety-sensitive functions for the prospective employer.

FMCSA Response: The requirements of part 382 only apply to persons covered by part 383 (CDL) requirements. Section 391.23(e) adds conforming amendments for the requirements of part 382 to those of part 391 as required by the HazMat Act. It is possible an applicant for a driving job that does not require a CDL may have previously driven vehicles requiring a CDL and failed an alcohol or controlled substance required test.

The specification at § 391.23(e) applies to all drivers who held a safety sensitive job in the previous 3 years. For motor carriers, this is a CDL driver. If they are driving a CMV, whether they will perform a safety sensitive job for the prospective employer does not matter. The prospective employer is required for such drivers to request the alcohol and controlled substances information. The requirement at 49 CFR 390.3(d) states an employer may specify more stringent requirements as a condition of employment. However, if during the previous three-year period the driver did not hold a safety sensitive job subject to the requirements of part 40 or part 382, there is no requirement for the previous employer to have applied the testing requirements required for safety sensitive jobs. FMCSA does not have the authority to require drivers not performing safety sensitive functions to be subject to the requirements of parts 40 and 382.

Liability Limitation (§ 391.23 (l))

All commenters support the provision that limits liability when previous employers are furnishing driver records. Two commenters raise questions about whether immunity will apply to State courts and whether this provision will prevent a driver who was not hired from suing. Three commenters have specific recommendations regarding the language of the provisions. First, Con-Way proposes that protections should apply unless a person knowingly and intentionally furnishes false information. Second, ATA urges the FMCSA to delete from § 391.23(l)(2) the second phrase "* * * or who are not in compliance with the procedures specified for these investigations * * *" by placing a period after the word "information" and striking the balance of the sentence in order to strengthen the employer protections. However, the IBT disagrees with ATA and claims that this suggestion would immunize employers from liability even if they do not comply with the regulations. Finally, Qwest recommends protections for good faith compliance.

However, OOIDA believes that motor carriers' fear of liability is exaggerated. OOIDA states

> The proposed rule emphasizes carriers' supposed fear of their exposure to legal liability for following the rules. OOIDA finds this fear suspect and vastly overstated. OOIDA does not understand why any carrier would express any fear of liability unless they know or believe that the information they are using is false, or that they are engaged in the improper use of such information. Furthermore, OOIDA is unaware of any litigation brought against a carrier for the creation of false information in a driver's safety performance history or the misuse of such information. FMCSA presents no factual record to back up this fear. From OOIDA members' experience, drivers' careers are much more likely to be damaged by carrier misuse of background information than carriers are at risk for litigation under the rules.

In addition, OOIDA expresses concern that motor carriers knowingly passing along false information received from another carrier would be shielded from legal liability.

FMCSA Response: The only basis provided under the statute and this regulation for a driver to have standing in court is to allege the previous employer knowingly provided false information. If the driver proves false information was provided by the previous employer, the liability limitation does not apply and the court can determine and assess a penalty on the previous employer. The preemption language in TEA–21 at section 4014(c) (*see* document 39 in this docket) explicitly refers to State and local law and regulations that create liability associated with providing or using safety performance history investigative information.

FMCSA concurs with the IBT comment to the docket that the HazMat Act does not provide discretion for partial or good faith compliance with the procedures established by this final rule. Motor carriers must comply with the regulations.

Implementation

The previous topics and their discussions indicate many commenters are concerned about a number of practical difficulties that must be dealt with to effectively implement this rule. Additionally the Small Business Administration (SBA) submission to the docket in response to the NPRM, document 26, expresses concern that the implementation needs of the large number of small businesses should be given more explicit attention. Two issues SBA explicitly addressed were the phasing in of accident data retention and providing compliance assistance.

FMCSA Response: The issue of phasing in accident data retention is addressed separately, and FMCSA is doing that. However, it only addresses that specific aspect of implementation that is impossible to accomplish until enough time has passed to allow accumulation of three years of data.

An additional issue is allowing a reasonable enough time for all parties to effectively implement the newly required processes for data retention, investigating, reporting, using data obtained as part of the hiring decision process, and managing the driver rights processes. FMCSA determined that six months after the effective date of this rule is a reasonable balance between motor carrier implementation and safety requirements for all impacted parties to implement the process capabilities required to operate in compliance with

[2] SAFETYNET is a database management system that allows entry, access, analysis, and reporting of data from driver/vehicle inspections, crashes, compliance reviews, assignments, and complaints. It is operated at State safety agencies and Federal Divisions and includes links to SAFER and MCMIS. It is an Oracle based client-server system.

this rule. This will also allow the industry together with FMCSA to develop and make available various non-mandatory guidance materials.

Rulemaking Analyses and Notices

Privacy Act

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

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA determined this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979), because the subject of requirements for background checks of prospective driver safety performance history information generated considerable public and congressional interest. FMCSA estimates the economic impact of this rule will not exceed the annual $100 million threshold for economic significance. The Office of Management and Budget (OMB) reviewed the final rule, Paperwork Reduction Act submission, the regulatory evaluation, and the regulatory flexibility analysis associated with this action.

Under a following section of this rule entitled "Regulatory Evaluation: Summary of Benefits and Costs," the agency estimates the first-year costs to implement this rule will amount to approximately $15 million. Total discounted costs over the 10-year analysis period (2004–2013) will be $113 million, using a discount rate of seven percent. All these costs are associated with the statutorily mandated requirements of section 114 of the Hazmat Act and section 4014 of TEA–21. First-year benefits associated with this rule are estimated at $7 million. Total discounted direct benefits over the 10-year analysis period (2004–2013) are estimated at $107 million. Total discounted net benefits from implementing this rule are estimated at −$6 million (without consideration of a deterrence effect) or as high as $47 million (with consideration of a deterrence effect).

A key assumption used in the above analysis involved the percentage of newly available accidents for which prospective employers would be able to determine, or infer, that the truck driver was at fault and therefore deny the driver employment as a result. In the analysis performed for the SNPRM, now called scenario 1, it was estimated that 30% of the drivers are at fault, and from those a total of 10% of driver applicants would be denied employment. In this final rule it is estimated from preliminary data from the Large Truck Crash Causation Study that 38.64% of the drivers are at fault, and from those in scenario 1 a total of 12.88% of driver applicants would be denied employment. Both the 10% in the SNPRM and the 12.88% in this rule are derived as one-third of the vehicle accidents involving a large truck where the truck driver is estimated to be at fault.

For purposes of sensitivity analysis perspective, FMCSA also presents a scenario 2 in the regulatory analysis where we assume the full 38.64 percent of drivers at fault would be denied employment by prospective employers because the employer would be able to determine, or infer, from the data that the CMV driver was at fault in the accident, and would choose to deny employment to all. This new, more aggressive assumption is presented in an effort to provide readers with the range of possible impacts, in light of the inherent uncertainty regarding how much new accident data will become available to prospective employers and exactly how they will use this data to make hiring decisions. However, the more aggressive scenario 2 estimates are only presented for sensitivity analysis perspective. FMCSA continues to cite the original (now scenario 1) as the primary analysis performed for this rule.

Under the scenario 2 assumption that prospective employers will be able to accurately determine, or infer, fault in all the accident data involving drivers applying for positions, and that all the drivers who were at fault would be denied employment as CMV drivers for on average six-months, the costs would remain the same, $113 million. But, the first year benefits could be as high as $24 million, and the total discounted 10-year benefits could be as high as $406 million. This means the total discounted net benefits under this aggressive scenario 2 could be as high as $294 million over the 10-year analysis period (2004–2013).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In response to SBA's request for more information on the economic impact of this final rule upon small entities, and the determination that this is considered a significant rulemaking proposal, the agency prepared a final regulatory evaluation and the following Regulatory Flexibility Analysis.

(1) *A description of the reasons why action by the agency is being considered.* Motor carriers must hire a large number of drivers each year to operate large commercial motor vehicles on the nation's roads and highways. These drivers are responsible for safe, secure and reliable operation of these vehicles. Public concern regarding the safety of commercial motor vehicles and their operators has heightened awareness of the almost non-existent investigative driver safety performance history information made available to prospective motor carrier employers to assist in making hiring decisions. If prospective employers have access to more information about a driver's safety performance history, it will enable employers to make more informed decisions regarding the relative safety risk of applicants to operate CMVs.

With enactment of section 114 of the HazMat Act, Congress directed revision of the FMCSRs to specify the minimum driver safety performance information a prospective employer must investigate from previous employers, and further directed that previous employers now must provide the specified information. Additionally, the HazMat Act sets a 30-day time limit for previous employers to respond to the investigations, and provides the driver with "* * * a reasonable opportunity to review and comment on the information" provided by previous employers to the prospective employer.

In response to industry concerns about the legal liability which could arise from providing information about driver safety performance history, Congress determined that the societal importance of this information is sufficient to grant limited liability to motor carriers by preempting State and local laws and regulations creating liability. This is carried out in section 4014 of TEA–21. The liability limitation applies to prospective and previous

employers, their agents, and their insurance providers from defamation suits when investigating, using or providing accurate information about safety performance histories of their drivers. The right of drivers to review such employer investigative records, and to have them corrected or include a rebuttal from the driver, is made statutory. The Secretary is directed to develop procedures for implementing these new requirements as part of the changes to § 391.23 previously mandated by section 114 of the HazMat Act.

(2) *A succinct statement of the objectives of, and legal basis for, the rule.* The legal bases for this final rule are the Congressional directives contained in section 114 of the HazMat Act and section 4014 of TEA–21. Congressional direction is to ensure prospective motor carriers have access to increased information about the safety performance history of driver applicants, including access to specified investigative information from the driver's previous employers for the preceding three years.

Regulations at §§ 391.23(a)(2) and (c) currently require prospective employers to investigate a driver's employment record from previous employers. The regulations do not specify what information prospective employers must investigate, nor do they require previous employers to respond to investigations received from prospective employers. Comments to the docket for this rulemaking, such as those from Dart and Fleetline, Food Distributors International, Interstate Truckload Carriers Conference, American Movers Conference, United Motor Coach Association, and the National Private Truck Council state that many previous employers are either not responding, or not providing any information other than verification of employment and dates.

Further, comments to docket FMCSA–2001–9664 state that many previous employing motor carriers either do not respond to investigations for alcohol and controlled substances information, or do so belatedly, making the data of questionable value in the hiring decisions. Docket 9664 contains the **Federal Register** notice and numerous comments regarding the requirement of section 226 of the MCSIA for a Report to Congress on the possibility of requiring employers to report positive results or refusals to be tested for controlled substances. A copy of section 226 of MCSIA is included in the docket for this rulemaking as document 40.

The objective of this final rulemaking is to improve the quantity and quality of investigations made to previous employers, especially the quantity, quality and timeliness of driver safety performance information provided to prospective employers. This should foster more informed hiring decisions about the safety risks of potential new driver employees, while affording drivers the opportunity to review, correct or rebut the accuracy of information provided by previous employers.

This final rule specifies minimum information that must be investigated, and specifies processes to facilitate this information exchange, so as to minimize the reporting burden, including establishing the limit on potential liability of employers, their agents, and insurance providers from lawsuits.

(3) *A description of, and where feasible, an estimate of the number of small entities to which the rule will apply.* This rule will apply to all motor carrier employers regulated by the FMCSRs whose driver employees apply to work for another motor carrier operating CMVs in interstate commerce. This includes small motor carriers, many of which are in numerous industries covered by the FMCSRs because they operate their own private commercial motor vehicles. Examples include drivers who operate CMVs in industrial categories, such as: bakeries, petroleum refiners, retailers, farmers, bus and truck mechanics, cement masons and concrete finishers, driver/sales workers, electricians, heating, air conditioning and refrigeration mechanics and installers, highway maintenance workers, operating engineers and other construction equipment operators, painters, construction and maintenance workers, plumbers, pipefitters and steamfitters, refuse and recyclable material collectors, roofers, sheet metal workers, telecommunications equipment installers and repairers, welders, cutters, solderers, and brazers.

The SBA regulations at 13 CFR 121 specify Federal agencies should analyze the impact of proposed and final rules on small businesses using the SBA Small Business Size Standards. Where SBA's standards do not appropriately reflect the effects of a specific regulatory proposal, agencies may develop more relevant size determinants for rulemaking.

The regulatory evaluation below estimates the number of driver hiring decisions affected by this final rule at approximately 403,000 annually. This estimate is a function of three components, including: (1) Annual driver turnover within the industry, (2) annual employment growth within the industry, and (3) an increase in the number of drivers required to fill vacancies left by those denied employment when this background information becomes available to prospective employers.

It is difficult to determine exactly how many existing motor carriers will be affected by this final rule, since it is not known year-to-year how many employers on average hire drivers. However, it is known from the MCMIS that there are more than 500,000 active motor carriers currently operating in interstate commerce in the United States. This includes both for-hire and private motor carriers, but deducts a number of carriers believed not to be currently operating, yet still having files in MCMIS. Data from the 1997 Economic Census (U.S. Census Bureau), Standard Industrial Classification (SIC) Code 4213, "Trucking, Except Local," indicates that over 90 percent of trucking firms in that SIC code had less than $10 million in annual sales in 1997 (less than $10 million in annual revenues represents the threshold for defining small motor carriers in this analysis).

Because the FMCSA does not have annual sales data on private carriers, we assume the revenue and operational characteristics of the private trucking firms are generally similar to those of the for-hire motor carriers. Using the 90-percent estimate from for-hire motor carriers to identify the small business portion of the existing industry, FMCSA estimates that 450,000 out of the approximately 500,000 total existing motor carriers could be defined as small businesses. Also, we estimated that a net 403,000 hiring decisions will be affected by this final rule annually. These 403,000 net annual hirings within the industry represent 13 percent of the total three million drivers currently estimated in the regulatory evaluation to be employed within the trucking industry. To be conservative, we assumed that 13 percent of existing motor carriers will be filling the 13 percent of driver positions each year. Using 13 percent of existing motor carriers translates to 67,000 out of the 500,000 existing motor carriers that would be prospective motor carriers hiring drivers each year.

We conservatively assumed that these 67,000 hiring employers will bear the full cost of the data retention and reporting processes for the 403,000 drivers to be hired each year. This includes the file searches, duplication, and reporting costs incurred by previous employers for providing the information.

Conversely, if instead we had assumed previous employers would also bear a portion of these costs, and we assumed one previous employer for each driver over the past three years, then we would have had to divide compliance costs by twice the 67,000 hiring carriers, *i.e.*, 134,000 carriers. However, to ensure we do not underestimate the impact to small employers, we have used the 67,000 estimate of hiring employers.

Total discounted compliance costs of this final rule are estimated at $113 million over the 10-year analysis period (2004–2013), resulting in an average discounted annual cost of $11.3 million. If we divide these average annual costs by the 67,000 hiring companies estimated to be hiring drivers within a given year, the result is a total compliance cost of roughly $169 per motor carrier in the first year of this rule's implementation.

Data from the 1997 Economic Census, SIC 4213 (derived from NAICS Categories 484121, 484122, 484210, and 484230) divides trucking firms into 11 revenue categories, beginning with those firms generating less than $100,000 in annual gross revenues and ending with those generating $100 million or more. As stated, "small" trucking firms are defined here as those that generate less than $10 million in annual revenues. The 1997 Economic Census divides these firms into eight specific revenue categories. The annual revenue categories, the number of firms in each, and the average annual revenues of firms in each category are listed below in Table 1.

TABLE 1.—AVERAGE ANNUAL REVENUES OF SMALL TRUCKING FIRMS (SIC 4213, "TRUCKING, EXCEPT LOCAL") BY REVENUE CATEGORY

Revenue category ($1,000s)	Number of firms/% of total small firms		Average annual revenues ($1,000s)	Compliance costs ($169), as % of annual revenues	Average pre-tax profit margins, by revenue size (in percent)
<$100	1,487	(5)	$67	0.25	9.5
$100–$249.9	8,715	(30)	160	0.11	9.5
$250–$499.9	5,687	(19)	356	0.05	9.5
$500–$999.9	4,890	(17)	710	0.02	9.5
$1,000–$2,499.9	4,819	(16)	1,580	0.01	2.8
$2,500–$4,999.9	2,414	(8)	3,490	<0.01	2.9
$5,000–$9,999.9	1,407	(5)	7,000	<0.01	3.5
Total	29,419	(100)			

Source: 1997 Economic Census, Sales Size of Firms, NAICS Categories 484121, 484122, 484210, and 484230 aggregated to SIC 4213.

We applied the average annual regulatory compliance costs ($11.3 million) to the number of existing motor carriers in the industry we anticipated will be hiring drivers in a given year (67,000). As seen in the above table, the compliance costs of this final rule per existing motor carrier ($169) represent 0.25 percent (or a little less than 3/10 of one percent) of gross annual revenues of the smallest firms (*i.e.*, those with annual gross revenues less than $100,000). For the second smallest revenue category compliance costs represent 0.11 percent of gross revenues in the first year.

Data obtained from Robert Morris Associates (RMA) in 1999 on pre-tax profit margins of trucking firms in SIC Code 4213 are contained in the right-hand column of the above table. For all firms with less than $1 million in annual revenues, the RMA listed average pre-tax profit margins of 9.5 percent. Since the 1997 Economic Census data had additional revenue categories, FMCSA applied the same profit margins (9.5%) to all firms with annual revenues of less than $1 million.

The data reveal that total discounted 10-year costs to existing motor carriers will reduce, although not eliminate average pre-tax profits for carriers in any of the carrier revenue categories. The smallest revenue category in this table (<$100,000 annual revenues), which represents 5 percent of the firms in the Economic Census table, will experience an average reduction in pre-tax profit margins of 2.6 percent (0.25/9.5 = 2.6%). For the second smallest revenue category ($100–249.9), which represents 30 percent of the small carriers in this motor carrier category, pre-tax profit margins are reduced by about 1.2 percent (0.11/9.5 = 1.2%). For the third smallest revenue category, the annual compliance costs associated with this final rule are expected to reduce these carriers' average pre-tax profit margins by 0.5 percent (0.05/9.5 = 0.5%).

Several things about this data should be noted. The above figures for compliance costs and profit margins by revenue category represent averages of the estimated impact of this rule to small motor carriers. Impacts to particular subgroups of small motor carriers, such as those with annual profits that fall within the lowest quartile of carriers in each revenue category, may be more significant than those at the median. For example, FMCSA is aware that a number of motor carriers go out of business every year. At least some percentage of those likely are for financial reasons.

Recognizing that the RMA data used here is only for firms that applied for commercial bank loans (presumably the more profitable firms in their revenue category in order to qualify for loans) and represents only one to five percent, generally speaking, of those motor carriers identified in the 1997 Economic Census, FMCSA did not feel confident in breaking out the RMA profit margin data into individual quartiles. As such, we have reported the anticipated impacts using an average compliance cost per carrier and average profit margins for carriers in each revenue category.

(4) *A description of the proposed reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report.*

Reporting. No new reporting to the Federal government or a State is required. New reporting is required by all DOT regulated employers of the previous three years for alcohol and controlled substances, and all motor carriers for accident information, to prospective motor carrier employers. In response to prospective employees who assert their right to disagree with the

investigative driver safety performance data reported by that previous employer, previous employers are also required either to correct the data per the driver's assertion, or include the driver's rebuttal with their data.

In the case of alcohol and controlled substances, all previous employers or their agents subject to DOT alcohol and controlled substances regulations are required by 49 CFR 40.25(h) to report specified minimum employer investigative safety performance history data for their previous employees to prospective employers upon receiving an investigation.

Data to be provided will include at least the following:

1. Information verifying the driver worked for that employer and the dates of employment.

2. The driver's three-year alcohol and controlled substances history, an increase of one year from the two-year history now required, which will make it the same as the already required three-year retention of previous employer data, and two years less than the five-year retention of positive results or refusals to test.

3. Information indicating whether the driver failed to undertake or complete a rehabilitation referral prescribed by a substance abuse professional within the previous three years, but only if that information is recorded with the responding previous employer. Previous employers will not be required to seek alcohol and controlled substance data they are not already required to retain by part 382.

4. Information indicating whether the driver illegally used alcohol and controlled substances after having completed a rehabilitation referral, but only if recorded with the responding previous employer. Previous employers will not be required to seek alcohol and controlled substances data they are not already required to retain by part 382.

5. Information, only from previous employing motor carriers, indicating whether the driver was involved in any accidents as defined in § 390.15.

Previous employers or their agents for three years after a driver leaves their employ will be required to respond within 30 days to investigations from prospective motor carriers about an applicant and provide at least the minimum information specified in this final rulemaking. This final rule will enhance the ability of FMCSA and its agents to take enforcement action if a previous employer does not record and provide the information required within the specified time.

Motor carriers are already required to respond to alcohol and controlled substances requests under part 382. However, requests for that data can be the last information requested in the screening process. This is because of the requirement for a signed authorization from the driver applicant to release any such data, and in subsectors such as truckload, this generally occurs only for that portion of drivers still under consideration for employment, based on initial screening.

All motor carriers, and all DOT regulated entities for alcohol and controlled substances, for the previous three years, will now be required by conforming language in § 391.23 to provide the specified minimum investigative safety performance history data. That data, minus the alcohol and controlled substances data, will be requested routinely for many driver applicants from all previous employers as part of the initial employment screening process that does not require signed authorization. For those drivers still under consideration for employment, the same previous employers could receive a subsequent second request for the alcohol and controlled substances information.

The 1997 CDL Effectiveness study contained a report of focus group meetings of motor carrier safety directors. (CDL Focus Group Study, November 1996, copy of the Safety Director comments are included in docket as document 41.) It documents that a number of motor carriers require drivers to have obtained previous experience driving a CMV before that motor carrier will hire the driver. This means that employers operating more as employers of entry-level drivers, will be required to systematically provide investigative information, but will not get much benefit of receiving such investigative data from other previous employers. FMCSA estimates this to be 24 percent of the drivers under scenario 1, and 30 percent of the drivers under scenario 2.

Recordkeeping. It is a largely accepted motor carrier practice that alcohol and controlled substance information is kept separately from the driver qualification file. This is a practical arrangement that enables employers to defend that the data is adequately secured and access to it is controlled, in compliance with the recordkeeping requirements of parts 40 and 382.

Employers are currently required by § 391.23(c) to keep prior employer furnished investigative information in the driver qualification file. Section 4014 of TEA–21, codified at 49 U.S.C. 508, restricts usage of previous employer investigative data to just the hiring decision. Therefore, this rule changes the specification of where previous employer investigative information is kept to now be with the alcohol and controlled substance data in the already established controlled access, secure file. Because such a file already exists, there should be no significant impact on recordkeeping requirements of prospective employers.

Professional skills. Motor carriers are already required to provide two-years of prior alcohol and controlled substances data. That function requires designation of a person who has the controlled access to that data. The additional task of reporting accident data could be another responsibility of the person already required to report the alcohol and controlled substances data.

(5) *An identification, to the extent practicable, of all Federal rules which may duplicate, overlap, or conflict with the rule.* The Fair Credit Reporting Act specifies procedures that must be followed by consumer reporting agencies when providing consumer reports. Motor carriers and their agents are consumer reporting agencies when providing information on drivers' safety records to prospective motor carrier employers, as required by this rule. The FCRA specifically authorizes the provision of information "for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee" [15 U.S.C. 1681a(h)]. The purpose of this rule is therefore consistent with the FCRA. Furthermore, the rule is drafted following the model of the FCRA. FMCSA believes there is no duplication, overlap, or conflict with the FCRA or with any other Federal statute or rule."

(6) *A description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.* The FHWA published an NPRM on March 14, 1996 (61 FR 10548) following the detailed prescriptive specifications contained in section 114 of the HazMat Act. It proposed processes for investigations to previous employers, the required provision of that data, and use of that data in the hiring decision process. The FMCSA published a SNPRM on July 17, 2003 (68 FR 42339) incorporating additional prescriptive requirements contained in section 4014 of TEA–21, and to concerns expressed by various commenters, including the SBA to the NPRM. This final rule responds to concerns expressed in response to the SNPRM. FMCSA continues to believe that the agency does not have the latitude to propose alternatives other than discussed in this rule, because of

the prescriptiveness of the HazMat Act and TEA–21.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes in this rulemaking will not have an impact of $100 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also have an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children. The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045.

This rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of $100 million or more in any one year. This rule also does not concern an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

As stated in other parts of this final rule, Congress first mandated details about checking driver safety performance history in section 114 of the HazMat Act. It directed the Secretary to amend the FMCSRs to specify the minimum driver safety performance history information that a motor carrier must investigate from the motor carrier employers and other DOT regulated employers for the preceding three years, and to require those previous employers to provide that data to the requesting motor carrier within 30 days.

Comments to the docket in response to the 1996 NPRM expressed great concern that the agency's proposals in the 1996 NPRM could subject them to considerable litigation and expense by drivers denied employment based on the proposed safety performance history data. Congress responded to those concerns by implementing section 4014 of TEA–21,[3] by granting limited liability to employers and agents furnishing and using this information by preempting State and local laws and regulations creating such liability. TEA–21 also directed FMCSA to include provisions implementing this limited liability, and driver protection rights, in a revision to the previously issued 1996 NPRM. The intent of the Act is to "* * * provide protection for driver privacy and to establish procedures for review, correction, and rebuttal of the safety performance records of a commercial motor vehicle driver."

In the SNPRM, the FMCSA proposed a process similar to what is specified under the FCRA for protecting a driver's rights when investigating previous employer background information. The SNPRM also proposed processes for recordkeeping to make it possible for FMCSA to verify that previous and prospective employers are conforming to the agency's proposed processes protecting driver rights.

[3] Section 4014 of the 1998 TEA–21 explicitly says "No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using safety performance records in accordance with regulations issued by the Secretary to carry out this section." This Federal preemption of State or local jurisdictions' liability rights is codified at 49 U.S.C. 508, and is intended to facilitate the transfer of this vital investigative driver safety information between DOT regulated employers. The liability limitation does *not* apply if it is proven the previous employer knowingly provided incorrect information.

Because the preemption requirement set forth in the SNPRM was established by TEA–21, this was the first time this preemption provision was set forth as a proposed regulatory change. Consequently, the SNPRM sought public comments on possible compliance costs or preemption implications from elected State and local government officials or their representatives on whether there may be any major concerns about the proposed preemption of State and local law and regulations for these Federally protected interests. FMCSA did not receive any comments on this issue.

Accordingly, FMCSA determined that implementation of this rule change, in conformance with the specification contained at 49 U.S.C. 508(c), will not add substantial additional compliance costs nor preemption burdens to States or local subdivisions. We also determined that these changes will have no effect on the State or local subdivisions' ability to discharge traditional governmental functions. FMCSA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that there are not sufficient federalism implications on States that would limit the policy discretion of the States.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires Federal agencies to obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that the changes in this final rule will impact and/or reference three currently-approved information collections (IC), as follows: (1) Driver Qualification Files, OMB Control No. 2126–0004 (formerly 2125–0065), approved at 941,856 burden hours through December 31, 2005; (2) Accident Recordkeeping Requirements, OMB Control No. 2126–0009 (formerly 2125–0526), approved at 37,800 burden hours through September 30, 2005; and (3) Controlled Substances and Alcohol Use and Testing, OMB Control No. 2126–0012 (formerly 2125–0543),

approved at 573,490 burden hours through August 31, 2004.

There is no effect on the IC burdens covered by Controlled Substances and Alcohol Use and Testing, OMB Control No. 2126–0012. The IC burdens for investigating and reporting requirements are addressed in the IC Driver Qualification Files, OMB Control No. 2126–0004.

The effect of this final rule on the IC burdens of Accident Recordkeeping Requirements, OMB Control No. 2126–0009 is limited to the additional costs for maintaining the accident records for two additional years. FMCSA estimates maintaining data for two additional years will result in an additional 252,000 records. The cost for keeping these records is estimated at $0.15 per record per year, derived from Association of Records Management Activities (ARMA) costs.

FMCSA's estimate of 252,000 additional records is derived as follows. The FMCSA estimates there are approximately 155,000 accidents (as defined in § 390.5 of the FMCSRs) annually involving trucks plus an additional 17,000 accidents involving buses (source: General Estimate System, p. 28). The issue is to estimate how many of these are subject to FMCSA regulations that require the motor carrier to retain accident information in the accident register, pursuant to § 390.15(b)(1).

FMCSA estimates that approximately 80 percent of these accidents involve trucks and buses operated by interstate motor carriers. Additionally, most buses involved in crashes are school or transit buses and are not subject to this recordkeeping requirement. FMCSA estimates about 85 percent of those interstate bus accidents are not subject to accident register retention requirements.

Thus, the number of accidents required by § 390.15(b)(1) to be recorded on accident registers is estimated at:

$(0.80 \times 155{,}000) = 124{,}000$ interstate truck accidents that must be in accident register.

$(0.80 \times 0.15 \times 17{,}000) = 2{,}040$ interstate bus accidents and regulated by FMCSA.

Total accidents that must be placed in motor carriers' accident registers = 126,000 (rounded to the nearest thousand).

Thus, the cost for maintaining this accident information an additional two years is calculated as $37,800 (126,000 accidents per year × 2 years × $0.15 per record = $37,800.)

There are significant adjustments and changes caused by this final rule concerning IC burdens of driver safety performance history records covered by Driver Qualification Files, OMB Control No. 2126–0004. These files are now stored according to § 391.23, called the Driver Qualification file, and § 391.53, called the Driver Investigation History file. The latter contains information that must be secured and controlled regarding who can see the information and when.

For purposes of this information collection, the agency is using 6,458,430 as the estimate of the number of interstate and intrastate drivers that could be impacted by this proposal. Several existing FMCSA information collections employ this number (OMB Control No. 2126–0001—Drivers Records of Duty Status; OMB Control No. 2126–0004—Driver Qualification Files; and OMB Control No. 2126–0006—Medical Qualification Files). The agency believes this high-end estimate captures all drivers who may be affected by the new information collection burdens being proposed here. The agency continues to explore methods of more precisely determining the number of drivers that could be affected by FMCSA regulations.

Number of Drivers Screened

Previous information collections have estimated there are burden hours associated with 839,596 driver job openings each year. That represents a national average turnover rate of 13 percent for the 6,458,430 truck driver positions. However, it is also well known that some sectors of the truck driving industry are characterized by a high driver turnover rate, *e.g.*, truckload.

Comments to the docket for the 1996 NPRM describe various driver-screening processes used by trucking companies to fill these driver positions. In the 2003 SNPRM, FMCSA specifically requested comments addressing on average how many applicants are screened per job opening, or what percentage of applicants are denied employment using current screening practices. Comments to the docket for the SNPRM supported the premise put forward in the preamble that on average more than one applicant is screened for each job. However, there was no clear agreement on what is a representative average number of applicants per job in the many different sub-sectors and industries covered by the FMCSRs.

ATA made inquiries to some of its members and submitted to the docket that the weighted mean of their sample is 80.1 percent of driver applicants are denied employment. However, TCA and others in the truckload sector point out that in their portion of the industry they perceive the labor market to be tight, *i.e.*, a shortage of qualified drivers. CTS Con-Way Transportation Services points out that, "If employers need drivers and they are in short supply, [the motor carriers] will hire who is available." These comments imply there could be less than an 80.1 percent denial rate in their subsector of the trucking industry.

Comments to the docket for the NPRM and the SNPRM make it clear that different employers covered by the FMCSRs use different screening processes. Some employers physically see and screen the driver on criteria other than driving (because driving is an ancillary duty) before deciding to perform the inquiries and investigations required by § 391.23. On the other hand, some motor carriers such as in the truckload subsector begin the inquiry and investigation process immediately for all driver applicants based on phone or other electronic applications for each applicant. (See document 36 in this docket; record of meeting with DAC Services, Inc.)

AT&T points out they currently perform a substantial screening of potential employees on the company job criteria that forms the major portion of job responsibilities for their company. It is only for the select subset of applicants, after being successfully identified as someone the company would hire based on the skills they possess, that the inquiries and investigations required by § 391.23 are performed. This is because driving a CMV is a minor portion of their job responsibilities and would only prevent the applicant from performing that function, not qualify them to perform that function. Thus, the only drivers that companies such as AT&T want to screen according to the requirements of § 391.23, are drivers who have invested considerably in acquiring skills sufficient to qualify to work for a company in that trade, performing duties that also require them to drive a CMV covered by the FMCSRs.

A similar pattern applies to a number of employers covered by the FMCSRs, but whose primary business requires the employee to have skills in addition to being a driver. All such employees have much more at stake to preserve their professions, and have much more to lose if they illegally use alcohol or controlled substances or are involved in numerous accidents. The net result is that drivers who pass the technical skills screening to be considered for hiring by such firms also covered by the FMCSRs, very likely have considerably less than an 80.1 percent denial rate based on subsequent screening to

qualify as a truck driver for their ancillary job responsibilities.

Examples of skills or trades where many CMV drivers are subject to the FMCSRs include the following industrial classifications: bakeries, petroleum refiners, retailers, farmers, bus and truck mechanics, cement masons and concrete finishers, driver/sales workers, electricians, heating air conditioning and refrigeration mechanics and installers, highway maintenance workers, operating engineers and other construction equipment operators, painters, construction and maintenance workers, plumbers, pipefitters and steamfitters, refuse and recyclable material collectors, roofers, sheet metal workers, telecommunications equipment installers and repairers, welders, cutters, solderers and brazers.

There is agreement between the agency, as expressed in the preamble text of the SNPRM, and commenters to the docket in response to this question in the SNPRM. Namely, the national average is more than one applicant screened pursuant to these regulations for each job opening. But, there is no clear agreement on how many. While the estimate of 5 applicants per hire presented by ATA may be representative of their membership, it appears very excessive for numerous other industries also covered by the FMCSRs. As a result, FMCSA is using the estimate that on a national average across all industries covered by the FMCSRs, there are 3 applicants screened pursuant to these regulations for each job, *i.e.*, two denials and one hire. Clearly, the discussion indicates the number will be higher in some subsectors and industries, and lower in others.

Experienced Versus Inexperienced

There is an additional aspect of this screening. Namely, what percentage of drivers screened will be experienced drivers with previous employer safety performance history information that can be investigated? What percentage are inexperienced or new entrant drivers with no previous employers to investigate? These numbers are derived from the estimates given in the 1997 Gallup study for the ATA Foundation.

Based on this final rule establishing a new requirement for previous employers to report driver safety performance history information, drivers will no longer be able to hide their safety performance history information by jumping from one motor carrier to another. Thus, drivers with poor safety records will be denied employment with a new motor carrier employer, and their safety record will accumulate enough to cause the current employer to remove them as part of the § 391.25 required annual review. As a result, prospective motor carriers will have a much stronger basis for knowing whether an applicant with previous driving experience is a safety risk.

Adjustments and Changes to Estimated Burden

Adjusting the estimate of number of applicants screened per job opening from one to three requires a substantial adjustment in the existing estimated burden for performing the already existing regulatory requirements for inquiries and investigations. In addition, it also requires a substantial revision to the estimates presented in the SNPRM for changes in new burdens created by this final rule.

The adjustments for the existing regulatory IC burden are entirely in the First Element of the existing information collection requirements. These are explained in detail below under the First Element of the IC.

Both small and large changes (increases in burdens) are created in the same First Element, and large changes or increases are created in the new Third Element. These are explained in detail below under the First and Third Elements of this IC.

A summary of all adjustments and changes is presented at the end of this section along with the existing approved burdens.

Structure of Elements

The currently-approved Driver Qualification Files information collection can be broken down into two elements: (1) § 391.23, addressing the burdens of prospective and previous employers and driver applicants during the hiring process, and (2) § 391.25, addressing the burdens related to carriers and drivers who are currently employed (*e.g.*, annual review). This rule requires revisions to the first and leaves the second unchanged. In addition, FMCSA is creating a new third element—to address new burdens imposed by the rule on the previous and prospective employers of drivers. The resulting three elements of this information collection will be: (1) The hiring process (prospective employers and driver applicants), (2) the annual review (current employers and drivers), and (3) the responsibilities of previous employers related to the hiring process.

First Element of IC. The changes to the first item—the hiring process—address the specific types and timeframes of driver safety performance history that must be requested (includes accident data).

The burdens required for the existing driver application process must be adjusted substantially. This is because FMCSA now assumes there are three applicants per job opening, not one. On a national average, the prospective motor carrier denies two out of three applicants employment as a driver as part of the existing screening processes. Plus, for experienced drivers on average there is more than one previous employer that must be investigated.

The number of inquiries for driver records that prospective employers must make increases from the SNPRM estimate of 839,596 to 2,641,788 applicants. Using the Gallup estimate of just under 80 percent of driver hires will come from existing drivers, we initially assume approximately 80 percent of the 839,596 job openings, or 666,677, would be filled by experienced drivers. For experienced drivers with safety performance history information we estimated there is a ratio of 3 drivers screened for each job opening, meaning there will be 2,000,031 experienced driver applicants (666,677 × 3 = 2,000,031).

The number of new entrant driver applications is calculated as the initial approximately twenty percent of jobs, 172,919 × 3 applicants, or 518,757. To this is added the number of new entrant applications to fill the 41,000 jobs that were not filled by experienced drivers because of the new safety performance history data. This is 41,000 × 3 = 123,000. Thus, the total number of applications by new entrants is 518,757 + 123,000 = 641,757. And, the total number of applications by all drivers is 2,000,031 + 641,757 = 2,641,788.

The total burden hours for drivers making applications for a job increases from 41,981 to 132,090 hours. The burden estimate for the application process remains at 2 additional minutes for the driver to furnish the motor carrier unique information and 1 minute for the motor carrier to review that unique information. Based on the estimation of 2,641,788 applications, the burden is 132,090 hours (2,641,788 applications × 3 minutes/60 minutes/hour = 132,090 hours rounded to the nearest hour).

In order to distinguish the adjustments from the changes to the burden, we separated analysis of the positions for which high risk drivers will be denied employment because of the new safety performance history information.

Adjustment. The adjustment to the burden for this element is caused by the adjustment in the assumed number of

drivers that must be screened for each job opening. Experienced driver applications are calculated as 2,000,031 (666,677 × 3 applicants per job). Inexperienced driver applications make up the difference, calculated as 518,757 [(839,596 − 666,677) × 3]. This totals 2,518,788 applicants (2,000,031 + 518,757 = 2,518,788). The adjusted burden hours for this element thus are 125,940 hours (2,518,788 applications × 3 minutes/60 minutes/hour = 125,940 rounded).

Change. The change to the burden for this element is caused by the high risk experienced drivers who will be denied employment. We estimated that at 41,000 positions. These will be filled by new entrant drivers. The change in burden is calculated as 6,150 hours (41,000 positions × 3 applicants/positions × 3 minutes/60 min/hr = 6,150 hours).

The 41,000 denials are calculated on the following logic. Denials because of new accident data is calculated as (0.148 annual accidents per driver × 3 years × 0.1288 percent of drivers denied employment based on at-fault accident data × 666,677 experienced job openings for drivers coming from DOT- and FMCSA-regulated previous employers required to provide history = 38,125 drivers denied employment based on new accident data.)

Denials because of an additional year of alcohol and controlled substances positive tests or refusals to test are calculated as: 0.001 percent of the experienced drivers (666,677) do not pass because they test positive and 0.015 of them fail because they refuse to test. This equals to a total of 10,666.84 experienced drivers who do not pass or refuse to test for alcohol and controlled substances. FMCSA estimates that 25 percent of these 10,666.84 experienced drivers (or 2,667 drivers) would be denied employment because of the additional year of alcohol and controlled substances positive tests or refusals to test ([0.0001 × 666,677 = 666.68] + [0.015 × 666,677 = 10,000.16] = 0.25 × 10,666.84 = 2,667 rounded).

Rounded to the nearest thousand, this represents 41,000 additional job openings that will be involved in the hiring process. For purposes of not over estimating the benefits associated with this rule, FMCSA assumes the applicants for these 41,000 job openings will be new entrants from outside the existing industry without any safety performance history information on file.

The burden for obtaining the driver records and analyzing them under the current regulations increases from 69,966 to 209,899 hours, an adjustment of 139,933 hours. The burden estimates for obtaining the driving record remains at 4 minutes, and for reviewing at 1 minute. Based on the adjusted estimation of 2,518,788 inquiries, the burden is 209,899 hours (2,518,788 inquiries × 5 minutes/60 minutes/hour = 209,899 hours).

The additional 41,000 job openings because of the denials (based on the driver safety performance history information) require the motor carrier to obtain and review the MVR for each of the 123,000 applicants. This is a change of an additional 10,250 hours (41,000 jobs × 3 applicants × 5 minutes to obtain and review/60 minutes/hour = 10,250 hours).

For purposes of this information collection, the agency estimates that, on average, at a 13 percent annual turnover rate, each applicant will have had 1.39 employers in the past 3 years. If all applicants were investigated, the number of investigation requests for safety performance history information would be greater than 3,501,115 (1.39 previous employers × 839,596 job openings × 3 applicants = 3,501,115).

However, the Gallup study for the ATA Foundation estimated in 1997 that only approximately 80% of the jobs will be filled with experienced drivers, *i.e.*, those who worked for previous employers regulated by DOT or FMCSA. Upon implementation of this final rule, that percentage of jobs to be filled with experienced drivers decreases to about 75%. This is because of the experienced drivers who will be denied employment because of this final rule. Therefore, the number of employers who will be investigated for experienced drivers is calculated at 2,780,043 (1.39 previous employers × 666,677 experienced job openings × 3 applicants = 2,780,043).

The burden for investigation of previous employers under the current regulations increases from 139,933 to 463,341 hours, an adjustment of 323,408 hours. The burden estimate for investigating previous employers remains at 10 minutes per investigation. Based on the assumption of 2,000,031 applicants, the burden is 463,341 hours (1.39 previous employers × 2,000,031 applicants × 10 minutes/60 minutes/hour = 463,341 hours).

There is no additional burden for investigating previous employers of new entrant applicants for these jobs because we assumed these applicants come from jobs that are outside the FMCSA or any other DOT agency's regulatory authority. Thus, there are no regulated previous employers to be investigated nor any that are required to provide safety performance history information.

For most drivers, there will be no accident or alcohol and controlled substances data to report. For those drivers, the amount of time the prospective employer must spend reviewing the data obtained will be only seconds. However, for those drivers who have any such data reported to the prospective employer, substantial time may be spent reviewing and evaluating that data to determine if that driver is a reasonable risk to hire. The majority of this review time thus will be spent on the small number of drivers for whom accident and/or alcohol or controlled substance information is reported. In order to turn this into a usable metric, FMCSA assumes that on average prospective employers will spend 10 minutes evaluating the additional safety performance history data made available to them. FMCSA believes this is likely a high estimate, and therefore does not understate the total burden that will be placed on motor carriers. This leads to a burden change of an estimated additional 463,341 burden hours (2,780,043 investigations × 10 minutes/60 minutes/hour = 463,341 hours).

This rule requires prospective motor carriers to notify driver applicants that they have the right to be provided a copy of the safety performance history data provided to the prospective motor carrier by previous employers for the driver applicant to review. If the driver applicant wants to receive a copy, the driver must request the copy in writing. If the driver wants the previous employer to correct the data, the driver applicant must request the previous employer to correct the data, or to include a rebuttal furnished by the driver. The majority of these notifications would be made via a statement on the job application; therefore, we are not assigning an additional information collection burden for this notification. FMCSA requested comments in the SNPRM on whether there might be any significant burden in sectors of the industry using telephone job application processes. No comments specific to this question were received. One commenter said it would be a major imposition for them to create new employment forms to include such a notification. Other comments asked FMCSA to provide a template statement so they could easily incorporate such a notification. In general, it appears most carriers feel this could be easily accommodated within their employment applications. Thus, there is 0 burden hours assumed for this function.

In many cases, drivers have an idea of what type of safety performance history they have on file with their previous employers. Thus, although FMCSA does not have any actual data, it seems

unlikely every driver will go through the trouble to submit a request in writing to obtain the information provided to the prospective employer. FMCSA assumes that one-half of the experienced driver applicants investigated who are not hired would request to receive the previous employer information provided to the prospective employer. We assume 666,677 × 3 = 2,000,031 experienced applicants of which (666,677 − 41,000 =) 625,677 are hired. This means (2,000,031 − 625,677 =) 1,374,354 experienced driver applicants are not hired. One half of these, or 687,177 drivers, will request copies of the safety performance histories furnished by previous DOT- or FMCSA-regulated employers.

Therefore, the change in the additional burden estimate for prospective employers to provide a copy of the previous employer information to the drivers who choose to request it is 57,265 burden hours [687,177 drivers × 5 minutes for prospective employers to provide the data to each of those drivers, divided by 60 minutes = 57,265 hours].

Therefore, the total burden to notify of rights and to provide requested copies of histories is 57,265 hours (0 + 57,265 = 57,265 hours).

Thus, the total annual burden associated with the first element is 1,336,186 hours (125,940 hours + 6,150 hours + 209,899 hours + 10,250 hours + 463,341 hours + 463,341 hours + 57,265 hours = 1,336,186 hours).

Second Element of IC. The second element of the Driver Qualification Files—annual review—would be unaffected. It remains at 187,294 burden hours for obtaining the list or certification of annual violations; 468,236 burden hours for the motor carrier to obtain and review the MVR; and 37,674 burden hours for additional or duplicate recordkeeping associated with using multi-employer drivers.

Thus, the total annual burden associated with the second element remains at 693,204 hours (187,294 hours + 468,236 hours + 37,674 hours = 693,204 hours).

Third Element of IC. The third element of this information collection—related to the hiring process—addresses the substantial new burdens created due to the changes made by this final rule. In the past, previous employers were not required to provide safety performance history on their former employees. However, this rule requires all previous employers to provide driver safety performance history data for the 3 year period preceding the date of the request. The annual change in IC burden for previous employers reporting this information is estimated to be 231,670 burden hours [2,780,043 investigations × 5 minutes, divided by 60 minutes = 231,670 hours].

This rule also establishes a new right for former drivers to request correction or rebut employment data supplied by previous employers to prospective employers. Prospective employers are required to provide the driver applicant with copies of the information it receives from the previous employer. In turn the previous employer is required to: (1) Provide the past employee/driver the opportunity to request correction; (2) review such a request, if submitted; (3) correct records, if persuaded by the driver's request; (4) append the driver's rebuttal to the record, if not persuaded to revise their records by the rebuttal; and (5) keep a copy of the rebuttal with the file; and (6) send (a) the revised record or the rebuttal to the prospective employer, and (b) the employment history with the appended rebuttal when requested in the future by any subsequent prospective employer.

If a driver wishes to pursue getting a previous employer to correct their previous driver safety performance history data, or to prepare a quality rebuttal for that employer to include with the safety performance history data, the driver will have to commit a considerable amount of time and effort. FMCSA estimates that as 2 hours. As a result, FMCSA believes only a small percentage of such drivers denied employment will decide it is worth the effort. The agency estimates that 10 percent of the drivers requesting to see previous employer information would choose to expend the effort to protest their driver safety performance history provided by former employers. Thus, 68,178 (687,177 × 0.10) drivers would actually request corrections or submit rebuttals. The FMCSA further estimates that on average it would take the previous employer 2 hours to address and respond to such request for correction or rebuttal. Therefore, the change in burden estimate for this activity is 272,712 hours [(68,178 × 2 hours per protesting driver = 136,356 hours) + (68,178 hours × 2 hours per previous employer = 136,356 hours) = 272,712 hours].

The total change in annual burden caused by this rule associated with this third IC item is 504,382 hours [231,670 hours (burden associated with previous employers providing safety performance history) + 272,712 hours (burden associated with rebuttals/protests) = 504,712 hours].

Summary

Accordingly, Table 2 estimates that the total burden adjustment for the Driver Qualification Files information collection associated with the revised number of driver applicants per job opening is 547,300 hours [799,180 hours is the total adjusted burden for these three activities: 125,940 hours (application) + 209,899 hours (request MVR and review) + 463,341 hours (request/investigate previous employers information) − the currently approved burden of 251,880 hours for the same activities: 41,981 hours (application) + 69,966 hours (request MVR and review) + 139,933 hours (request/investigate previous employers information) = an adjustment of 547,300 hours].

The amount of current burden for the annual review remains the same at 693,204 hours [187,294 hours (list or certify violations) + 468,236 hours (annual review of the driving record) + 37,674 hours (multi-employer drivers) = 693,204 hours].

The total change or new IC burden hours caused by this rule is estimated as 1,041,388 hours [463,341 hours (review/evaluate data received) + 57,265 hours (notification and driver rights to review data received) + 6,150 hours (for the additional 41,000 jobs—41,000 × 3 applicants—that will need to go through the application hiring process) + 10,250 hours (for the additional 41,000 jobs—41,000 × 3 applicants—that need to have their MVRs obtained and reviewed by prospective employers) + 231,670 hours (previous employers providing 3 years of safety performance history) + 272,712 hours (duties of previous employers and drivers associated with drivers who rebut and protest employment history) = 1,041,388 hours].

A more detailed summary of the adjusted burden and changes from new IC burden requirements is provided in the Paperwork Reporting Act Supporting Statement.

You may submit comments on the *information collection burden* addressed by this final rule to the OMB. The OMB must receive your comments by April 29, 2004. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Activities	Currently approved burdens	Continuing burden hours	Adjusted burden hours	Changed burden hours
Application	41,981		125,940	
Additional 41,000 drivers application				6,150
Request MVR and review	69,966		209,899	
Request 41,00 Additional MVRs and review				10,250
Request/investigate previous employers information	139,933		463,341	
Review previous employer information received				463,341
Notify driver of rights and provide info from previous employer to drivers requesting copy to review				57,265
List or certification of violations	187,294	187,294		
Annually obtain and review driving record	468,236	468,236		
Multi-employer drivers	37,674	37,674		
Providing 3 years of safety performance history				231,670
Driver rebuttals				272,712
Sub-Totals		693,204	799,180	1,041,388
Grand Totals	945,084			2,533,772

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (published in the March 1, 2004 **Federal Register** at 69 FR 9680 with an effective date of March 30, 2004), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. *See* 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely continues requiring each motor carrier to inquire into the driving record and investigate the previous safety performance history of each prospective new driver, and establishes a requirement, including driver rights, for previous DOT and FMCSA regulated employers to provide this safety performance history to improve CMV safety on our nation's highways.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulatory Evaluation: Summary of Benefits and Costs

I. Background and Summary

The primary new costs created by this final rule involve previous employers providing and prospective motor carriers reviewing driver safety performance history data for use in hiring decisions, and dealing with driver rights to request correction or rebut the data. The specific types of new driver safety performance data include providing driver accident, alcohol/controlled substance positive test results or refusals to be tested, and any rehabilitation program data the previous employer may have.

Specific new costs to previous employers include reporting this specified investigative data to all prospective motor carrier employers of drivers for three years after a driver leaves their employ, and dealing with any of their previous drivers that request correction or inclusion of a rebuttal to the safety performance history data the previous employer reports. Current regulations require motor carriers to collect and retain accident data for one year on their drivers. This rule requires retaining accident data for an additional two years on each of its drivers.

Before this there was no requirement for previous motor carriers to report accident information to prospective motor carrier employers. This rule requires such reporting. Additionally, previous employers are required to report an additional year of positive alcohol/controlled substances tests (and refusals to test) and any rehabilitation program data they may have to prospective motor carriers, i.e., three-years in lieu of the two years of data currently required by existing regulations.

Previous employers are already required by parts 40 and 382 to report on driver positive tests or refusals to be tested regarding alcohol and controlled substances use, as well as whether any such driver completed the return to duty requirements (if the previous employer has that information) within the preceding two years. This rule adds a conforming requirement to the § 391.23 investigation provision that previous employers must report the alcohol and controlled substances information as part of the safety

performance information, plus increases the reporting period for this data from two to three years. (Previous employers are already required to retain this data for at least three years.)

Specific costs to prospective employers include reviewing all responses and any driver accident and alcohol/controlled substances data received from previous employers and using that data in hiring decisions. Current regulations require prospective employers to inquire to obtain driver Motor Vehicle Record(s) (MVRs) from appropriate States and to investigate previous motor carriers for the preceding three years.

As explained in the SNPRM, this final rule relies on the interpretation that previous employers cannot make receiving a fee for providing this information a precondition of releasing the minimum driver safety performance history information within the specified maximum response period. Not withstanding that previous employers can set a fee and ultimately enforce collection of that fee by going to court, many employers are unlikely to enforce collection because they are small entities with limited resources. Thus, they could wind up not receiving reimbursement for their cost of providing the safety performance history information. On the other hand, in some segments, at least some of these costs could be relatively equally shared, *i.e.*, many employers will get value from investigations to other employers as well as costs from providing the information to others.

This final rule reasserts the position presented in the SNPRM, namely, these costs are not always equally shared. (See document 41 in the docket for this rule.) Some firms hire new entrant drivers who systematically leave those employers to work for firms that require several years of experience before they will hire a driver. This analysis estimates that as 24 percent in scenario 1, and 30 percent in scenario 2. These distributional effects are relevant to SBA concerns about small businesses, and are addressed in other sections of this final rule, particularly the Regulatory Flexibility Act analysis and the Paperwork Reduction Act analysis. However, who incurs these costs is not directly important to the estimation of total costs of this rule addressed in this section, since they represent transfer costs among employers.

The discussion that follows is a summary of the costs and benefits associated with this rule. For a complete discussion of the data used, assumptions made, and calculations performed for this analysis, the reader is referred to the docket, where a copy of the full regulatory evaluation report for this final rule is found as document 86.

The summary of costs associated with this rule is presented as Table 3.

TABLE 3.—SUMMARY OF COSTS, 2004–2013, IN MILLIONS OF DOLLARS

First Year Costs	$15
Total Discounted Costs, 10-Year Period	113

These figures represent FMCSA's estimate of the costs associated with implementation of this rule. Where uncertainties exist regarding these cost estimates, they are noted in the discussions.

Changes From SNPRM

These regulatory evaluation estimates incorporate information provided to the docket in response to questions in the SNPRM. They contain both substantial adjustments and changes from the numbers presented in the SNPRM analysis.

The number of drivers screened for each job opening is a good example of where a major adjustment in burden resulted from submissions to the docket in response to questions asked in the SNPRM. The issue is how many drivers, on average, are investigated and inquired about for every driver hired. The regulatory evaluation in the SNPRM used one driver applicant per job. The text of the SNPRM pointed out FMCSA had conducted a study that reports the number is much higher than one to one (see document 41 in the docket), and asked for information regarding what the estimate should be. The responses to the docket further confirmed there currently are on average multiple rejections per driver hired. The explanation in the paperwork reduction analysis explains how FMCSA determined an estimated average of three applicants per job instead of the former assumption of one applicant per job.

Another example of a change is the percentage of truck drivers that could be found at fault for accidents. This final rule uses estimates developed from preliminary results of FMCSA's Large Truck Crash Causation Study that were not available when we initially prepared our benefits analysis for the SNPRM. They are used in this final rule as an update for the scenario 1 analysis. The crash causation data supercedes the "contributing factors" data used in the SNPRM analysis. They allow us to establish a much stronger link between the actions taken by the truck driver and the cause of the accident than does information regarding "contributing factors" to an accident.

Estimating Percentage of Drivers at Fault

The SNPRM used the estimate that 30 percent of accidents a truck driver is involved in could be attributed as the truck driver being at fault. This was based on data about driver fault rates for two vehicle accidents, which was the only relatively definitive data available when the SNPRM was finalized.[4, 5] This final rule uses 38.64 percent as the estimate for the accidents the driver could be attributed to the driver being at fault. This revised percentage of at faults is calculated using the new preliminary data from the Large Truck Crash Causation Study.[6] This number was calculated in the following manner.

The LTCCS subdivides its analysis to examine the actions taken by the truck driver in single-truck accidents, and those taken by the truck driver and other driver(s) in two- and multi-vehicle accidents involving trucks. Thus we need an estimate of the percentage of driver fault in each category of accident, and then to combine them to get an overall value.

Examining preliminary data on single-truck accidents, the LTCCS study researchers found that in 32 of the 50 accidents examined to date (or 64 percent), some action by the truck driver (driver non-performance, driver recognition, decision, or performance error) was the "critical reason" for the accident. In two-vehicle accidents involving a truck, the preliminary data revealed that in 46 of the 157 accidents examined to date (or 29.3 percent), some action taken by the truck driver was the critical reason for the accident. In multi-vehicle accidents involving a truck, the preliminary data revealed that in 26 of 78 accidents examined to date (or 33 percent), some action by the truck driver was the critical reason for the accident.

In order to determine the overall percentage of total truck-related accidents where the truck driver's action (or inaction) was the cause (and therefore could be "charged" with the accident), we must also know the distribution of single-truck, two-vehicle,

[4] "Large Truck Crash Facts 2000," Federal Motor Carrier Safety Administration, Analysis Division, March 2002. This document is available online at *http://ai.volpe.dot.gov/CarrierResearchResults/PDFs/2000LargeTruckFactsx.pdf.*

[5] "Large Truck Crash Profile: The 1997 National Picture," by the Analysis Division, Office of Motor Carriers, Federal Highway Administration, September 1998. Table 15 from this report is available in the docket for this rulemaking as document 87.

[6] Progress presentation on the Large Truck Crash Causation Study is included in the docket as document 88.

and multi-vehicle accidents involving a truck as a percent of total truck-related accidents. Categorizing truck-related accident data from MCMIS into single-, two-, and multi-vehicle truck accidents for fiscal years 2001 through 2003, we found that single-truck accidents represented an average of 24.5 percent of all truck-related accidents in MCMIS over these three years, while two-vehicle accidents represented 52.7 percent, and multi-vehicle accidents represented 22.8 percent. These serve as the weighting factors for calculating the overall average percentage of accidents where the truck driver likely was at fault.

Multiplying the percent of total accidents represented by each accident category by the percent of each accident category where the truck driver was at fault, we derived an estimate of the percent of all truck-related accidents where the truck driver would be at fault. The result is 38.64 percent.

24.5% single-truck accidents × 64% of these where the truck driver was at fault = 15.68.

52.7% two-vehicle accidents × 29.3% of these where the truck driver was at fault = 15.44.

22.8% multi-vehicle accidents × 33% of these where the truck driver was at fault = 7.52.

15.68 + 15.44 + 7.52 = 38.64.

This "38.64 percent" estimate represents the percent of all truck-related accidents where the truck driver would have taken an action that served as the critical reason for the accident and therefore could be charged with the accident. Of course, in making this determination, we assumed that the 285 large truck accidents examined to date as part of the Large Truck Crash Causation Study are representative of all truck-related accidents in recent years. We used these results to determine the number of drivers denied employment under scenarios 1 and 2 in this analysis of the final rule.

Adjustments Versus Changes

When making such substantial revisions, it is important to distinguish between what are adjustments to the existing burden and what are new changes in burden caused by this rule. Adjustments such as the prospective motor carriers' ongoing costs of performing the required investigations and inquiries are not germane to the new cost/benefit considerations of this rule (*i.e.*, they are not new costs caused by of this rule). Therefore, this regulatory evaluation limits itself to the new costs and benefits resulting from this rule's implementation.

The Paperwork Reduction Act analysis addresses both the adjustments in reporting burden and the new changes in burdens caused by this rule. The adjustments and changes are shown side by side for clarity in that analysis.

Development of Benefit Scenarios

The intent of this rule is to reduce accidents by altering some portion of the 403,000 driver hiring decisions made each year within all industries covered by the FMCSRs. Because this rule will provide hiring managers with additional accident and alcohol/controlled substance data with which to evaluate driver applicants, it is reasonable to assume that some drivers will not be hired because of the new data, whereas previously these drivers would have been hired (in the absence of this information). In this analysis, we assumed that the drivers who are denied employment because of the new accident and alcohol/controlled substances data will not obtain other positions as drivers for an average of six months. Drivers with relatively few previous accidents or positive alcohol/controlled substance test results presumably will find work sooner, while those with a relatively large number of previous accidents (or positive test results) are expected to require a longer period. The assumption of the analysis is the vast majority of drivers initially denied employment because of this rule will find alternative positions as drivers over time. One reason is their previous crashes stretching back three years are removed from their records. Another is in some particularly competitive segments, employers must select their drivers from a limited pool of applicants (accidents or no accidents). Only those particularly problematic drivers who exhibit a consistent pattern of poor safety performance over an extended period of time presumably will have difficulty re-entering the industry at some point in the future.

In the particularly competitive market segments, employers experience greater difficulty finding qualified drivers. This is largely because the competitive nature of the segment causes such employers to pay relatively low wages and/or subject drivers to extremely difficult working conditions, erratic hours, time away from home and family, etc. Additionally, the broader macroeconomic climate partially determines the percent of existing capacity of all segments of industries requiring drivers, as well as changing the size of the existing labor pool. Thus the pressures to hire drivers are different under different economic conditions and thereby affect the point at which employers in all industries, as well as the particularly competitive for-hire trucking segments would need to hire new drivers.

Benefits accrue as a result of accident reductions from prospective employers hiring safer drivers in lieu of the worst-performing drivers. The assumptions used to calculate the benefits in the SNPRM are presented in this final rule as scenario 1. Scenario 1 in this final rule represents a lower bound of the societal benefits of this rule, and still forms what FMCSA believes is a reasonable estimate of benefits that will be obtained because of this final rule. Scenario 2 represents an upper bound of the societal benefits that FMCSA estimates could accrue from this rule. It was added to this analysis to provide perspective on the sensitivity of the estimates used. Scenarios 1 and 2 are based on the following logic.

The only data that previous employers are required to provide to prospective employers is the data maintained in the accident register required by § 390.15. The issue is what difference will such data make in the thousands of driver hiring decisions made by prospective motor carriers each year. Because many accidents are not the fault of the CMV driver, and many motor carriers are under pressure to find drivers, in some number of cases FMCSA realizes the hiring official will discount the accident data and hire the driver anyway. The challenge is to create an estimate of the number of applicants that will be denied employment based on this new data. We have made two different sets of assumptions to generate estimates of what we believe would be lower and upper bounds for the accident reduction potential of this rule.

Benefits Scenario 1

Scenario 1 is considered conservative and as such, represents a lower bound. It assumes that of the 38.64 percent of accidents where a truck was involved and the CMV driver was at fault, the hiring official will successfully infer both the fault and decide to deny the driver employment in ⅓ of those cases (or 12.88 percent of all new accident records made available to prospective employers). In other words, the prospective employer must use its own method to infer "cause" or "chargeability" of an accident to a truck driver, and additionally decide how the employer will use that information in deciding whether to deny employment to that driver.

As a result, we calculate 12.88 percent of the 142,500 truck-related accidents

that will become available means 18,300 truck drivers will be denied employment because of the new accident data, since "chargeability/fault" is a very important hiring factor for safety conscious prospective employers. When coupled with the 1,300 truck drivers we estimate will be denied employment because of the additional year of alcohol/controlled substance data, the total number of drivers denied positions in any given year is almost 20,000. The benefits associated with this rule under Benefits Scenario 1 are presented in Table 4.

TABLE 4.—SUMMARY OF BENEFITS, BENEFITS SCENARIO 1, 2004–2013,

[In millions of dollars]

Benefits scenario 1	First-year benefits	Total discounted benefits, 10-year analysis period
Direct Benefits Only [1]	$7	$107
With 10% Deterrence Effect [2]	8	117
With 25% Deterrence Effect [2]	9	133
With 50% Deterrence Effect [2]	11	160

[1] Under the "Direct Benefits Only" scenario, all truck-related accident reduction benefits result from those commercial drivers with the worst safety performance records not being hired.

[2] Under the three benefits scenarios including a "Deterrence Effect", FMCSA assumes that the availability of, and easier access to, new commercial driver safety performance data will result in some drivers improving their driving behavior because prospective employers will have such data available for use in future hiring decisions. Since we were unsure of the exact magnitude of this effect, we illustrated the deterrence effect at zero, 10, 25, and 50 percent of direct truck-related accident reduction benefits.

In calculating benefits for this rule, we attempted to account for both direct and indirect benefits. Direct benefits are reductions in truck-related accidents that result from prospective employers not hiring certain drivers (those with poor accident or alcohol/controlled substance information) because the new accident and additional year of alcohol/controlled substance test and refusal data are made available by previous employers.

Indirect benefits are those associated with a deterrence effect. The FMCSA believes that the availability of, and easier access to, new driver safety performance data will cause some portion of drivers to improve their driving behavior, because prospective employers will now obtain and use such data in hiring decisions. Relevant research documents the existence of this deterrence effect, most notably in the field of drunk driving, and CMV CDL driver traffic convictions. However, since we do not know the specific magnitude of the deterrence effect associated with the availability of new driver safety performance data, we illustrated this effect as a percentage of the direct accident reduction benefits from this rule.

Benefits Scenario 2

Scenario 2 is considered an optimistic scenario and as such, represents an upper bound of the potential benefits of this rule. It assumes the hiring official will successfully infer in all of the accidents where accident experts would attribute fault to the CMV driver (38.64 percent of accidents involving a truck) that the CMV driver was in fact at fault and will also deny employment to all such drivers.

The full 38.64 percent of drivers at fault from the 142,500 truck-related accidents that will become available to prospective employers for use in the hiring decision once this rule is fully implemented would result in 55,000 truck drivers being denied employment because of the new accident data. When coupled with the 1,300 truck drivers we estimate will be denied employment because of the additional year of alcohol/controlled substance data, the total number of drivers denied positions in any given year would be about 56,000 (after rounding). Total benefits that could be associated with this rule under Benefits Scenario 2 are presented in Table 5 and also illustrate our assumptions regarding the magnitude of the deterrence effect associated with this rule.

TABLE 5.—SUMMARY OF BENEFITS, BENEFITS SCENARIO 2, 2004–2013

[In millions of dollars]

Benefits scenario 2	First-year benefits	Total discounted benefits, 10-year analysis period
Direct Benefits Only [1]	$16	$271
With 10% Deterrence Effect [2]	17	298
With 25% Deterrence Effect [2]	20	339
With 50% Deterrence Effect [2]	24	406

[1] Under the "Direct Benefits Only" scenario, all truck-related accident reduction benefits result from the industry's refusal to hire drivers with the worst safety performance records.

[2] Under the three benefits scenarios including a "Deterrence Effect", FMCSA assumes that the availability of, and easier access to, new commercial driver safety performance data will result in some drivers improving their driving behavior because prospective employers will now use such data in future hiring decisions. Since we were unsure of the magnitude of this effect, we illustrate the deterrence effect at zero, 10, 25, and 50 percent of direct truck-related accident reduction benefits.

Under Benefits Scenario 2, first-year (2004) benefits associated with this final rule range from $16 million with no deterrence effect, to $24 million if the deterrence effect is equal to 50 percent of the direct accident reduction benefits.

Total discounted benefits associated with this rule range from a low of $271 million when we assumed no deterrence effect to a high of $406 million when we assumed the deterrence effect is equal to 50 percent of the direct accident reduction benefits.

Net Benefits and Benefit Cost Ratios

Benefits Scenario 1. Comparing total discounted costs and benefits under Benefits Scenario 1, we calculated net benefits and benefit-cost ratios for this rule. They are presented in Table 6.

TABLE 6.—SUMMARY OF NET BENEFITS AND BENEFIT-COST RATIOS, BENEFITS SCENARIO 1, 2004–2013

[In millions of dollars]

Benefits scenario 1	Total discounted net benefits (millions) [1]	Benefit-cost ratio [2]
Direct Benefits Only	–$6	0.95
With 10% Deterrence Effect	4	1.04
With 25% Deterrence Effect	20	1.18
With 50% Deterrence Effect	47	1.42

[1] Total Discounted Net Benefits were derived by subtracting the Total Discounted Cost estimate of $113 million in Table 3 from each of the Total Discounted Benefits estimates in Column 3 of Table 4. For example, the $113 million in total discounted costs from Table 3 subtracted by the $107 million in Total Discounted Benefits under the "Direct Benefits Only" scenario of Table 4 yields Total Net Discounted Benefits of –$6 million (after rounding) over the 10-year analysis period (2004–2013).

[2] Benefit-Cost Ratios were derived by dividing the Total Discounted Cost estimate of $113 million in Table 3 from each of the Total Discounted Benefits estimates for each of the Indirect Benefits assumptions located in Column 3 of Table 4. For example, the $107 million in Total Discounted Benefits under the "Direct Benefits Only" scenario of Table 4 divided by the $113 million in total discounted costs from Table 3 yields a Benefit-Cost Ratio of 0.95 over the 10-year analysis period (2004–2013). A benefit-cost ratio less than one implies that the rule is not cost beneficial to implement within the 10-year analysis period. It says nothing about the cost effectiveness of the rule beyond 10 years.

When examining the total discounted net benefits and benefit-cost ratios for this conservative scenario contained in Table 6, we find that if one assumes there is no deterrence effect associated with this rule, then the final rule is not cost beneficial when measured within the 10-year analysis period. However, if one assumes any level of deterrence effect, then the rule is cost beneficial within the 10-year analysis period. Regardless of the assumptions one makes about the deterrence effect, the estimated benefits and costs are relatively equal within the 10-year analysis when we use the conservative benefits assumptions outlined above for Scenario 1.

Benefits Scenario 2. Comparing total discounted costs and benefits under Benefits Scenario 2, we have calculated net benefits and benefit-cost ratios for this rule. They are presented in Table 7.

TABLE 7.—SUMMARY OF NET BENEFITS AND BENEFIT-COST RATIOS, BENEFITS SCENARIO 2, 2004–2013

[In millions of dollars]

Benefits scenario 2	Total net discounted benefits [1]	Benefit-cost ratio [2]
Direct Benefits Only	$158	2.40
With 10% Deterrence Effect	185	2.64
With 25% Deterrence Effect	226	3.00
With 50% Deterrence Effect	294	3.61

[1] Total Net Discounted Benefits were derived by subtracting the Total Discounted Cost estimate of $113 million in Table 3 from each of the Total Discounted Benefits estimates in Column 3 of Table 5. For example, the $113 million in total discounted costs from Table 3 subtracted by the $271 million in Total Discounted Benefits under the "Direct Benefits Only" scenario of Table 5 yields Total Net Discounted Benefits of $158 million (after rounding) over the 10-year analysis period (2004–2013).

[2] Benefit-Cost Ratios were derived by dividing the Total Discounted Cost estimate of $113 million in Table 3 from each of the Total Discounted Benefits estimates for each of the Benefits Scenarios located in Column 3 of Table 5. For example, the $271 million in Total Discounted Benefits under the "Direct Benefits Only" scenario of Table 5 divided by the $113 million in total discounted costs from Table 3 yields a Benefit-Cost Ratio of 2.40 over the 10-year analysis period (2004–2013). A benefit-cost ratio of greater than one implies that the rule is cost beneficial to implement when comparing costs to benefits within the 10-year analysis period.

Under Benefits Scenario 2, total net discounted benefits associated with this optimistic scenario for the rule over the 10-year analysis period, range from a low of $158 million when we assume no deterrence effect benefits to a high of $294 million when we assume the magnitude of the deterrence effect is equal to 50 percent of the direct accident reduction benefits. Correspondingly, benefit-cost ratios range from 2.40 when we assume no deterrence effect benefits to 3.61 when deterrence effect benefits are assumed to equal 50 percent of direct accident reduction benefits.

Uncertainties

As seen from examining Tables 6 and 7, the threshold at which the benefits associated with this rule are greater than the costs (thereby making the rule cost beneficial) is dependent upon several important (and to some degree uncertain) factors. These include: (1) The percentage of newly-available truck-related accident records that will be provided by previous employers to prospective employers (we assumed all will be provided), (2) the likelihood that the prospective employer will use "chargeability" (and hence fault in an accident) as the determining factor in whether to hire a driver based on this new data (we assumed a lower percentage in scenario 1 and 100

percent in scenario 2), and (3) the likelihood that the prospective employer will be able to determine, or infer in a certain percentage of cases, that the CMV driver was in fact at fault in an accident, based on the information provided by previous employers. (To examine the sensitivity of the second and third uncertainties on the results, we incorporated the two benefits scenarios described above).

Research seems to indicate that the "chargeability" factor is a very important one in the hiring decision for the "safest" motor carriers. This is based on a recent survey of the safest motor carriers conducted by the University of Maryland Robert H. Smith School of Business on driver hiring practices. It revealed that 93 percent of such trucking company officials surveyed indicated that "no chargeable accidents" was an "important" or "very important" factor in their driver hiring decisions.[7] However, there are motor carriers whose operating practices seem to indicate they place a low importance on previous driver safety behavior indicated by convictions on the driver's record obtained from the State.[8] Such motor carriers may place a similar lack of importance on the new safety performance history data such as chargeable accidents required by this final rule. Such motor carriers often are the ones targeted by the FMCSA SafeStat scores to receive a carrier compliance review.

If the LTCCS results on the initial 285 large-truck accidents are representative of all large truck-related accidents, if the hiring motor carrier can determine or infer driver fault for the entire 38.64 percent of truck accidents, and if the motor carrier places the same emphasis on at-fault accident data as the safest motor carriers, then scenario 2 could apply. It seems questionable all these conditions will be met for all motor carriers. For example, the accident data specified at § 390.15 for reporting is not required to contain information about driver fault.

[7] "Best Highway Safety Practices, A Survey of the Safest Motor Carriers About Safety Management Practices," by Thomas Corsi and Richard Barnard, University of Maryland, College Park, R.H. School of Business, 2003, Report to the Federal Motor Carrier Safety Administration. This document is available online at *http://ai.volpe.dot.gov/CarrierResearchResults/CarrierResearchResults.asp?file=PDFs/BestHighwaySafetyPractices.pdf.*

[8] "An Analysis of Commercial Vehicle Driver Traffic Conviction Data to Identify Higher Risk Motor Carriers," Brenda Lantz, North Dakota State University and David Goettee, Federal Motor Carrier Safety Administration, March 2004. A copy of this analysis is available online as document 85 in the docket.

The estimation of costs and benefits of this rule are discussed in more detail in the next two sections.

II. Costs

Accident Data

In 1997, the study "Empty Chairs and Musical Seats[9] prepared for the ATA Foundation, Inc. by the Gallup Organization, estimated that 403,000 commercial drivers will need to be hired by the trucking industry each year between the years 1994 and 2005 in order to meet projected demand. Of this total, Gallup estimated that 320,000 (or 80 percent) will need to be hired due to internal turnover (drivers switching trucking companies), 35,000 (or 8 percent) will need to be hired due to industry growth, and 48,000 (or 12 percent) will need to be hired due to attrition, retirement, and external turnover (drivers leaving trucking for alternative industries). This estimate is used later in the analysis when we determine the costs associated with this rule.

To estimate the new accident records that may be stored and reported on as part of this rule, we used the average annual total for truck-related accidents for 1999 and 2000, which is equal to 445,000 (includes all truck-related fatal, injury, and property-damage-only accidents).[10] Using an estimate of 3 million as the total existing driver population, we estimated the number of annual accidents per driver at 0.148 (445,000/ 3 million).

In this analysis, we assumed drivers being hired due to internal turnover (320,000 positions) will be experienced drivers (with possible accident records) and the remainder (those hired due to attrition, retirement, and industry growth) will be new drivers (those without possible accident records). As such, the number of accidents available for the number of drivers being hired each year will be 47,500 (0.148 × 320,000). Over three years, the number of accidents these drivers will be involved in would total 142,500 (47,500 × 3).

Regarding new data reporting requirements, each driver applying for a new position will potentially generate a new investigation request from the prospective employer, and consequently a new search by the previous employer. The exact number of investigation requests conducted by prospective employers, and responded to by previous employers, depends upon operating practices used by different employers in different industry sectors.

In this analysis, we assumed that on a national average, prospective employers will conduct three driver safety performance history investigations for each position filled within the industry each year. This estimate is based on information supplied to FMCSA in the docket, including ATA, AT&T and others during the public comment period for the SNPRM. (An explanation of how the value of 3 was developed is presented in the Paperwork Reduction Act section of this rule.) Previously, we estimated that 403,000 drivers are hired annually within the industry, of which 320,000 will be drivers with previous experience (and will have a potential accident record to search). Therefore, 960,000 driver record searches will be conducted each year on average for each position filled (320,000 × 3). Additionally, we estimated that 142,500 accident records (47,500 annual accident records × 3 years) will now be reported annually by previous employers to prospective employers.

Since each investigation request requires a search, whether it yields past accidents or not, 960,000 searches will need to be completed per year at $1.57 per search according the ARMA. For the 142,500 cases where an accident is discovered within the preceding three years, duplication of the record will need to be performed at $1.33 per record according to ARMA, and the original record will need to be refiled in the driver's investigation history file at $1.84 per record according to ARMA. Lastly, we assumed one letter will be mailed, at $0.37 per letter via first-class mail, for each of the 960,000 driver record searches conducted annually, with the letter either containing the data investigated or a statement indicating that no accidents were found. Multiplying the cost per record for each activity by the number of records handled under each activity, total first-year costs from: (a) Storing/retaining two additional years of driver accident data, (b) searching/retrieving, duplicating, and refiling three years of accident data in preparation for mailing, and (c) mailing out the information are $2.4 million.

[9] "Empty Seats and Musical Chairs: Critical Success Factors in Truck Driver Retention", page 1, prepared by the Gallup Organization for the American Trucking Associations (ATA) Foundation, October 1997. A copy of this report is available online at *http://www.atri-online.org/research/safety/images/Musical_Chairs.pdf.*

[10] This number differs from the number of accidents resulting from application of the definition for accident found at § 390.5 and required to be retained in the accident register by § 390.15(b)(1). For an explanation see full regulatory evaluation for this final rule in the docket, document 86.

Note: Although there are estimated to be 1.39 previous employers per applicant, we decided to be conservative and exclude that from the calculations. This lowers the costs some, but it lowers the benefits by even more than the costs. These considerations are reflected in the information collection analyses for the paperwork reduction analysis.

Alcohol and Controlled Substances Test-Related Data

Using data from the 2001 FMCSA Drug and Alcohol Testing Survey, we estimated that an average of 5,120 of the 403,000 drivers hired annually within the industry will fail random and non-random alcohol/controlled substances tests each year, and will be referred for rehabilitation. The final rule requires one additional year of such data to be reported to prospective employers on the 320,000 experienced drivers hired annually (recall that the remainder of drivers hired each year are assumed to be new drivers). Assuming that prospective employers conduct investigations on an average of three potential drivers per position opening, whether it yields past data or not, then 960,000 record searches (320,000 × 3) will have to be completed per year at $1.57 per search according the ARMA.

Also, in the 5,120 cases where a violation/referral is discovered for reporting the additional year's results, duplication of the record will have to be performed at $1.33 per record according to ARMA, and the original record will have to be refiled in the driver's file at $1.84 per record according to ARMA.

Lastly, we assumed one letter will be mailed at $0.37 per letter via first-class mail for each of the 960,000 driver record searches conducted annually with the letter containing either the data investigated or a statement indicating that no test/program data were found.

Multiplying the cost per record for each activity by the number of records handled under each activity, total first-year costs from: (a) Searching/retrieving, duplicating, and refiling one year of such data in preparation for mailing, and (b) mailing out the information are $1.9 million. Because of cost savings and overlaps with the already-existing processes being performed, the actual cost could be less.

Also, we know that some segments of the industry initiate applications using telephone and other means of communication. As a result, the prospective employer initiates the required inquiries and investigations based on the application, before the prospective employer has obtained the signed driver authorization to obtain the drug and alcohol data. Some portion of these drivers will pass the initial screening. They will be asked to provide the signed authorization for the drug and alcohol data.

These second stage screening investigations for possible alcohol and controlled substances data will be requested from the same previous employers that were investigated initially for accident and other safety performance history data. We do not have enough data to estimate the additional cost these employers will bear for these multiple investigations for the same driver application. Therefore, we did not incorporate any such calculations into our analysis.

Costs To Notify Drivers of Rights To Review Data

Under this rule, data obtained through investigation is defined to include driver accident and alcohol/controlled substances data. For this analysis, we assumed that 1.2 million drivers (403,000 × 3) applying for positions annually will be notified of such rights on their employment applications, or via a simple return letter sent to the driver upon receipt of the application. Since we expect that employers will have to purchase new application forms, including the new/revised information, we used the difference between the current cost of a standard application form. This is $0.06 each when purchased from a large office supply distributor, versus what we believed would be the cost for the new customized form ($0.12 each). For 1.2 million applications, the annual cost to provide this information to applicants is $72,500.

There are some segments of the motor carrier industry (such as truckload) that encourage drivers to make initial applications via telephone, where no paperwork is provided to the driver at that stage. To abide by the requirements of the final rule, prospective employers will then be required to notify these applicants via mail of their rights to review, request correction, or rebut safety performance history data furnished by previous employers. To establish an upper bound, we assumed a third of the applications (or 403,000) will be filed via telephone, each requiring notification of driver review, correction and rebuttal rights be mailed. For purposes of this analysis we assume this information is transmitted via a form letter. At $0.37 for postage and $1.00 for labor to address and mail each letter, an additional cost of $552,000 will be incurred. Added to the $72,500 in costs discussed in the last paragraph, total costs to notify drivers of their right to review and protest safety performance data are $625,000 annually.

Costs Associated With Driver Requests for Previous Employer Data

Since each driver applying for a new position is notified of his or her rights to review and refute data in their safety performance histories, it is reasonable to assume that some portion of these driver applicants will actually request their data. Of the total 960,000 annual applicants who have previous experience within the industry (and for whom previous safety performance history data will exist), we assumed that the 320,000 who are hired are unlikely to request their data for review, since they were in fact hired.

The question is what percentage of the other two-thirds of applicants with previous employer safety performance history (640,000) who were not offered the position will request this data? In order to create a deterrent to drivers frivolously requesting this information, the rule requires drivers to make their request to receive this information in writing. Additionally FMCSA believes that the dependence of previous employers' limited liability being based on accuracy creates an incentive for previous employers to be accurate. Thus, most of the driver safety performance history data reported will be accurate. Therefore, FMCSA assumes that one-half of those experienced drivers who are denied employment will take the time to make a written request to receive a copy of the information provided by previous employers to review. This is 320,000 drivers (640,000 denied × ½).

Each of these requests is accompanied by a record search, at $1.57 per search, and duplication at $1.33 per search, which when multiplied by 320,000 yields costs of $0.5 million and $0.4 million, respectively. Additionally, at $0.37 per mailing, an additional mailing cost of almost $120,000 must be added. Summing these three cost subtotals yields a total cost of $1 million annually (after rounding) to provide driver applicants with their safety performance data.

Costs Associated With Driver Requests for Correction or Rebuttal

Recall that the rule provides that all drivers have the right to review, comment on, and rebut the safety performance history provided by their previous employers to prospective employers and that 320,000 of the applicants will request such data. Of these, only some portion is likely to file a formal protest, since an investment of personal time is required to initiate such

an action. In this analysis, we assumed that 10 percent of the driver applicants who request their safety performance data each year will then file a protest. This amounts to an average of 32,000 (or 320,000 × 10%) filing protests each year.

In the 32,000 cases where we anticipate a protest will be filed each year, we assumed two additional hours of labor time spent by each driver to develop and file that protest with their previous employer. Additionally, we assumed two additional hours of labor time spent by each previous employer to address each protest. Using an average 2001 hourly wage rate for trucking managers of $35.94 and 32,000 cases, total costs to the trucking company to address driver protests of their data files are $2.3 million annually, undiscounted (32,000 × $35.94 × 2).[11] Multiplying the 2001 hourly wage rate of $14.66 (average for a truck driver) by the two additional hours spent by each of the 32,000 drivers to file a protest adds another $0.9 million to this total annual cost. Aggregating these two components yields an annual total cost to address driver protests of $3.2 million. In estimating the driver and employer costs associated with potential protests, it was unclear how frequently the driver or the employer will secure the services of an attorney to either file or review such protests. Therefore, costs associated with these services were not included in this analysis. Although the agency invited comments regarding the accuracy of this omission, no public comments were submitted.

Costs to Prospective Employers To Review Additional Data

As discussed, the new driver safety performance history data required under this final rule will expand the review process currently being practiced by prospective employers as part of the hiring process. To determine the cost per hiring decision, we estimated the prospective employer's review of driver safety performance history data will be expanded by an additional 10 minutes per hiring decision. Recall that the Gallup poll indicated that of the 403,000 driver position openings filled within the trucking industry each year, 320,000 will be filled due to internal turnover (drivers switching jobs within the industry). Therefore, for our calculations here, we assumed 960,000 applicants for 320,000 position openings will have safety performance histories for prospective employers to review, with the remainder of industry positions being filled by candidates outside of the industry, whether new workers to the labor force or those switching from outside industries. Using the average 2001 hourly wage rate for a trucking company manager of $35.94, 960,000 applications by experienced drivers, and a total of 10 additional minutes spent reviewing each driver's safety performance data in preparation for a hiring decision, total annual costs of this activity amount to $5.8 million (undiscounted).

Total Costs

Total first-year costs to implement this final rule amount to approximately $15 million (undiscounted, after rounding). Total discounted costs over the 10-year analysis period (2004–2013) are $113 million, using a discount rate of seven percent.

III. Benefits

Societal benefits associated with this final rule will accrue from the expected reduction in accidents resulting from the use of safer drivers by all industries subject to the FMCSRs. Specifically, additional driver safety performance history data used in the hiring decision process should result in denying positions to the less safe drivers who prior to this final rule would have been hired. Additionally, it is reasonable to assume this final rule will generate a deterrence effect, since studies of similar social problems and policy approaches have quantified such impacts (reducing alcohol-related accidents via changes in penalties and public attitudes and reduced CDL specified traffic convictions). In this analysis, we quantified the "direct" benefits resulting from a reduction in accidents due to changes in driver hiring decisions. To illustrate "indirect" benefits associated with a deterrence effect, we conducted a sensitivity analysis by assuming that the benefits from a deterrence effect could range anywhere from zero, 10 percent, 25 percent, or 50 percent of the direct accident reduction benefits associated with this rule.

Total Number of Drivers Affected by This Rule

We analyze in scenarios 1 and 2 that this rule will alter portions of the 403,000 driver hiring decisions made each year within the trucking industry. Because hiring managers will have accident and an additional year of alcohol/controlled substance test data with which to evaluate drivers for positions, it is likely that the new data will result in some drivers (who previously would have been hired) not being hired because of this rule.

In the conservative scenario 1 of this benefits analysis, we estimate that once fully implemented 20,000 of the 403,000 commercial drivers hired annually by the industry will now be denied employment because of the new accident and alcohol/controlled substance test data becoming available to prospective employers.

In the optimistic scenario 2 of this benefits analysis, we estimated that once fully implemented 56,000 of the 403,000 commercial drivers hired annually by the industry will now be denied employment because of the new accident and alcohol/controlled substance test data becoming available to prospective employers.

Benefits Associated With Accident Reductions

Using the above data on the number of drivers who will not be hired for on average six months as a result of the newly-available accident data, we can estimate the direct accident reduction benefit associated with this rule.

A study conducted by the Volpe National Transportation Systems Center examined the difference in accident rates for motor carriers with a high number of previous accidents versus those with a low number of previous accidents. We used the results of this study as a proxy for the direct accident reduction potential of this rule, under the logic that if a hiring manager, using the new accident data provided under this rule, ends up hiring an applicant with a low previous accident rate (or no accidents in the recent past) in lieu of the applicant with a high previous accident rate, then accident reduction benefits will accrue from this rule. We felt that this was logical considering that a carrier's safety performance profile is a direct extension of that of its drivers.

The Volpe study discovered that motor carriers identified as high-risk, based on accidents experienced during a 36-month period prior to identification, had a post-identification accident rate of 81.4 accidents per 1000 power units. This is in contrast to carriers identified as low risk, based on the absence of past accidents and hence no Accident Safety Evaluation Area (SEA) score, who had a post-identification accident rate of only 29.9 accidents per 1000 power units. As stated, under the premise that a motor carrier's accident profile is a direct

[11] In table 3 of the article "A Cost Benefit Study of Motor Carrier Safety Programs," published in the January 1997 Journal of Transport Economics and Policy, Professors Leon Moses and Ian Savage estimated that the average trucking company manager earns $31.25 per hour, including wages and benefits. Inflating this figure to 2001 dollars using the GDP price indicator yields an average wage for trucking company managers of $35.94. A copy of this table is available in the docket as document 89.

extension of its drivers' profiles and is a result of that carrier's commercial driver hiring and screening process, then we can use these results to examine differences in drivers.

At a post-identification accident rate difference of 51.5 accidents per 1000 power units between high- and low-risk carriers, we converted this accident rate difference to a per-driver rate by assuming two drivers per power unit on average within the industry (based on information obtained at the Hours-of-Service Roundtables, July 2000). Therefore, the difference in accidents per driver is .026 (51.5 /(1000 × 2)) over the 18-month post-identification analysis period examined in the study. Assuming an equal distribution of this accident involvement differential over the 18-month period following identification, we estimated the annual difference in accidents between drivers with and without accidents within the preceding 18 months to be 0.017 accidents per driver per year.

Assuming drivers not hired as a result of this final rule will find alternative employment as drivers after an average of six months of searching, the accident reduction differential used to calculate benefits in this analysis was 0.0085 per driver (0.026 − 0.017). By using such a conservative estimate (*i.e.*, it is likely that drivers with a high number of past accidents will find it difficult to secure alternative positions on average within six months), we are ensuring that our estimates of accident reduction benefits will not be overstated.

Using an average cost per truck-related accident of $79,873 in 2002 dollars, we can estimate the value of accident reduction benefits.[12]

Accident Data Benefits Scenario 1

For illustrative purposes, in the first year of the analysis period (2004), one year of accident data (or 47,500 accident records) will be available to prospective employers. Based on an assumption that in 12.88 percent of these cases, the driver will not be hired for on average six months, then 6,100 drivers will be denied employment because of the newly-available accident data. In the second year of the analysis period (2005), two years of accident data (or 95,000 records) are collected on drivers and the number of drivers not hired rises to 12,200 (or 12.88 percent of the 95,000 records). In 2006 and thereafter, when this final rule will be fully implemented, the number of drivers not hired because of the new accident data will rise to 18,300 (or 12.88 percent of the 142,500 newly-available accident records for the 320,000 experienced drivers hired each year).

At an average cost per accident of $79,873 in 2002 dollars, an accident differential of .0085, and 6,100, 12,200, and 18,300 drivers who are not hired in 2004, 2005, and 2006, respectively, the undiscounted value of annual accident reduction benefits is equal to $4.2 million in 2004, $8.4 million in 2005, and $12.6 million in 2006 (when three years of data become available to prospective employers). This translates to a total of 52, 105, and 157 accidents avoided in these three years, respectively, as a result of the newly-available accident data. Thereafter, the accident reduction potential (157 accidents) remains the same as that in 2006, the year the accident data retention and reporting requirement will become fully implemented. First-year accident reduction benefits equal $4.2 million (undiscounted), while total discounted accident reduction benefits from the new accident data are equal to $82 million (after rounding) over the 10-year analysis period.

Accident Data Benefits Scenario 2

In the first year of the analysis period (2004), one year's worth of accident data (or 47,500 records) will be available to prospective employers, since previous employers are currently required to collect and retain one year's worth of such data. Based on our earlier assumption for the second benefits scenario that in 38.64 percent of these cases the driver will not be hired, then 18,300 drivers will be denied employment because of the newly available accident data. In the second year of the analysis period (2005), two years of accident data (or 95,000 records) are collected on drivers, and the number of drivers not hired because of the new accident data rises to 36,700 (or 38.64 percent of the 95,000 records), and in 2006 and thereafter, when this final rule will be fully implemented, the number of drivers not hired because of the new accident data will rise to 55,000 (or 38.64 percent of the 142,500 newly-available accident records available to prospective employers each year).

At an average cost per accident of $79,873 in 2002 dollars, an accident differential of .0085, and 18,300, 36,700, and 55,000 drivers who are not hired in 2004, 2005, and 2006, respectively, the undiscounted value of annual accident reduction benefits is equal to $12.6 million in 2004, $25.2 million in 2005, and $37.7 million in 2006 (when three years of data become available to prospective employers). This translates to a total of 157, 315, and 472 accidents avoided in these three years, respectively, as a result of the newly available accident data. Thereafter, the accident reduction potential (472 accidents) remains the same as that in 2006, the year the accident data retention and reporting requirement will become fully implemented. First-year accident reduction benefits equal $12.6 million (undiscounted), while total discounted accident reduction benefits from the new accident data are equal to $247 million (after rounding) over the 10-year analysis period.

Benefits From Alcohol and Controlled Substances Data

The second source of direct accident reduction benefits will result from the availability of driver alcohol and controlled substance use and rehabilitation program data by prospective employers. Lacking a data source linking positive tests for alcohol and controlled substances with accident rates, we used FMCSR traffic enforcement data for violations of alcohol and controlled substances and accident rates as a proxy.

The MCMIS contains information on the number of accidents experienced by drivers with and without alcohol or controlled substances citations for the period 1999–2001. Results reveal that the difference in accidents for drivers with, and without, citations for alcohol and controlled substances violations is .019 accidents per driver over a three-year period (1999–2001). Assuming an equal distribution of accident involvement and driver exposure over this three-year period, the difference in accident profiles between drivers with, and without, a citation for a serious traffic violation is roughly 0.0633 accidents per driver per year.

As was done with the accident data, we conservatively assumed that drivers who are not hired into positions during any given year because of the new alcohol/controlled substances data will be able to find other driver positions after an average of six months of searching. As such, the accident reduction differential used to calculate benefits in this analysis was 0.0316 per driver (0.0633 × ½ year). In this analysis, we estimated that roughly 25 percent (or 1,280) of those 5,120 commercial drivers who fail random or non-random alcohol/controlled substance tests annually, are referred to rehabilitation programs, and change employment within the industry each year, will now be denied employment

[12] The average cost per truck-related accident was obtained from "Costs of Large Truck- and Bus-Involved Crashes" by Eduard Zaloshnja, Ted Miller, and Rebecca Spicer, 2000. Cost estimates were updated to 2003 using the Gross Domestic Product (GDP) Price Deflator). This document is available in docket FMCSA–00–7382 as document 6.

because of the new alcohol/controlled substance program data made available to prospective employers.

Using an average cost per truck-related accident of $79,873 and an annual difference in accidents of .0316 per driver, annual benefits associated with this provision equal roughly $3.2 million in 2004. The number of accidents avoided as a result of the new driver alcohol and controlled substance test and program data is equal to 41 accidents each year between 2004 and 2013 (0.0316 × 1,280 drivers). Total discounted accident reduction benefits from the new alcohol/controlled substance test and program data over the 10-year analysis period are estimated to be $24 million.

Total Direct (Accident Reduction) Benefits

Under Benefits Scenario 1, where we used relatively conservative assumptions regarding the use of accident records by prospective employers, total discounted direct benefits of this rule are $107 million (after rounding). This total is derived by adding the $82 million in total discounted accident reduction benefits from the new accident records discussed earlier with the $24 million in total discounted accident reduction benefits associated with new alcohol/controlled substance data discussed above. Note that we have not yet incorporated any indirect benefits, or those associated with a deterrence effect. Those are discussed in the next section.

Under scenario 2, where we used more aggressive assumptions regarding the use of accident records by prospective employers, total discounted direct benefits of this rule are $271 million (after rounding). This total was derived by adding the $247 million in total discounted accident reduction benefits from the new accident records with the $24 million in total discounted accident reduction benefits associated with new alcohol/controlled substance data. Again, note that we have not yet incorporated any indirect benefits, or those associated with a deterrence effect. Those are discussed below.

Benefits From a Deterrence Effect

FMCSA believes it is reasonable to assume there will be a "deterrence effect" associated with this rule, where a driver will strive to improve his or her safety performance record because he or she will know that such information will be available to prospective employer. This will limit the ability of a driver to "run away" from a bad accident history, just as it has been for alcohol and controlled substances abuse. However, we are unsure as to the specific magnitude of this effect. Therefore, we performed a sensitivity analysis as part of this evaluation by assuming that the deterrence effect could range anywhere from zero, 10 percent, 25 percent, or 50 percent of the value of direct accident reduction benefits measured earlier. Since the "deterrence effect" benefits are a percentage of the direct accident reduction benefits associated with this rule, they are identified in the next section, where we discuss the total benefits.

Total Benefits

Benefits Scenario 1. Recall that under Benefits Scenario 1, we estimated that in 12.88 percent of the accidents where accident data will be made available to prospective employers, the prospective motor carrier will both accurately infer the truck driver was at fault and choose to deny employment as a result. Total benefits associated with this rule under Benefits Scenario 1 are identified in Table 8 and are separated according to our assumptions regarding the magnitude of the deterrence effect associated with this rule.

TABLE 8.—SUMMARY OF BENEFITS, BENEFITS SCENARIO 1, 2004–2013

[In millions of dollars]

Benefits scenario 1	First-year benefits	Total discounted benefits, 10-Year analysis period
Direct Benefits Only [1]	$7	$107
With 10% Deterrence Effect [2]	8	117
With 25% Deterrence Effect [2]	9	133
With 50% Deterrence Effect [2]	11	160

[1] Under the "Direct Benefits Only" scenario, all truck-related accident reduction benefits result from the industry's refusal to hire drivers with the worst safety performance records.

[2] Under the three benefits scenarios including a "Deterrence Effect," FMCSA assumes that the availability of, and easier access to, new commercial driver safety performance data will result in some drivers improving their driving behavior because prospective employers will now use such data in future hiring decisions. Since we were unsure of the magnitude of this effect, we assessed the deterrence effect at zero, 10, 25, and 50 percent of direct truck-related accident reduction benefits.

Under Benefits Scenario 1, first-year (2004) benefits associated with this final rule range from slightly less than $7 million when we assume there is no deterrence effect to $11 million when we assume the deterrence effect is equal to 50 percent of the direct accident reduction benefits of this rule.

Total discounted benefits associated with this rule range from a low of $107 million when we assume no deterrence effect to a high of $160 million when we assume the deterrence effect is equal to 50 percent of the direct accident reduction benefits.

Benefits Scenario 2. Recall that under Benefits Scenario 2, or what we estimated to be an "upper bound" to the benefits estimates, we assumed that in all 38.64 percent of the accidents where the truck driver is chargeable for the accident, the prospective motor carrier will both correctly infer the chargeability and deny employment. Total benefits that could be associated with this rule under Benefits Scenario 2 are identified in Table 9 and are separated according to our assumptions regarding the magnitude of the deterrence effect associated with this rule.

TABLE 9.—SUMMARY OF BENEFITS, BENEFITS SCENARIO 2, 2004–2013

[In millions of dollars]

Benefits scenario 2	First-year benefits	Total discounted benefits, 10-Year analysis period
Direct Benefits Only [1]	$16	$271
With 10% Deterrence Effect [2]	17	298
With 25% Deterrence Effect [2]	20	339
With 50% Deterrence Effect [2]	24	406

[1] Under the "Direct Benefits Only" scenario, all truck-related accident reduction benefits result from the industry's refusal to hire drivers with the worst safety performance records.

[2] Under the three benefits scenarios including a "Deterrence Effect, "FMCSA assumes that the availability of, and easier access to, new commercial driver safety performance data will result in some drivers improving their driving behavior because prospective employers will now use such data in future hiring decisions. Since we were unsure of the magnitude of this effect, we assessed the deterrence effect at zero, 10, 25, and 50 percent of direct truck-related accident reduction benefits.

Under Benefits Scenario 2, first-year (2004) benefits associated with this final rule range from $16 million when we assume there is no deterrence effect to $24 million when we assume the deterrence effect is equal to 50 percent of the direct accident reduction benefits of this rule.

Total discounted benefits associated with this rule range from a low of $271 million when we assume no deterrence effect to a high of $406 million when we assume the deterrence effect is equal to 50 percent of the direct accident reduction benefits.

List of Subjects

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety.

■ In consideration of the foregoing, the FMCSA amends chapter III of title 49 CFR parts 390 and 391, as set forth below:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 1. The authority citation for 49 CFR part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 2. Section 390.5 is amended by adding the following definition in alphabetic order to read as follows:

§ 390.5 Definitions.

* * * * *

Previous employer means any DOT regulated person who employed the driver in the preceding 3 years, including any possible current employer.

* * * * *

■ 3. Section 390.15 is revised to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier must make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative or authorized third party representative, upon request or as part of any investigation within such time as the request or investigation may specify. A motor carrier shall give an authorized representative all reasonable assistance in the investigation of any accident including providing a full, true and correct response to any question of the inquiry.

(b) For accidents that occur after April 29, 2003, motor carriers must maintain an accident register for three years after the date of each accident. For accidents that occurred on or prior to April 29, 2003, motor carriers must maintain an accident register for a period of one year after the date of each accident. Information placed in the accident register must contain at least the following:

(1) A list of accidents as defined at § 390.5 of this chapter containing for each accident:

(i) Date of accident.

(ii) City or town, or most near, where the accident occurred and the State where the accident occurred.

(iii) Driver Name.

(iv) Number of injuries.

(v) Number of fatalities.

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of motor vehicle involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

(Approved by the Office of Management and Budget under control number 2126–0009)

PART 391—QUALIFICATIONS OF DRIVERS

■ 4. The authority citation for 49 CFR part 391 is revised to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; Sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; and 49 CFR 1.73.

■ 5. In § 391.21, paragraphs (b)(10) and (d) are revised to read as follows:

§ 391.21 Application for employment.

* * * * *

(b) * * *

(10)(i) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted,

(ii) The dates he or she was employed by that employer,

(iii) The reason for leaving the employ of that employer,

(iv) After October 29, 2004, whether the (A) Applicant was subject to the FMCSRs while employed by that previous employer,

(B) Job was designated as a safety sensitive function in any DOT regulated mode subject to alcohol and controlled substances testing requirements as required by 49 CFR part 40;

* * * * *

(d) Before an application is submitted, the motor carrier must inform the applicant that the information he/she provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's previous employers will be contacted, for the purpose of

investigating the applicant's safety performance history information as required by paragraphs (d) and (e) of § 391.23. The prospective employer must also notify the driver in writing of his/her due process rights as specified in § 391.23(i) regarding information received as a result of these investigations.

■ 6. In § 391.23, revise paragraphs (a)(2), (b) and (c), and add new paragraphs (d) through (l) to read as follows:

§ 391.23 Investigations and inquiries.

(a) * * *

(1) * * *

(2) An investigation of the driver's safety performance history with Department of Transportation regulated employers during the preceding three years.

(b) A copy of the driver record(s) obtained in response to the inquiry or inquiries to each State driver record agency required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no driving record exists from the State or States, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State. The inquiry to the State driver record agencies must be made in the form and manner each agency prescribes.

(c)(1) Replies to the investigations of the driver's safety performance history required by paragraph (a)(2) of this section, or documentation of good faith efforts to obtain the investigation data, must be placed in the driver investigation history file, after October 29, 2004, within 30 days of the date the driver's employment begins. Any period of time required to exercise the driver's due process rights to review the information received, request a previous employer to correct or include a rebuttal, is separate and apart from this 30-day requirement to document investigation of the driver safety performance history data.

(2) The investigation may consist of personal interviews, telephone interviews, letters, or any other method for investigating that the carrier deems appropriate. Each motor carrier must make a written record with respect to each previous employer contacted, or good faith efforts to do so. The record must include the previous employer's name and address, the date the previous employer was contacted, or the attempts made, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented. The record must be maintained pursuant to § 391.53.

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA following procedures specified at § 386.12 of this chapter and keep a copy of such reports in the Driver Investigation file as part of documenting a good faith effort to obtain the required information.

(4) *Exception.* For a drivers with no previous employment experience working for a DOT regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver history investigation file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

(d) The prospective motor carrier must investigate, at a minimum, the information listed in this paragraph from all previous employers of the applicant that employed the driver to operate a CMV within the previous three years. The investigation request must contain specific contact information on where the previous motor carrier employers should send the information requested.

(1) General driver identification and employment verification information.

(2) The data elements as specified in § 390.15(b)(1) of this chapter for accidents involving the driver that occurred in the three-year period preceding the date of the employment application.

(i) Any accidents as defined by § 390.5 of this chapter.

(ii) Any accidents the previous employer may wish to provide that are retained pursuant to § 390.15(b)(2), or pursuant to the employer's internal policies for retaining more detailed minor accident information.

(e) In addition to the investigations required by paragraph (d) of this section, the prospective motor carrier employers must investigate the information listed below in this paragraph from all previous DOT regulated employers that employed the driver within the previous three years from the date of the employment application, in a safety-sensitive function that required alcohol and controlled substance testing specified by 49 CFR part 40.

(1) Whether, within the previous three years, the driver had violated the alcohol and controlled substances prohibitions under subpart B of part 382 of this chapter, or 49 CFR part 40.

(2) Whether the driver failed to undertake or complete a rehabilitation program prescribed by a substance abuse professional (SAP) pursuant to § 382.605 of this chapter, or 49 CFR part 40, subpart O. If the previous employer does not know this information (*e.g.*, an employer that terminated an employee who tested positive on a drug test), the prospective motor carrier must obtain documentation of the driver's successful completion of the SAP's referral directly from the driver.

(3) For a driver who had successfully completed a SAP's rehabilitation referral, and remained in the employ of the referring employer, information on whether the driver had the following testing violations subsequent to completion of a § 382.605 or 49 CFR part 40, subpart O referral:

(i) Alcohol tests with a result of 0.04 or higher alcohol concentration;

(ii) Verified positive drug tests;

(iii) Refusals to be tested (including verified adulterated or substituted drug test results).

(f) A prospective motor carrier employer must provide to the previous employer the driver's written consent meeting the requirements of § 40.321(b) for the release of the information in paragraph (e) of this section. If the driver refuses to provide this written consent, the prospective motor carrier employer must not permit the driver to operate a commercial motor vehicle for that motor carrier.

(g) After October 29, 2004, previous employers must:

(1) Respond to each request for the DOT defined information in paragraphs (d) and (e) of this section within 30 days after the request is received. If there is no safety performance history information to report for that driver, previous motor carrier employers are nonetheless required to send a response confirming the non-existence of any such data, including the driver identification information and dates of employment.

(2) Take all precautions reasonably necessary to ensure the accuracy of the records.

(3) Provide specific contact information in case a driver chooses to contact the previous employer regarding correction or rebuttal of the data.

(4) Keep a record of each request and the response for one year, including the date, the party to whom it was released, and a summary identifying what was provided.

(5) *Exception.* Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(h) The release of information under this section may take any form that reasonably ensures confidentiality, including letter, facsimile, or e-mail. The previous employer and its agents and insurers must take all precautions reasonably necessary to protect the driver safety performance history records from disclosure to any person not directly involved in forwarding the records, except the previous employer's insurer, except that the previous employer may not provide any alcohol or controlled substances information to the previous employer's insurer.

(i)(1) The prospective employer must expressly notify drivers with Department of Transportation regulated employment during the preceding three years—via the application form or other written document prior to any hiring decision—that he or she has the following rights regarding the investigative information that will be provided to the prospective employer pursuant to paragraphs (d) and (e) of this section:

(i) The right to review information provided by previous employers;

(ii) The right to have errors in the information corrected by the previous employer and for that previous employer to re-send the corrected information to the prospective employer;

(iii) The right to have a rebuttal statement attached to the alleged erroneous information, if the previous employer and the driver cannot agree on the accuracy of the information.

(2) Drivers who have previous Department of Transportation regulated employment history in the preceding three years, and wish to review previous employer-provided investigative information must submit a written request to the prospective employer, which may be done at any time, including when applying, or as late as 30 days after being employed or being notified of denial of employment. The prospective employer must provide this information to the applicant within five (5) business days of receiving the written request. If the prospective employer has not yet received the requested information from the previous employer(s), then the five-business days deadline will begin when the prospective employer receives the requested safety performance history information. If the driver has not arranged to pick up or receive the requested records within thirty (30) days of the prospective employer making them available, the prospective motor carrier may consider the driver to have waived his/her request to review the records.

(j)(1) Drivers wishing to request correction of erroneous information in records received pursuant to paragraph (i) of this section must send the request for the correction to the previous employer that provided the records to the prospective employer.

(2) After October 29, 2004, the previous employer must either correct and forward the information to the prospective motor carrier employer, or notify the driver within 15 days of receiving a driver's request to correct the data that it does not agree to correct the data. If the previous employer corrects and forwards the data as requested, that employer must also retain the corrected information as part of the driver's safety performance history record and provide it to subsequent prospective employers when requests for this information are received. If the previous employer corrects the data and forwards it to the prospective motor carrier employer, there is no need to notify the driver.

(3) Drivers wishing to rebut information in records received pursuant to paragraph (i) of this section must send the rebuttal to the previous employer with instructions to include the rebuttal in that driver's safety performance history.

(4) After October 29, 2004, within five business days of receiving a rebuttal from a driver, the previous employer must:

(i) Forward a copy of the rebuttal to the prospective motor carrier employer;

(ii) Append the rebuttal to the driver's information in the carrier's appropriate file, to be included as part of the response for any subsequent investigating prospective employers for the duration of the three-year data retention requirement.

(5) The driver may submit a rebuttal initially without a request for correction, or subsequent to a request for correction.

(6) The driver may report failures of previous employers to correct information or include the driver's rebuttal as part of the safety performance information, to the FMCSA following procedures specified at § 386.12.

(k)(1) The prospective motor carrier employer must use the information described in paragraphs (d) and (e) of this section only as part of deciding whether to hire the driver.

(2) The prospective motor carrier employer, its agents and insurers must take all precautions reasonably necessary to protect the records from disclosure to any person not directly involved in deciding whether to hire the driver. The prospective motor carrier employer may not provide any alcohol or controlled substances information to the prospective motor carrier employer's insurer.

(l)(1) No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (l)(1)(i) or (ii) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (l)(1) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

(Approved by the Office of Management and Budget under control number 2126–0004)

■ 7. In § 391.51, paragraph (b)(2) and the last line for Office of Management and Budget authority are revised to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(2) A copy of the response by each State agency concerning a driver's driving record pursuant to § 391.23(a)(1);

* * * * *

(Approved by the Office of Management and Budget under control number 2126–004)

■ 8. Add a new § 391.53 to read as follows:

§ 391.53 Driver Investigation History File.

(a) After October 29, 2004, each motor carrier must maintain records relating to the investigation into the safety performance history of a new or prospective driver pursuant to paragraphs (d) and (e) of § 391.23. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data, except the alcohol and controlled substances data.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's alcohol and controlled substances history as required under § 391.23(d).

(2) A copy of the response(s) received for investigations required by paragraphs (d) and (e) of § 391.23 from each previous employer, or documentation of good faith efforts to contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information received about the driver from the previous employer. Failures to contact a previous employer, or of them to provide the required safety performance history information, must be documented.

(c) The safety performance histories received from previous employers for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(d) A motor carrier must make all records and information in this file available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or an authorized third party, upon request or as part of any inquiry within the time period specified by the requesting representative.

(Approved by the Office of Management and Budget under control number 2126–004)

Issued on: March 22, 2004.

Annette M. Sandberg,

Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 04–6793 Filed 3–29–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380 and 391

[Docket FMCSA–97–2176]

RIN 2126–AA08

Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) establishes standards for minimum training requirements for the operators of longer combination vehicles (LCVs) and requirements for the instructors who train these operators. This action is in response to section 4007 of the Intermodal Surface Transportation Efficiency Act of 1991, which directed that training for the operators of LCVs include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary of Transportation (Secretary). The purpose of this final rule is to enhance the safety of commercial motor vehicle (CMV) operations on our Nation's highways.

EFFECTIVE DATE: June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Sec. 4007(b) of the Motor Carrier Act of 1991 [Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, 2152; 49 U.S.C. 31307] directs the U.S. Department of Transportation (DOT) to establish Federal minimum training requirements for drivers of LCVs. The ISTEA also requires that the certification of these drivers' proficiency be accomplished by instructors who meet certain Federal minimum requirements to ensure an acceptable degree of quality control and uniformity. Sec. 4007(f) of the ISTEA defines an LCV as "any combination of a truck tractor and 2 or more trailers or semi-trailers" that has a gross vehicle weight (GVW) greater than 80,000 pounds (36,288 kilograms) and is operated on the Interstate Highway System. This final rule implements the requirements of Sec. 4007.

Background

In the early 1980s, the Federal Highway Administration (FHWA) determined that a need existed for technical guidance in the area of truck driver training. FHWA is the predecessor agency to FMCSA within DOT. Research at that time had shown that many driver-training schools offered little or no structured curricula or uniform training programs for any type of CMV.

To help correct this problem, FHWA developed the *Model Curriculum for Training Tractor-Trailer Drivers,* issued in 1985 (GPO Stock No. 050–001–00293–1). The Model Curriculum, as it is known in the industry, incorporated the agency's "Proposed Minimum Standards for Training Tractor Trailer Drivers" (1984). The Model Curriculum is a broad set of recommendations that incorporates standardized minimum core curriculum guidelines and training materials, as well as guidelines pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement. Curriculum content includes the following areas: basic operation, safe operating practices, advanced operating practices, vehicle maintenance, and nonvehicle activities.

The Professional Truck Driver Institute (PTDI) was created in 1986 by the motor carrier industry to certify training programs offered by truck driver training schools. Originally named the Professional Truck Driver Institute of America, the group changed its name in November 1998 to reflect the addition of Canada to the organization. PTDI derived its certification criteria from the Model Curriculum, and, in mid-1988, began certifying truck-driver training programs across the country. As of February 2003, approximately 64 schools in 27 States and Canada have received the PTDI certification. Although many schools have a number of truck driving courses, most have only one course that is certified by PTDI.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*), although not directly targeted at driver training, was intended to improve highway safety. Its goal was to ensure that drivers of large trucks and buses possess the knowledge and skills necessary to operate these vehicles safely on public highways. The CMVSA established the commercial driver's license (CDL) program and directed the agency to establish minimum Federal standards that States must meet when licensing CMV drivers. The CMVSA applies to virtually anyone who operates a commercial motor vehicle in interstate or intrastate commerce, including employees of Federal, State, and local governments. As defined by the implementing regulation, a CMV is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle meets one or more of the following criteria:

(a) Has a gross combination weight rating (GCWR) of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds).

(b) Has a GVWR of 11,794 or more kilograms (26,001 or more pounds).

(c) Is designed to transport 16 or more passengers, including the driver.

(d) Is of any size and used in the transportation of hazardous materials as defined in this section [49 CFR 383.5].

In accordance with the CMVSA, all drivers of commercial motor vehicles must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate any of the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93(b):

(a) Double/triple trailers;

(b) Passenger vehicles;

(c) Tank vehicles;

(d) Vehicles required to be placarded for hazardous materials.

For all endorsements, the driver is required to pass a knowledge test that gauges the person's familiarity with the special handling characteristics of the specific vehicle type. To obtain a passenger endorsement, the driver also must pass a skills test.

The CDL standards do not require the comprehensive driver training proposed in the Model Curriculum, since the CDL is a licensing standard as opposed to a training standard. Accordingly, there are no prerequisite Federal or State training requirements to obtain a CDL.

In 1990, the National Transportation Safety Board (NTSB) recommended to FHWA (Safety Recommendation H–90–3) that drivers of specialized vehicles, including multiple-trailer vehicles, receive training in the special handling characteristics and other variables that influence the controllability and maneuverability of these vehicles. On September 12, 1990, NTSB voided this Safety Recommendation as "Closed—Reconsidered." NTSB determined that the knowledge and skills necessary for the operation of multiple-trailer combination vehicles are covered in the CDL requirements under 49 CFR subpart C as well as in the "the model driver manual and the model knowledge and skills tests," and that the trucking industry provided adequate training in these requirements.

In February 1991, FHWA awarded a contract to PTDI to develop voluntary criteria for training drivers in the safe operation of twin 8.534-meter (28-foot) trailer combination vehicles. The resulting "Twin Trailer Driver Curriculum" outlines how drivers should be trained in the safe operation of these vehicles. Subject matter experts from motor carrier fleets, industry associations, training institutions, and governmental organizations assisted in developing the curriculum, which consists of 115 clock hours of direct driver participation including a minimum of 56 hours of behind-the-wheel training. The "Twin Trailer Driver Curriculum" is available for review in the public docket for this rulemaking.

The agency awarded two additional contracts to the PTDI to develop curriculum outlines addressing triple-trailer combination vehicles and Rocky Mountain/Turnpike Double combination vehicles. Ultimately, the curriculum outlines for twin trailers, Rocky Mountain/Turnpike Doubles, and triple-trailer combinations were merged into a single document, entitled "Multiple Trailer Combination Vehicle (MTCV) Driver Training Guide: Suggested Units of Instruction and Curriculum Outline." The PTDI was selected to develop a composite modular training curriculum outline embracing both the LCV driver and the LCV instructor.

Upon completion of the curricula, the agency coordinated with the U.S. Department of Education to ensure that the proposed training requirements were in concert with its accreditation requirements. Representatives from both agencies agreed that the proposed training requirements would be eligible for accreditation by any group meeting the criteria and procedures described in the publication *Nationally Recognized Accrediting Agencies and Associations, Criteria and Procedures for Listing by the U.S. Secretary of Education and Current List.* This document is available for review in the public docket for this rulemaking.

During this period, two additional FHWA initiatives—a series of highway-safety focus groups in December 1994, and FHWA's first National Truck and Bus Safety Summit, held in March 1995—contributed to an enhanced understanding of driver training. Although neither project specifically focused on driver training methods or minimum training standards, they nevertheless provided perspective on the importance of driver training and the need for minimum training requirements. The "Focus Group Report" on the 1994 initiative and the "1995 Truck and Bus Safety Summit, Report of Proceedings" are available for review in the rulemaking docket.

On January 15, 1993, FHWA's Office of Motor Carriers published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (58 FR 4638) seeking comments and responses to 13 specific questions. The agency received 24 comments, which were summarized in the notice of proposed rulemaking (NPRM) discussed below.

Summary of the NPRM

The agency used the results of the projects mentioned above, the research conducted over the past several years, and the comments to the 1993 ANPRM to develop the proposals in the NPRM, published in the **Federal Register** on August 12, 2003 (68 FR 47890).

The NPRM proposed standards for minimum training requirements for the operators of LCVs and requirements for the instructors who train these operators. It also outlined procedures for determining compliance with the proposed rule by operators, instructors, training institutions, and employers.

As agency research and crash data have not indicated that multiple-trailer combination vehicle operations pose a significant safety problem, FMCSA proposed to limit the training requirement to operators of LCVs, as defined in Sec. 4007(f) of the ISTEA, rather than extend it to multiple-trailer combinations weighing less than 80,000 pounds.

As for the training, the NPRM proposed general requirements pertaining to an LCV driver-training test—consisting of both a knowledge and skills assessment—for all students wishing to obtain an LCV Driver-Training Certificate. FMCSA believes that specialized vehicle combinations require somewhat different training requirements because of differing operating characteristics. Therefore, we proposed two separate training courses for LCV drivers: LCV Doubles and LCV Triples. Although the proposed minimum curricula would be identical, the training entity would tailor each course to the unique operational and handling characteristics of the specific LCV category. Specialized commodity training could be addressed as necessary by training institutions or carriers.

The NPRM also established guidelines as to which drivers must comply with the proposed rule. The individual seeking LCV training would have to possess a valid CDL with a double/triple trailer endorsement, have only one driver's license, have a good driving record, and provide evidence of experience operating the category of combination vehicle designated as a prerequisite for the desired LCV training. Evidence of driving experience would consist of a statement from one or more employers indicating the type and amount of driving experience while employed by that motor carrier.

In addition, FMCSA believes that for many current LCV drivers, the combination of a good driving record

and experience with an LCV double or triple indicates that the individual has the minimum knowledge and driving skills to operate such a vehicle. Accordingly, we proposed to allow certain drivers to substitute a good driving record and experience for the completion of the LCV driver-training requirements. The driver would have to provide the employing motor carrier with evidence that he or she had operated LCVs safely during the 2-year period prior to application. FMCSA believes that grandfathering such drivers will not diminish public safety or the overall safe operation of CMVs.

Regarding the training program, each instructor employed by a training institution offering LCV training would be required to meet all State requirements for a vocational education instructor. FMCSA believes that, initially, persons currently conducting double/triple trailer combination vehicle training would become qualified LCV instructors under the proposed grandfather requirements. Subsequently, when the need for new instructors arises, those qualified (grandfathered) LCV instructors would train new instructors, who would then be qualified to train drivers.

While the States assume varying degrees of control over education, institutions of postsecondary education are permitted to operate with considerable autonomy. As a consequence, educational institutions can vary widely in the quality and adequacy of their programs. To ensure a basic level of quality and adequacy, the U.S. Department of Education has established accreditation requirements. FMCSA therefore proposed that any entity—whether for-profit or not-for-profit, private or public—that meets these accreditation requirements would be allowed to offer the training.

As for employer responsibilities, the proposed rule expressly prohibits a motor carrier from employing an individual to operate an LCV unless he or she has first met the requirements under the proposal. FMCSA or Motor Carrier Safety Assistance Program (MCSAP) State enforcement officials would verify compliance with the LCV driver training and driver-instructor requirements at the carrier's place of business during the compliance review, rather than at the roadside. For this reason, carriers would be required to maintain proof of qualification of LCV drivers and LCV driver-instructors in the qualification files for these individuals. This enforcement approach emphasizes that the motor carrier and driver each have a responsibility for the LCV training requirement. The driver would have to obtain the necessary LCV training, and the carrier would be required to prohibit a driver from operating an LCV without that training. Although enforcement officials would not be burdened with trying to determine at roadside whether a CMV driver is subject to the LCV training requirement, they could still check the CDL to determine whether the driver has the required doubles/triples endorsement.

Based on some of the public comments received in response to the NPRM, the agency made certain changes to the proposal as reflected in today's final rule. These are included in the discussion of comments below.

Discussion of Comments to the NPRM

FMCSA received nine comments on the NPRM. Five comments were from associations, two from individuals, one from a public interest group, and one from a motor carrier.

General Support

Several commenters praise FMSCA for taking this action. For example, the United Parcel Service (UPS) "commends the FMCSA for their efforts to promote commercial vehicle safety, particularly driver training standards." Advocates for Highway and Auto Safety (AHAS) supports the main framework of the proposed training regimen. The Motor Freight Carriers Association (MFCA) also commends FMCSA for closely following the training guidelines used by unionized less-than-truckload motor carriers.

General Opposition

Several commenters criticized this action. The American Trucking Associations (ATA) argues that the proposed mandatory training for LCV drivers is unlikely to result in safer LCV operations. ATA suggests that, rather than the proposed regulations, the agency adopt "a set of performance-based rules for training LCV drivers and driver-instructors that could result in enhanced public safety and will not impact the flow of freight on the nation's highways." Nonetheless, ATA provides recommendations to enhance the proposal. The chairman of the Montana Logging Association's Professional Log Haulers Committee opposes the new training rules for operators of LCVs, citing four points of contention: first, training would be a burden to rural log haulers; second, the proposed rule would compound the driver shortage; third, this highly specialized form of truck transportation needs particular skills; and fourth, a trainee already goes through an extensive orientation with a trainer until both are satisfied about the new driver's skills. An individual commenter also expressed criticism of the proposed rule, explaining that insurance entities will make sure that motor carriers comply with industry standards.

Finally, the Commercial Vehicle Safety Alliance (CVSA) commented:

> [CVSA is] concerned that the limited resources of both States and the FMCSA may be expended unnecessarily if this proposed rulemaking becomes regulation. Currently LCV operations have a crash rate lower than other commercial motor vehicle types and, at a time when State agencies are struggling financially, [CVSA does] not support an effort to expend substantive resources in an area that already operates in an overall safe manner.

FMCSA Response: Under section 4007(b) of the ISTEA, Congress expressly mandated the development of minimum training standards for operators of LCVs and requirements for those who instruct these drivers. Many of those who responded to the proposal, including dissenters, made useful recommendations for enhancing the proposal. FMCSA particularly appreciates information about how the industry currently trains LCV drivers and what entities offer this training. The agency has considered all comments and revised the final rule to reflect several recommended improvements.

One way in which the Montana Logging Association might meet the challenges of complying with this rule, as outlined in its comments, is for the association to provide the LCV driver-training program to the drivers of its member carriers.

Exclusion of Non-LCVs From Training Requirement

AHAS discusses at some length a series of studies and reports dealing with the relative safety of LCV operations. It quotes the Transportation Research Board's Special Report 211 (1986), which found that "[t]wins [*i.e.*, Western Doubles, usually a tractor pulling two 28-foot trailers] probably have slightly more crash involvements per mile traveled than tractor-semi-trailers operated under identical conditions at highway speeds." AHAS believes this information and related data compel FMCSA to subject drivers of Western Doubles weighing less than 80,000 pounds to the training requirements of this rule. AHAS argues that FMCSA "has no adequate foundation in the administrative record of this rulemaking" for excluding Western Doubles "and, therefore, continued reliance upon the arguments advanced in the notice * * * would

constitute arbitrary and capricious agency action."

FMCSA Response: Sec. 4007(b) of ISTEA requires training for drivers of LCVs, which subsection (f) defines as "any combination of a truck tractor and 2 or more trailers or semi-trailers which operate on the National System of Interstate and Defense Highways with a gross vehicle weight [GVW] greater than 80,000 pounds." This rule does not address drivers of Western Doubles, which normally operate at or below 80,000 pounds GVW, because Sec. 4007(b) is not applicable to them by its terms.

Definitions

Training institution

Two commenters questioned the definitions used in the proposed rule.

UPS and ATA remark that the definition of training institution is unclear. Section 380.105 would define a training institution as any technical or vocational school accredited by an accrediting institution recognized by the U.S. Department of Education. Sections 380.301(b) and 380.303(a) would require an LCV driver-instructor to "meet all State requirements for a vocational instructor, if employed by a training institution." Specifically, UPS asks for clarification about the process by which an employer's internal training school [such as the UPS Driver Training School (DTS) or others] becomes accredited. ATA urges the agency to publish a clarification stating that training programs that are managed directly by a motor carrier or provide exclusive service to a motor carrier are not considered to be training institutions.

In a related comment, MFCA said it is unaware of any driver training school that trains instructors for triples, or, for that matter, triples drivers. Until now, individual motor carriers have filled that role, with State regulators providing oversight.

FMCSA Response: In the NPRM, the establishment of requirements for training institutions was not intended to be interpreted as a mandate to use these training institutions. The rule does not require a motor carrier to employ a training institution to provide the LCV driver training described in the appendix to part 380. Conversely, a motor carrier's internal training school is not a training institution, as defined in § 380.105, unless it also accepts students from other motor carriers and charges them for training. However, if a motor carrier opts to use training institutions, the schools must be accredited, and the training institute employee must meet State vocational instructor guidelines.

In today's rule, FMCSA has clarified the definition of training institution under § 380.105(b) by stating that neither a motor carrier's training school for its drivers nor an entity that exclusively offers services to a single motor carrier is a training institution. Accordingly, in-house trainers who are not affiliated with a training institution must comply with the standards under subpart C to part 380, except §§ 380.301(a)(2), 380.301(b)(2), or 380.303(b)(4). A motor carrier's in-house training school for its drivers does not require accreditation.

LCV Double and LCV Double subcategories

ATA and CVSA question the definition of the term longer combination vehicle (§ 380.105(b)). The NPRM defines a longer combination vehicle as "any combination of a truck-tractor and two or more trailers or semi-trailers, which operate on the National System of Interstate and Defense Highways with a gross vehicle weight (GVW) greater than 36,288 kilograms (80,000 pounds.)." An LCV double is defined as a Turnpike Double or a Rocky Mountain Double, and both terms are defined to include trailer-length specifications. ATA points out that the trailer-length specifications create the possibility that doubles weighing more than 80,000 pounds, whose two trailers are of equal length but less than 45 feet, would qualify as an LCV, but that the drivers of these vehicles would not have training requirements because the definition of an LCV double is length-specific. ATA and CVSA suggest that FMCSA clarify this issue or simply omit the trailer-length specification.

FMCSA Response: FMCSA agrees that the proposed definition of an LCV double (and the LCV double subcategories) would inadvertently exclude certain vehicles that Congress clearly intended be covered under the LCV training requirements, according to the LCV definition in section 4007(f). For example, the NPRM's definition of Rocky Mountain double creates an applicability loophole for a vehicle that meets the weight and configuration thresholds established under section 4007(f) of ISTEA but exceeds the length specification for one of its components. To correct this error, the agency has in today's final rule removed the terms "Rocky Mountain double," "Turnpike double," "twin trailers," and "Western double" from the list of definitions under § 380.105. The definition of an LCV double has been modified to eliminate references to LCV subcategories defined by trailer length. An LCV double is redefined to mean "an LCV consisting of a truck-tractor in combination with two trailers and/or semi-trailers."

Qualified LCV Driver-Instructor

ATA and CVSA suggest that the definition of qualified LCV driver-instructor should properly refer to Subpart C, not Subpart B. Additionally, ATA comments that it is assumed that classroom instructors would not be included under this definition. ATA believes that classroom instruction activities need no driving prerequisites. Therefore, they request the rule clearly note that classroom instruction personnel need not meet any of the requirements of a "qualified LCV driver-instructor."

FMCSA Response: FMCSA agrees. Under the definition of *Qualified LCV driver*-instructor in the section "§ 380.105 Definitions" of today's final rule, we have corrected the erroneous cross-reference to read "subpart C of this part." See the section "Driver-Instructor Requirement" for a complete discussion of substantive changes to the definition of classroom instructor.

Driver Training Program

UPS believes the proposed rule would alter the way its training programs are currently operated. The UPS Driver Training School initially qualifies UPS drivers for twin trailers only. UPS does not have a separate school for LCV training but provides this special training to the driver at his or her work location, depending on the local State-by-State regulatory conditions that exist for LCV operations. After the extra training has occurred, a revised DOT road test form is prepared to indicate that the driver is qualified to drive LCVs. UPS asserts that the proposed rule would require the carrier to substantially modify its current training curriculum to include the requirements contained in the appendix to part 380, or to create a separate school specifically for LCV training away from the driver's work location. UPS is not convinced that generic training and testing will accommodate the unique aspects of different regional operations (such as mountainous terrain versus turnpikes, or eastern U.S. versus western U.S.).

UPS also asserts that the terms of the proposed training and certification program assume that a driver operates a particular type of LCV combination exclusively, whereas "[i]n reality, UPS drivers may operate one or more of the LCV combinations in any given day, week or month."

FMCSA Response: This rule establishes an LCV driver-training program and standards for driver instructors. The LCV driver-training program need not be offered in a different school from that used for other CMV training. Neither is the agency requiring UPS or any other carrier to incur the extra expense of training all drivers in the operation of an LCV; the rule applies only to those drivers who must operate an LCV as defined under § 380.105. However, UPS acknowledges that it already provides separate training for its drivers who operate LCVs. This training should be modified to include those requirements described in the appendix to part 380.

FMCSA has removed the definitions of LCV double subcategories in order to make clear that, while the rule applies to all LCV doubles, it does not require separate training for every conceivable subcategory of LCV double. Furthermore, the driver-training certificate will indicate the general LCV type(s) that a driver is authorized to operate: LCV doubles, LCV triples, or both.

Requirements To Qualify for Driver Training

Proposed §§ 380.203 and 380.205 would require drivers to have a doubles/triples endorsement on their CDLs for 6 months before applying for LCV doubles or triples training. ATA argues that it is likely that the knowledge and/or skills required to obtain the endorsement will be no more stringent than those required to obtain the LCV Driver-Training Certificate in this rule. Therefore, ATA believes that this requirement is duplicative, unnecessary, and not relevant. ATA explains that job opportunities occur randomly and a driver does not have the luxury of preparing for job changes ahead of time. The ATA urges FMCSA to remove the prerequisite to have a doubles/triples endorsement 6 months before applying for LCV doubles or triples training.

UPS and MFCA are concerned about the employer's responsibilities to provide evidence of a driver's experience. For example, MFCA asks if a verbal (*i.e.*, oral) statement from the employer would suffice as evidence when requested by an authorized FMCSA, State, or local official in the course of a compliance review. UPS strongly believes that further clarification is needed regarding the obligations and responsibilities of an employer to seek information regarding a driver's experience or, conversely, to provide such information to another employer.

FMCSA Response: The doubles/triples CDL endorsement is obtained by passing a knowledge test without a skills component. The purpose of the requirement that a driver-candidate possess this endorsement for at least 6 months prior to taking LCV training is to give the driver adequate time and opportunity to gain experience in operating combination vehicles having a GVW of less than 80,000 pounds. The doubles/triples endorsement qualifies drivers to operate combinations weighing less than 80,000 pounds (*e.g.*, Western doubles). The endorsement does not qualify drivers to operate either doubles or triples above the 80,000-pound threshold, and it cannot be substituted for the LCV Driver-Training Certificate. Drivers possessing the doubles/triples endorsement may not operate doubles and triples over 80,000 pounds until they successfully complete the required training and receive the LCV Driver-Training Certificate.

FMCSA believes it is important that drivers acquire this operational experience with lighter combination vehicles before being trained in the operation of LCVs. We concluded that the safety benefit of progressing from combination-vehicle experience to LCV training justifies the requirement that drivers hold the endorsement for 6 months. Today's rule clarifies that a written—but not an oral—statement from a previous employer is sufficient evidence of 6 months of combination-vehicle driving experience.

Substitute for Driver Training—Grandfathering

General

AHAS disputes the statement in the NPRM that "the combination of a good driving record and experience with a representative vehicle of the specific LCV category is an appropriate indication that the individual has the minimum knowledge and driving skills to operate such a vehicle." AHAS contends that FMCSA has "no grounds for grandfathering the vast majority of LCV drivers" and is thus "forswearing significant crash reduction benefits." AHAS also argues that the agency has no authority under Sec. 4007(b) to grandfather any LCV drivers.

FMCSA Response: The argument that the agency has no authority to grandfather drivers is contradicted by the broadly discretionary nature of the statutory mandate. Sec. 4007(b) simply directed the agency to "establish *minimum* training requirements" [emphasis added], *i.e.*, requirements sufficient in the judgment of the agency to improve the safety of LCV operations. Congress did not specify classroom versus on-the-road instruction, or the degree of crash reduction to be achieved; nor did it require universal training. In view of the small population of LCV drivers subject to the rule, the far smaller number of crashes involving LCVs, the fact that most current LCV drivers have undergone LCV training, and the shortcomings of available data on the relative safety of LCV operations, FMCSA has concluded that grandfathering safe, experienced LCV drivers is an effective means of reducing the costs of this rule while retaining its safety benefits. The agency has therefore placed training requirements on the drivers most in need of instruction—those with no experience in LCVs and current LCV drivers with flawed safety records. This is entirely consistent with the Congressional mandate.

FMCSA indicated the strict preconditions for grandfathering in its proposal, and these conditions are retained in today's rule. A driver will be eligible only if, during the last two years immediately before applying for the exemption, he or she had no suspension, revocation, or cancellation of his or her CDL; no convictions for a major offense committed while operating a CMV; no convictions for a railroad-highway grade crossing violation while operating a CMV; no convictions for violating an out-of-service order; and, above all, no convictions for violating a State or local traffic law in connection with a CMV crash [§ 380.111(b)(3), (4), (5), (6), and (8), respectively]. The agency estimates that 1,750 of the 35,000 current LCV drivers will not qualify for grandfathering. Involvement in CMV crashes, however, will not automatically bar a driver from being grandfathered, nor does FMCSA believe it should. A 1996 report from the National Highway Traffic Safety Administration (NHTSA) shows that in 71 percent of two-vehicle fatal crashes involving a large truck and another type of vehicle, the behavior of the other driver was a causative factor while that of the truck driver was not ("Traffic Safety Facts 1996: Large Trucks"). There is no reason to believe that the distribution of fault in LCV crashes is significantly different. In short, current LCV drivers convicted of a wide range of reckless or irresponsible behaviors will be required to take the training set forth in today's rule, leaving only those drivers eligible for grandfathering who have actual experience operating LCVs and a driving record clear of the most serious violations. AHAS presented no evidence that good, experienced LCV drivers pose

a significant crash risk requiring mitigation through training.

At-Fault Crash Involvement While Operating a CMV

Under the proposed rule, drivers who meet certain criteria may be grandfathered from the new driver training. One such criterion is that, during the past 2 years, a driver had "[n]o accident in which he/she was found to be at fault, while operating a CMV" [§ 380.111(b)(9)]. MFCA, CVSA, and ATA remark that the term at-fault accident is never defined, nor does the NPRM state who determines fault when a crash occurs. ATA urges FMCSA to define an at-fault accident to mean an accident for which a truck driver has been convicted of an offense that contributed to the crash. FMCSA also should provide guidance, either in the preamble or in an interpretation, regarding what types of offenses would generally be considered as contributing to a crash. MFCA asks whether "at-fault" simply means a citation of any kind relating to a CMV accident. MFCA suggests following the criteria in § 383.51, Disqualification of drivers. CVSA recommends that FMCSA define the term and then use it throughout the regulation.

FMCSA Response: FMCSA has eliminated §§ 380.111(b)(9), 380.203(a)(10), and 380.205(a)(10), which referred to fault, because States do not uniformly define or assess fault in crashes. The agency believes that the requirement under §§ 380.111(b)(8), 380.203(a)(9), and 380.205(a)(9) for "no convictions for a violation of State or local law relating to motor vehicle traffic control arising in connection with any traffic crash while operating a CMV" sufficiently addresses the issue of a CMV driver's crash involvement.

Two-Year Driving Experience for Grandfathering

The NPRM proposed that a driver must have 2 years of driving experience, immediately preceding the date of application for a "Certificate of Grandfathering," in the type of LCV he or she seeks to continue operating. ATA comments that the phrase "immediately preceding" would present a major problem for motor carriers operating LCVs because many drivers who are currently qualified could not meet the proposed qualification requirement. ATA explains that many drivers have several years of experience driving doubles and/or triples and are currently qualified to do so. For one reason or another, however, they are now driving a tractor-trailer combination or Western Doubles, or are teaching driver training instead of driving. Disqualifying these individuals would be a hardship on them, and counterproductive for both motor carrier and employee. Therefore, ATA strongly recommends that FMCSA revise § 380.111(c)(2) to allow grandfathering of any driver who currently holds a CDL with a doubles/triples endorsement and is authorized by a State to operate LCVs. CVSA agrees, stating that "any driver who currently holds a CDL with a double/triples endorsement, has no CDL disqualifications, has not been involved in a preventable crash, and is authorized by a State to operate LCVs should be grandfathered."

FMCSA Response: FMCSA has retained the 2-year driving experience requirement for grandfathered LCV drivers. However, in today's rule the driver is not required to have operated an LCV continuously during the previous 2 years, nor must he or she have operated LCVs exclusively. The driver is required only to have operated LCVs periodically within the previous 2 years. Drivers often take the tests for endorsement classes they have no immediate intention of using. Grandfathering virtually anyone holding a double/triple trailer endorsement could exempt from training some individuals who had never driven an LCV at all, despite their having the requisite endorsement. This would change grandfathering into a simple exemption. The agency rejects that approach.

Driver-Instructor Requirements

UPS believes the issue of driver-instructor requirements is perhaps the most problematic portion of the entire proposed rule. UPS requests that the agency outline the process for driver-instructors to become certified. UPS also believes it would be most practical to allow UPS Driver Training School instructors to be able, in turn, to train other UPS management personnel.

One requirement of the NPRM is that an LCV driver-instructor have at least 2 years' driving experience in the type of vehicle (LCV double or triple) for which he or she will provide training, as well as a Class A CDL with a doubles/triples endorsement. This requirement presents a major concern for UPS and ATA, which consider it infeasible. UPS states that, while it operates one of the Nation's safest commercial vehicle fleets, some of its LCV training personnel have not had at least 2 years of LCV driving experience. UPS does not believe that 2 years' experience operating an LCV is a relevant prerequisite for becoming a highly skilled LCV driver-trainer. All UPS LCV driver-trainers have successfully completed the UPS Driver Training School but have not necessarily driven twin trailers or LCV Triples for 2 years. UPS's position seems to be that driving experience in an LCV is less important than skill as an instructor. ATA agrees, and comments that the rule would make a large number of existing driver-instructors ineligible to continue their training duties. ATA also explains that motor carriers currently use driver-instructors who have never driven an LCV but have had a great deal of success training others to drive LCVs. ATA and UPS agree that the enactment of this provision would result in significant financial and administrative hardship to motor carriers.

Additionally, ATA assumes that classroom instructors would not be included under the definition of a qualified LCV driver-instructor. ATA comments that classroom instruction activities need no driving prerequisites. Therefore, ATA believes the rule should clearly state that classroom instruction personnel need not meet any of the requirements of a "qualified LCV driver-instructor."

FMCSA Response: Based on the information that motor carriers routinely use nondrivers to teach training courses, FMCSA has revised the requirements for a qualified LCV driver-instructor in §§ 380.105(b), 380.109(a), 380.301, 380.303, 391.53, and the appendix to part 380. The definition of a qualified LCV driver-instructor now includes a distinction between (1) classroom instructors and (2) skills instructors. Motor carriers may use an individual who does not possess a CDL, a doubles/triples endorsement, or recent CMV driving experience to instruct or test LCV drivers in knowledge and skills that do not require the actual operation of an LCV or one of its components. However, only a skills instructor may train or test driver-candidates in those skills requiring the operation of an LCV or one of its components.

Driver Testing

UPS seeks additional guidance and clarification from FMCSA on proposed requirements for testing methods, proficiency determinations, and automatic test failure in order to determine if its Driver Training School meets the standards contemplated by FMCSA regarding these driver-testing provisions.

ATA directs its comment to § 380.109(a) in the NPRM, which discusses the administration of driver-student knowledge and skills tests. This paragraph would require a qualified LCV driver-instructor to administer

knowledge and skills tests to driver-students. ATA notes that knowledge tests could be administered by almost anyone since there is no need for interaction between the driver-student and the instructor. Skills tests are generally taken on private property on a "closed course." Therefore, a qualified LCV driver-instructor would not be needed. ATA strongly suggests that FMCSA remove the requirement that a "qualified driver-instructor" administer the knowledge and skills tests to driver-students and replace the term "a qualified driver-instructor" with the term "an authorized motor carrier or training institution employee."

FMCSA Response: Motor carriers needing guidance for testing methods and proficiency determinations are referred to the "Examiner's Manual for Commercial Driver's License Tests." You may obtain a copy of the document from the American Association of Motor Vehicle Administrators (AAMVA), 4300 Wilson Boulevard, Suite 400, Arlington, Virginia 22203. Automatic test failure determinations are made at the sole discretion of the qualified LCV driver-instructor.

Today's rule retains the requirement that only qualified LCV driver-instructors administer knowledge and skills tests. We anticipate that a number of small carriers will conduct in-house training to meet the rule's provisions. As most such training programs will be small, allowing test administration by persons other than qualified driver-instructors could open the door to driver-trainees administering tests to one another. Under the rule, a qualified LCV classroom instructor may administer knowledge tests (as well as skills tests not involving actual operation of an LCV or one of its components), while only a qualified skills instructor may administer skills tests based on actual operation of an LCV. These standards protect the integrity of knowledge and skills testing and increase assurances that only qualified LCV driver-candidates will receive certification.

Merging the LCV Driver-Training Program With the Commercial Driver's License Program

The National Private Truck Council, Inc. (NPTC) supports the additional training requirements for LCV drivers and the general categories of instruction outlined in § 380.201(a). However, NPTC advocates incorporating the four general LCV training areas into the CDL testing program rather than creating separate training requirements with which a motor carrier must comply. NPTC believes integrating the LCV training areas into the CDL testing program would assist a motor carrier in attempting to demonstrate the adequacy of driver training in court cases for crash-related litigation involving its drivers. In addition the driver's training certification, like the CDL, would follow the driver from carrier to carrier.

FMCSA Response: LCVs are allowed to operate in fewer than half the States, and relatively small numbers of CDL drivers are covered under the LCV training requirements. FMCSA believes that requiring the State to administer, and enforce at roadside inspections, the LCV training requirements would add an unnecessary complication to the CDL program. FMCSA believes the Driver-Training Certificate is sufficient documentation that a driver has met the LCV training requirement.

Compliance Enforcement

CVSA believes that if an LCV operator is required to obtain additional training, this should be reflected on the CDL. CVSA is concerned about the lack of information provided for the roadside officer, since an additional endorsement will not be added to the CDL. The officer at roadside will not have access to any of the information concerning the LCV training, thus making this requirement unenforceable during a safety inspection. Therefore, any noncompliance will be discovered only through auditing the recordkeeping requirements for drivers and motor carriers, and not during a driver/vehicle safety inspection.

CVSA also questions why the proposed regulation is located in part 380 rather than parts 383 and 391, where other driver-related regulations are found. CVSA believes codifying this regulation in another part adds confusion with regard to compliance, both for the enforcement community and for the industry. CVSA recommends adding the proposed regulations to part 383 since they are applicable to CDL drivers.

FMCSA Response: By placing the LCV driver training and related requirements in part 380, FMCSA is emphasizing that these requirements are a training responsibility and that compliance would be checked at the carrier's place of business during a compliance review. Because the requirement is not a driver licensing issue to be administered by the State licensing agency, enforcement officials will not check for compliance at roadside. (Roadside enforcement officials may, however, check an LCV driver's CDL to verify the presence of a doubles/triples endorsement.)

Appendix—Knowledge and Skills Training (Appendix to Part 380)

ATA comments that many of the knowledge and skills requirements are already required for obtaining a CDL, and would therefore simply be repeated during LCV training. Like a postgraduate course, the training should build upon knowledge already acquired, not repeat it. Additionally, ATA strongly suggests that FMCSA eliminate the requirements already specified in part 383, subpart G, which would include units 1.2, 1.3, 1.4, and 2.1.

ATA also remarks that some requirements proposed in the appendix to part 380 would be imposed on LCV drivers, but not on other CDL holders, even though the situations addressed are not unique to LCVs. ATA states that security issues (Unit 3.5) are not unique to LCV drivers and asks why FMCSA finds it necessary to propose this requirement for LCV drivers when no other CDL holder is required to have this instruction. Also, ATA states that the proposed maintenance and trouble-shooting requirements in Unit 4.3 go beyond those currently required for other CDL holders. ATA does not understand why FMCSA believes that only LCV drivers should have these skills. Furthermore, some motor carriers prohibit LCV driver-employees from performing maintenance or emergency repairs to their complex and high-technology vehicles. Therefore, ATA also suggests that units 3.5 and 4.3 be eliminated.

FMCSA Response: Although many of the knowledge and skills topics covered in the LCV training program may be similar to those in the CDL Licensing Test, the licensing test measures general knowledge and familiarity with best practices. The LCV training program is intended to cover topics much more comprehensively and tailor the instruction to the unique characteristics of an LCV. The proficiency development unit will allow the driver to apply what is learned in class and to perfect skills under the supervision of a qualified instructor.

In response to ATA's request, FMCSA has eliminated Unit 2.1—Inspection, because these skills are adequately covered under Unit 4.3—Maintenance and Trouble-shooting. Unit 3.5—Security has been revised to refer to Federal and State security requirements including those of the Transportation Security Administration and the Research and Special Programs Administration. The agency has also revised the Unit 4.3 description to include knowledge of certain maintenance functions and how to

communicate vehicle malfunctions. The rule does not compel a motor carrier to allow an LCV driver to perform maintenance, but the agency believes it would be beneficial for LCV drivers to have basic maintenance and trouble-shooting skills. In some circumstances, it may be necessary to make temporary repairs that would allow the driver to move the vehicle to a safer location before permanent repairs are made.

Comments on the Cost-Benefit Analysis

ATA states that FMCSA inadvertently omitted "the opportunity cost to the motor carrier." A few ATA members have furnished cost figures for their LCV operations. Using these figures, ATA estimates that the annual cost to motor carriers of compliance with the rule "would be $4,995,650 while the 10–year cost would be $49,956,500." Therefore, ATA estimates that the 10–year cost "would exceed the 10–year benefits by $25,556,500 when you consider a 10 percent crash rate reduction; for a five percent accident rate reduction, costs would exceed benefits by $12,778,250."

In addition, ATA believes that "because LCVs have such an exemplary safety record, FMCSA would be hard-pressed to develop a prescriptive training requirement that would pass a cost-benefit analysis. ATA, therefore, seriously questions the need for mandatory LCV training." Recognizing, however, that the agency is under Congressional direction to develop an LCV training requirement, "ATA encourages the agency to develop a training requirement that is performance-based, with at-fault crash rates as the measure of performance for motor carriers."

FMCSA Response: ATA is correct that FMCSA should have explicitly included the opportunity cost to motor carriers of requiring some of their drivers to undergo training. FMCSA implicitly recognized this cost by including drivers' wages in its NPRM estimate of the cost of LCV training, but did not include the profits motor carriers would forgo. We have added these costs to the regulatory evaluation for today's rule. However, in the above-quoted calculations based on figures provided by specific carriers, ATA overestimates the cost of compliance with the LCV training requirements by including motor carriers' entire LCV operating costs. Although carriers will forfeit some revenue as a result of LCV driver training, those losses will be partly offset by reduced costs: Motor carriers will not have hourly operating costs (*e.g.*, fuel, wear and tear, tires) for drivers being trained. See the regulatory evaluation for a detailed comparison of costs and benefits.

Comments on the Federalism Assessment

ATA asks why FMCSA did not include an implementation date for State adoption of the proposed rule. According to ATA, 22 States allow the operation of LCVs within their borders, and many of those States have driver and vehicle requirements for LCV operations. Because FMCSA asserts that nothing in the NPRM preempts any State law or regulation, motor carriers and drivers that operate LCVs could be required to comply with two sets of training requirements. This would be confusing to the regulated motor carriers and would be considered counterproductive. ATA argues that the trucking industry needs a standardized rule that applies nationwide, and recommends that FMCSA review its Federalism assessment, revise it, and include an implementation date for State adoption.

FMCSA Response: Under the MCSAP, States have up to 3 years to adopt regulations compatible with the Federal Motor Carrier Safety Regulations [49 CFR 350.331(d)]. In any case, a State with special LCV requirements must continue to enforce them pursuant to the ISTEA freeze on the length and weight of LCVs and long doubles and triples [49 U.S.C. 31112(d)(1) and 23 U.S.C. 127(d)(1)(B), implemented by 23 CFR 658.21]. Failure to do so would force FHWA, our sister agency within DOT, to withhold some of that State's Federal-aid highway funds or to take injunctive action against the State in Federal court. For both these reasons, it would be inappropriate to preempt current State regulations.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to CMV safety and training of certain CMV drivers. The Office of Management and Budget has completed its review of this rule under Executive Order 12866.

Regulatory Evaluation

Following is a summary of the regulatory evaluation. The complete evaluation has been placed in the docket.

Approximately 35,000 drivers currently operate LCVs; most are expected to be grandfathered. Approximately 1,200 LCV drivers are estimated to require training annually. ANPRM docket comments and conversation with industry representatives and analysts suggest that LCV drivers are currently obtaining about half the amount of training we estimate would be needed to cover the topics outlined in this rule, approximately 50 hours. The net cost of training (including drivers' wages) is $45.50 an hour. This results in a 10–year cost of approximately $29 million.

Precisely quantifying the benefits of this rule is difficult. Congress clearly assumed that increased training reduces crash rates, and many analysts agree with this position. However, quantitative data examining the relationship between training and crash rates is not plentiful, and those studies we have located have not found a strong and consistent relationship. Therefore, we performed sensitivity analysis, estimating the benefits from a range of reductions in drivers' crash rates for drivers who have received training. Net benefits ranged from −$12 million for a 5 percent reduction in the crash rate to +40 million for a 20 percent reduction.

Table 1 presents the results for a number of possible deterrence levels.

TABLE 1.—BENEFIT COST RATIO WITH DIFFERENT CRASH RATE REDUCTIONS

Crash reduction	5%	10%	15%	20%
B/C Ratio	0.6	1.2	1.8	2.4

Table 2 shows costs, benefits, and the number of crashes and drivers that would be affected by these proposals, with an assumed 10 percent reduction in crashes.

TABLE 2.—SUMMARY RESULTS WITH 10% CRASH RATE REDUCTIONS

[millions of dollars]

# Trained annually	10-year costs	10-year benefits	Net benefits	B/C ratio	Crashes prevented
1,172	$28.8	$34.4	$5.6	1.2	315

This analysis assumes that, under the rule, prospective LCV drivers will obtain an additional 50 hours of training. This is a conservative estimate, in that it is on the high end of the range of likely training time. Nonetheless, because of uncertainty over how many hours of training will be needed, we performed sensitivity analysis for different assumed hours of training. As expected, the sensitivity analysis shows that net benefits move in the opposite direction of the number of hours.

All costs and benefits are over a 10–year period, and are discounted at a 7 percent rate.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), as amended, requires Federal agencies to "* * *endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." Accordingly, DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies shall strive to lessen any adverse effects on these businesses. The following sections contain the FMCSA regulatory flexibility analysis.

Need and Objective for the Rule

This action is being promulgated in response to Congressional direction. Specifically, Sec. 4007(b) of ISTEA directed the Secretary to promulgate regulations requiring training for LCV drivers. Congress mandated this action because of concern over the number of LCV crashes. The objective of this rule is to reduce the number of LCV crashes through better training of LCV drivers.

Significant Issues Raised in Response to IRFA

Commenters to the NPRM docket did not raise any significant issues concerning the Initial Regulatory Flexibility Analysis. None of the eight commenters addressed any small business concerns.

Number of Small Entities to Which the Action Will Apply

This action will apply to all small entities regulated by FMCSA that own or operate LCVs. Using the number of drivers as a proxy for size, the majority of carriers can reasonably be described as small. As of April 2002, there were 610,000 motor carriers on the FMCSA Motor Carrier Management Information System (MCMIS) census file. Of the 500,000 carriers for which we have driver data, 435,000 (87 percent) have six or fewer drivers. Assuming that 87 percent of the 110,000 carriers with no driver information are also small, the total number of carriers with six or fewer drivers would exceed half a million.

Reporting, Recordkeeping, and Other Compliance Requirements

This action will impose a very modest burden on small entities, since it largely regulates the actions of drivers rather than motor carriers. Nonetheless, this action does impose some recordkeeping requirements on motor carriers. The primary carrier requirement would be to verify drivers' eligibility before allowing them to operate an LCV. In addition, carriers must maintain a copy of the required driver-training certificate in each driver qualification (DQ) file. Carriers are currently required to maintain a DQ file for each driver, as outlined in part 391 of the Federal Motor Carrier Safety Regulations. No special skills are required to verify eligibility to operate an LCV or to place a driver-training certificate in a DQ file.

Agency Steps To Minimize Impacts on Small Entities

As discussed above, while this rule will affect a significant number of small entities, the impact on any individual small carrier will be minimal. Therefore, FMCSA certifies that this regulation will not have a significant impact on the small businesses subject to today's final rule.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (49 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this final rule creates a new collection of information requiring OMB's approval. This PRA section addresses the information collection burden for certifying new LCV drivers and current, non-grandfathered LCV drivers; the burden associated with grandfathering those current LCV drivers who are eligible for certification; and the burden associated with certifying that driver-instructors satisfy the qualification requirements of § 380.301.

FMCSA estimates that 35,000 drivers currently operate LCVs. Ninety-five percent of these drivers (or 33,250 LCV drivers) are expected to be eligible to be grandfathered during the first year after the rule becomes effective. The agency also estimates that approximately 1,200 new LCV drivers would require training each year, with an additional 1,750 non-grandfathered LCV drivers (or 5 percent of LCV drivers currently operating) requiring training during the first year. In addition, there would be a burden to the motor carrier or other training entity to complete, photocopy, and file the training certification form for LCV operation. FMCSA estimates that 10

minutes would be required for this paperwork activity, resulting in a first-year information collection burden of 491.7 hours, or rounded to the nearest tenth, 492 burden hours [1,200 new LCV drivers + 1,750 LCV drivers × 10 minutes per motor carrier/training entity, divided by 60 minutes = 492 hours] and an annual information collection burden in subsequent years of 200 hours [1,200 LCV drivers × 10 minutes divided by 60 minutes = 200 hours].

For grandfathering 33,250 LCV drivers, there would be a one-time, one-year-only information collection burden of 16,625 hours, since LCV drivers can be grandfathered only during the first year after the rule becomes effective. There are two parts to the burden for grandfathered drivers: (1) the burden for the driver to collect and provide the information to the motor carrier, and (2) the burden for the motor carrier to review the documents and to complete, duplicate, and file the certification form. FMCSA estimates that it would take approximately 15 minutes for the driver to collect the necessary information and provide the documentation to the motor carrier, and 15 minutes for the motor carrier to review the information, complete the certification, and duplicate and file the document. Therefore, the burden associated with grandfathering the 33,250 LCV drivers would be 16,625 burden hours [(33,250 LCV drivers × 15 minutes per driver, divided by 60 minutes = 8,312.5 hours) + (33,250 LCV drivers × 15 minutes per motor carrier, divided by 60 minutes = 8,312.5 hours) = 16,625 hours].

FMCSA estimates that the burden associated with driver-instructor certification would be 70 burden hours during the first year after the rule becomes effective and 3 annual burden hours thereafter. The agency based these estimates on the following.

We estimate that during the first year, training 1,200 new LCV drivers and 1,750 non-grandfathered LCV drivers would require 148 driving-instructors teaching four classes of five students each [2,950 drivers, divided by five students per class, divided by four classes per year = 147.5 LCV driving instructors, or rounded to the nearest tenth, 148 burden hours]. Approximately one-third (or 49) of the instructors would be classroom instructors and two-thirds (99) would be skills instructors. Instructors would provide to the training school (or to the training entity of the motor carrier) documentation certifying their qualifications under § 380.301.

FMCSA estimates that a classroom instructor would take 10 minutes to collect this instructor documentation and provide it to the certifying training school or motor carrier, while the skills instructor would require 15 minutes to collect and provide this documentation. The training school or motor carrier would require an estimated 15 minutes to review the documentation, complete the instructor certification, and duplicate and file the document. Therefore, the first-year burden associated with instructor certification would be 70 burden hours [(49 classroom instructors × 10 minutes per instructor = 490 minutes, divided by 60 minutes = 8.1 hours, or rounded to the nearest tenth, 8 burden hours) + (99 skills instructors × 15 minutes per instructor = 1,485 minutes, divided by 60 minutes = 24.75 hours, or rounded to the nearest tenth, 25 burden hours) + (148 total instructors × 15 minutes' administrative burden per instructor certification = 2,220 minutes, divided by 60 minutes = 37 burden hours) = 70 hours].

As the specialized nature of LCV training correlates with low instructor turnover, FMCSA estimates an annual turnover rate of 10 percent. Based on an estimated annual instructor pool of 60 instructors to train 1,200 new LCV drivers (with each instructor teaching four classes of five students), six new instructors (two classroom instructors and four skills instructors) would need to be certified each year after the first year. Therefore, the estimated subsequent-year annual burden associated with instructor certification would be 2.8 burden hours, or rounded to the nearest tenth, 3 burden hours [(two classroom instructors × 10 minutes = 20 minutes) + (four skills instructors × 15 minutes = 60 minutes) + (six new instructors × 15 minutes' administrative burden per instructor certification = 90 minutes) = 170 minutes/60 minutes = 3 hours].

Thus, the total first-year burden associated with this rule, when promulgated, is estimated to be 17,187 burden hours [492 + 16,625 + 70 = 17,187 hours]. The information collection burden for subsequent years would drop to 203 burden hours [200 + 3 = 203 hours].

Activity—Burden to complete and process the annual Certification form for LCV drivers and to certify driver-instructors	First-year burden hours	Burden hours for subsequent years
• First-year training of 1,200 new LCV drivers + 1,750 non-grandfathered LCV drivers	492	
• First-year instructor certification for 1,200 new LCV drivers + 1,750 non-grandfathered LCV drivers	70	
• Training & instructor certification in subsequent years—1,200 new LCV drivers annually		203
Grandfathering 33,250 LCV drivers currently operating in the first year	16,625	
Total	17,187	203

OMB Control Number: 2126–(new).

Title: Training Certification for Drivers of Longer Combination Vehicles.

Respondents: 36,348 during the first year; 1,260 in subsequent years.

Estimated Annual Hour Burden for the Information Collection: Year 1 = 17,187 hours; subsequent years = 203 hours.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of FMCSA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget. The OMB must receive your comments by April 29, 2004. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (published in the March 1, 2004 **Federal Register** at 69 FR 9680 with an effective date of March 30, 2004), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change the routing of CMVs, how CMVs operate or the CMV fleet-mix of motor carriers. This action merely establishes standards for minimum training requirements for operators of LCVs and requirements for the instructors who train them.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The agency has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of Section 4(b) of the Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule establishes training requirements for operators of LCVs and sets forth requirements for trainers of such operators. This action has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy, such as gasoline, fuel oil, or other fuels.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*). Under this rule, there are no costs to States, and costs to the private sector should be minimal. This action establishes minimum training standards for operators of LCVs.

Although not required to do so under the FMCSRs, motor carriers routinely provide similar training to their drivers who operate LCVs. The rule does not stipulate that motor carriers must provide such training, but requires them to use only those drivers and driver-instructors who have met the standards established by the rule.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

The agency has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule sets forth training requirements for LCV drivers and sets standards for instructors of such drivers. Therefore, FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

List of Subjects

49 CFR Part 380

Driver training, instructor requirements.

49 CFR Part 391

Highways and roads, Motor vehicle safety.

■ For the reasons stated in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR chapter III as set forth below:

■ 1. Chapter III is amended by adding part 380 to read as follows:

PART 380—SPECIAL TRAINING REQUIREMENTS

Subpart A—Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements—General

Subpart B—LCV Driver-Training Program

Subpart C—LCV Driver-Instructor Requirements

Subpart D—Driver-Training Certification

Authority: 49 U.S.C. 31136, 31307, and 31502; Sec. 4007(b) of Pub. L. 102–240 (105 Stat. 2152); 49 CFR 1.73.

Subpart A—Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements—General

§ 380.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish minimum requirements for operators of longer combination vehicles (LCVs) and LCV driver-instructors.

(b) *Scope.* This part establishes:

(1) Minimum training requirements for operators of LCVs;

(2) Minimum qualification requirements for LCV driver-instructors; and

(3) Procedures for determining compliance with this part by operators, instructors, training institutions, and employers.

§ 380.103 Applicability.

The rules in this part apply to all operators of LCVs in interstate commerce, employers of such persons, and LCV driver-instructors.

§ 380.105 Definitions.

(a) The definitions in part 383 of this subchapter apply to this part, except where otherwise specifically noted.

(b) As used in this part:

Classroom instructor means a qualified LCV driver-instructor who provides knowledge instruction that

does not involve the actual operation of a longer combination vehicle or its components. Instruction may take place in a parking lot, garage, or any other facility suitable for instruction.

Longer combination vehicle (LCV) means any combination of a truck-tractor and two or more trailers or semi-trailers, which operate on the National System of Interstate and Defense Highways with a gross vehicle weight (GVW) greater than 36,288 kilograms (80,000 pounds).

LCV Double means an LCV consisting of a truck-tractor in combination with two trailers and/or semi-trailers.

LCV Triple means an LCV consisting of a truck-tractor in combination with three trailers and/or semi-trailers.

Qualified LCV driver-instructor means an instructor meeting the requirements contained in subpart C of this part. There are two types of qualified LCV driver-instructors: (1) classroom instructor and (2) skills instructor.

Skills instructor means a qualified LCV driver-instructor who provides behind-the-wheel instruction involving the actual operation of a longer combination vehicle or its components outside a classroom.

Training institution means any technical or vocational school accredited by an accrediting institution recognized by the U.S. Department of Education. A motor carrier's training program for its drivers or an entity that exclusively offers services to a single motor carrier is not a training institution.

§ 380.107 General requirements.

(a) Except as provided in § 380.111, a driver who wishes to operate an LCV shall first take and successfully complete an LCV driver-training program that provides the knowledge and skills necessary to operate an LCV. The specific types of knowledge and skills that a training program shall include are outlined in the appendix to this part.

(b) Before a person receives training:

(1) That person shall present evidence to the LCV driver-instructor showing that he/she meets the general requirements set forth in subpart B of this part for the specific type of LCV training to be taken.

(2) The LCV driver-instructor shall verify that each trainee applicant meets the general requirements for the specific type of LCV training to be taken.

(c) Upon successful completion of the training requirement, the driver-student shall be issued an LCV Driver Training Certificate by a certifying official of the training entity in accordance with the requirements specified in subpart D of this part.

§ 380.109 Driver testing.

(a) *Testing methods.* The driver-student must pass knowledge and skills tests in accordance with the following requirements, to determine whether a driver-student has successfully completed an LCV driver-training program as specified in subpart B of this part. The written knowledge test may be administered by any qualified driver-instructor. The skills tests, based on actual operation of an LCV, must be administered by a qualified LCV skills instructor.

(1) All tests shall be constructed to determine if the driver-student possesses the required knowledge and skills set forth in the appendix to this part for the specific type of LCV training program being taught.

(2) Instructors shall develop their own tests for the specific type of LCV-training program being taught, but those tests must be at least as stringent as the requirements set forth in paragraph (b) of this section.

(3) LCV driver-instructors shall establish specific methods for scoring the knowledge and skills tests.

(4) Passing scores must meet the requirements of paragraph (b) of this section.

(5) Knowledge and skills tests shall be based upon the information taught in the LCV training programs as set forth in the appendix to this part.

(6) Each knowledge test shall address the training provided during both theoretical and behind-the-wheel instruction, and include at least one question from each of the units listed in the table to the appendix to this part, for the specific type of LCV training program being taught.

(7) Each skills test shall include all the maneuvers and operations practiced during the Proficiency Development unit of instruction (behind-the-wheel instruction), as described in the appendix to this part, for the specific type of LCV training program being taught.

(b) *Proficiency determinations.* The driver-student must meet the following conditions to be certified as an LCV driver:

(1) Answer correctly at least 80 percent of the questions on each knowledge test; and

(2) Demonstrate that he/she can successfully perform all of the skills addressed in paragraph (a)(7) of this section.

(c) *Automatic test failure.* Failure to obey traffic laws or involvement in a preventable crash during the skills portion of the test will result in automatic failure. Automatic test failure determinations are made at the sole discretion of the qualified LCV driver-instructor.

(d) *Guidance for testing methods and proficiency determinations.* Motor carriers should refer to the Examiner's Manual for Commercial Driver's License Tests for help in developing testing methods and making proficiency determinations. You may obtain a copy of this document by contacting the American Association of Motor Vehicle Administrators (AAMVA), 4300 Wilson Boulevard, Suite 400, Arlington, Virginia 22203.

§ 380.111 Substitute for driver training.

(a) *Grandfather clause.* The LCV driver-training requirements specified in subpart B of this part do not apply to an individual who meets the conditions set forth in paragraphs (b), (c), and (d) of this section. A motor carrier must ensure that an individual claiming eligibility to operate an LCV on the basis of this section meets these conditions before allowing him/her to operate an LCV.

(b) An individual must certify that, during the 2-year period immediately preceding the date of application for a Certificate of Grandfathering, he/she had:

(1) A valid Class A CDL with a "double/triple trailers" endorsement;

(2) No more than one driver's license;

(3) No suspension, revocation, or cancellation of his/her CDL;

(4) No convictions for a major offense while operating a CMV as defined in § 383.51(b) of this subchapter;

(5) No convictions for a railroad-highway grade crossing offense while operating a CMV as defined in § 383.51(d) of this subchapter;

(6) No convictions for violating an out-of-service order as defined in § 383.51(e) of this subchapter;

(7) No more than one conviction for a serious traffic violation, as defined in § 383.5 of this subchapter, while operating a CMV; and

(8) No convictions for a violation of State or local law relating to motor vehicle traffic control arising in connection with any traffic crash while operating a CMV.

(c) An individual must certify and provide evidence that he/she:

(1) Is regularly employed in a job requiring the operation of a CMV that requires a CDL with a double/triple trailers endorsement; and

(2) Has operated, during the 2 years immediately preceding the date of application for a Certificate of Grandfathering, vehicles representative

of the type of LCV that he/she seeks to continue operating.

(d) A motor carrier must issue a Certificate of Grandfathering to a person who meets the requirements of this section and must maintain a copy of the certificate in the individual's Driver Qualification file.

Longer Combination Vehicle (LCV) Driver-Training Certificate of Grandfathering

I certify that _____ has presented evidence of meeting the prerequisites set forth in the Federal Motor Carrier Safety Regulations (49 CFR § 380.111) for the substitute for LCV driver training and is qualified to operate the LCVs indicated below:

YES	NO	
☐	☐	**LCV Doubles**
☐	☐	**LCV Triples**

DRIVER NAME (First name, MI, Last name)	
Commercial Driver's License Number	STATE
ADDRESS OF DRIVER (Street Address, City, State and Zip Code)	
FULL NAME OF MOTOR CARRIER	Telephone Number
ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Street Address, City, State, and Zip) Code)	
SIGNATURE OF MOTOR CARRIER OFFICIAL	DATE ISSUED

(e) An applicant may be grandfathered under this section only during the year following June 1, 2004.

§ 380.113 Employer responsibilities.

(a) No motor carrier shall:

(1) Allow, require, permit or authorize an individual to operate an LCV unless he/she meets the requirements in §§ 380.203 or 380.205 and has been issued the LCV driver-training certificate described in § 380.401. This provision does not apply to individuals who are eligible for the substitute for driver training provision in § 380.111.

(2) Allow, require, permit, or authorize an individual to operate an LCV which the LCV driver-training certificate, CDL, and CDL endorsement(s) do not authorize the driver to operate. This provision applies to individuals employed by or under contract to the motor carrier.

(b) A motor carrier that employs or has under contract LCV drivers shall provide evidence of the certifications required by § 380.401 or § 380.111 of this part when requested by an authorized FMCSA, State, or local official in the course of a compliance review.

Subpart B—LCV Driver-Training Program

§ 380.201 General requirements.

(a) The LCV Driver-Training Program that is described in the appendix to this part requires training using an LCV Double or LCV Triple and must include the following general categories of instruction:

(1) Orientation;
(2) Basic operation;
(3) Safe operating practices;
(4) Advanced operations; and
(5) Nondriving activities.

(b) The LCV Driver-Training Program must include the minimum topics of training set forth in the appendix to this part and behind-the-wheel instruction that is designed to provide an opportunity to develop the skills outlined under the Proficiency Development unit of the training program.

§ 380.203 LCV Doubles.

(a) To qualify for the training necessary to operate an LCV Double, a driver-student shall, during the 6 months immediately preceding application for training, have:

(1) A valid Class A CDL with a double/triple trailer endorsement;

(2) Driving experience in a Group A vehicle as described in § 383.91 of this subchapter. Evidence of driving experience shall be an employer's written statement that the driver has, for at least 6 months immediately preceding application, operated a Group A vehicle while under his/her employ;

(3) No more than one driver's license;

(4) No suspension, revocation, or cancellation of his/her CDL;

(5) No convictions for a major offense, as defined in § 383.51(b) of this subchapter, while operating a CMV;

(6) No convictions for a railroad-highway grade crossing offense, as defined in § 383.51(d) of this subchapter, while operating a CMV;

(7) No convictions for violating an out-of-service order as defined in § 383.51(e) of this subchapter;

(8) No more than one conviction for a serious traffic violation, as defined in § 383.5 of this subchapter, while operating a CMV; and

(9) No convictions for a violation of State or local law relating to motor vehicle traffic control arising in connection with any traffic crash while operating a CMV.

(b) Driver-students meeting the preliminary requirements in paragraph (a) of this section shall successfully complete a training program that meets the minimum unit requirements for LCV Doubles as set forth in the appendix to this part.

(c) Driver-students who successfully complete the Driver Training Program for LCV Doubles shall be issued a certificate, in accordance with subpart D of this part, indicating the driver is qualified to operate an LCV Double.

§ 380.205 LCV Triples.

(a) To qualify for the training necessary to operate an LCV Triple, a driver-student shall, during the 6 months immediately preceding application for training, have:

(1) A valid Class A CDL with a double/triple trailer endorsement;

(2) Experience operating the vehicle listed under paragraph (a)(2)(i) or (a)(2)(ii) of this section. Evidence of driving experience shall be an employer's written statement that the driver has, during the 6 months immediately preceding application, operated the applicable vehicle(s):

(i) Group A truck-tractor/semi-trailer combination as described in § 383.91 of this subchapter; or

(ii) Group A truck-tractor/semi-trailer/trailer combination that operates at a gross vehicle weight of 80,000 pounds or less;

(3) No more than one driver's license;

(4) No suspension, revocation, or cancellation of his/her CDL;

(5) No convictions for a major offense, as defined in § 383.51(b) of this subchapter, while operating a CMV;

(6) No convictions for a railroad-highway grade crossing offense, as defined in § 383.51(d) of this subchapter, while operating a CMV;

(7) No convictions for violating an out-of-service order, as defined in § 383.51(e) of this subchapter;

(8) No more than one conviction for a serious traffic violation, as defined in § 383.5 of this subchapter, while operating a CMV; and

(9) No convictions for a violation of State or local law relating to motor vehicle traffic control arising in connection with any traffic crash, while operating a CMV.

(b) Driver-students meeting the preliminary requirements in paragraph (a) of this section shall successfully complete a training program that meets the minimum unit requirements for LCV Triples as set forth in the appendix to this part.

(c) Driver-students who successfully complete the Driver Training Program for LCV Triples shall be issued a certificate, in accordance with subpart D of this part, indicating the driver is qualified to operate an LCV Triple.

Subpart C—LCV Driver-Instructor Requirements

§ 380.301 General requirements.

There are two types of LCV driver-instructors: Classroom instructors and Skills instructors. Except as provided in § 380.303, you must meet the conditions under paragraph (a) or paragraph (b) of this section to qualify as an LCV driver-instructor.

(a) *Classroom instructor.* To qualify as an LCV Classroom instructor, a person shall:

(1) Have audited the driver-training course that he/she intends to instruct.

(2) If employed by a training institution, meet all State requirements for a vocational instructor.

(b) *Skills instructor.* To qualify as an LCV skills instructor, a person shall:

(1) Provide evidence of successful completion of the Driver-Training Program requirements, as set forth in subpart B of this part, when requested by employers and/or an authorized FMCSA, State, or local official in the course of a compliance review. The Driver-Training Program must be for the operation of CMVs representative of the subject matter that he/she will teach.

(2) If employed by a training institution, meet all State requirements for a vocational instructor;

(3) Possess a valid Class A CDL with all endorsements necessary to operate the CMVs applicable to the subject matter being taught (LCV Doubles and/or LCV Triples, including any specialized variation thereof, such as a tank vehicle, that requires an additional endorsement); and

(4) Have at least 2 years' CMV driving experience in a vehicle representative of the type of driver training to be provided (LCV Doubles or LCV Triples).

§ 380.303 Substitute for instructor requirements.

(a) *Classroom instructor.* The requirements specified under § 380.301(a) of this part for a qualified LCV driver-instructor are waived for a classroom instructor-candidate who has 2 years of recent satisfactory experience teaching the classroom portion of a program similar in content to that set forth in the appendix to this part.

(b) *Skills instructor.* The requirements specified under § 380.301(b) of this part for a qualified LCV driver-instructor are waived for a skills instructor-candidate who:

(1) Meets the conditions of § 380.111(b);

(2) Has CMV driving experience during the previous 2 years in a vehicle representative of the type of LCV that is the subject of the training course to be provided;

(3) Has experience during the previous 2 years in teaching the operation of the type of LCV that is the subject of the training course to be provided; and

(4) If employed by a training institution, meets all State requirements for a vocational instructor.

§ 380.305 Employer responsibilities.

(a) No motor carrier shall: (1) Knowingly allow, require, permit or authorize a driver-instructor in its employ, or under contract to the motor carrier, to provide LCV driver training unless such person is a qualified LCV driver-instructor under the requirements of this subpart; or

(2) Contract with a training institution to provide LCV driver training unless the institution:

(i) Uses instructors who are qualified LCV driver-instructors under the requirements of this subpart;

(ii) Is accredited by an accrediting institution recognized by the U.S. Department of Education;

(iii) Is in compliance with all applicable State training school requirements; and

(iv) Identifies drivers certified under § 380.401 of this part, when requested by employers and/or an authorized FMCSA, State, or local official in the course of a compliance review.

(b) A motor carrier that employs or has under contract qualified LCV driver-instructors shall provide evidence of the certifications required by § 380.301 or § 380.303 of this part, when requested by an authorized FMCSA, State, or local official in the course of a compliance review.

Subpart D—Driver-Training Certification

§ 380.401 Certification document.

(a) A student who successfully completes LCV driver training shall be

issued a Driver-Training Certificate that is substantially in accordance with the following form.

Longer Combination Vehicle (LCV) Driver-Training Certificate

I certify that _____ has presented evidence of meeting the training prerequisites set forth in the Federal Motor Carrier Safety Regulations (49 CFR §§ 380.203(a) and 380.205(a)) for LCV training, and has successfully completed the LCV Driver-Training Course(s) indicated below:

YES	NO		
☐	☐	**LCV Doubles**	_____ Date Training Completed
☐	☐	**LCV Triples**	_____ Date Training Completed

I certify that the indicated LCV Driver-Training course(s) was provided by a qualified LCV driver-instructor as defined under 49 CFR § 380.105 and meet(s) the minimum requirements set forth in 49 CFR part 380, subparts A and B.

DRIVER NAME (First Name, MI, Last Name)	
Commercial Driver's License Number	STATE
ADDRESS OF DRIVER (Street Address, City, State and Zip Code)	
FULL NAME OF TRAINING ENTITY	Telephone Number
BUSINESS ADDRESS (Street Address, City, State, and Zip Code)	
SIGNATURE OF TRAINING CERTIFYING OFFICIAL	DATE ISSUED

(b) An LCV driver must provide a copy of the Driver-Training Certificate to his/her employer to be filed in the Driver Qualification File.

Appendix to Part 380—LCV Driver Training Programs, Required Knowledge and Skills

The following table lists topics of instruction required for drivers of longer combination vehicles pursuant to 49 CFR part 380, subpart B. The training courses for operators of LCV Doubles and LCV Triples must be distinct and tailored to address their unique operating and handling characteristics. Each course must include the minimum topics of instruction, including behind-the-wheel training designed to provide an opportunity to develop the skills outlined under the Proficiency Development unit of the training program. Only a skills instructor may administer behind-the-wheel training involving the operation of an LCV or one of its components. A classroom instructor may administer only instruction that does not involve the operation of an LCV or one of its components.

TABLE TO THE APPENDIX—COURSE TOPICS FOR LCV DRIVERS

Section 1: Orientation	
1.1	LCVs in Trucking
1.2	Regulatory Factors
1.3	Driver Qualifications
1.4	Vehicle Configuration Factors
Section 2: Basic Operation	
2.1	Coupling and Uncoupling
2.2	Basic Control and Handling
2.3	Basic Maneuvers
2.4	Turning, Steering and Tracking
2.5	Proficiency Development
Section 3: Safe Operating Practices	
3.1	Interacting with Traffic
3.2	Speed and Space Management
3.3	Night Operations
3.4	Extreme Driving Conditions
3.5	Security Issues
3.6	Proficiency Development
Section 4: Advanced Operations	
4.1	Hazard Perception
4.2	Hazardous Situations
4.3	Maintenance and Troubleshooting
Section 5: Non-Driving Activities	
5.1	Routes and Trip Planning
5.2	Cargo and Weight Considerations

Section 1—Orientation

The units in this section must provide an orientation to the training curriculum and must cover the role LCVs play within the

motor carrier industry, the factors that affect their operations, and the role that drivers play in the safe operation of LCVs.

Unit 1.1—LCVs in Trucking. This unit must provide an introduction to the emergence of LCVs in trucking and must serve as an orientation to the course content. Emphasis must be placed upon the role the driver plays in transportation.

Unit 1.2—Regulatory factors. This unit must provide instruction addressing the Federal, State, and local governmental bodies that propose, enact, and implement the laws, rules, and regulations that affect the trucking industry. Emphasis must be placed on those regulatory factors that affect LCVs, including 23 CFR 658.23 and Appendix C to part 658.

Unit 1.3—Driver qualifications. This unit must provide classroom instruction addressing the Federal and State laws, rules, and regulations that define LCV driver qualifications. It also must include a discussion on medical examinations, drug and alcohol tests, certification, and basic health and wellness issues. Emphasis must be placed upon topics essential to physical and mental health maintenance, including (1) diet, (2) exercise, (3) avoidance of alcohol and drug abuse, and caution in the use of prescription and nonprescription drugs, (4) the adverse effects of driver fatigue, and (5) effective fatigue countermeasures. Driver-trainees who have successfully completed the Entry-level training segments at § 380.503(a) and (c) are considered to have satisfied the requirements of Unit 1.3.

Unit 1.4—Vehicle configuration factors. This unit must provide classroom instruction addressing the key vehicle components used in the configuration of longer combination vehicles. It also must familiarize the driver-trainee with various vehicle combinations, as well as provide instruction about unique characteristics and factors associated with LCV configurations.

Section 2—Basic Operation

The units in this section must cover the interaction between the driver and the vehicle. They must teach driver-trainees how to couple and uncouple LCVs, ensure the vehicles are in proper operating condition, and control the motion of LCVs under various road and traffic conditions.

During the driving exercises at off-highway locations required by this section, the driver-trainee must first familiarize himself/herself with basic operating characteristics of an LCV. Utilizing an LCV, students must be able to perform the skills learned in each unit to a level of proficiency required to permit safe transition to on-street driving.

Unit 2.1—Coupling and uncoupling. This unit must provide instruction addressing the procedures for coupling and uncoupling LCVs. While vehicle coupling and uncoupling procedures are common to all truck-tractor/semi-trailer operations, some factors are peculiar to LCVs. Emphasis must be placed upon preplanning and safe operating procedures.

Unit 2.2—Basic control and handling. This unit must provide an introduction to basic vehicular control and handling as it applies to LCVs. This must include instruction addressing brake performance, handling characteristics and factors affecting LCV stability while braking, turning, and cornering. Emphasis must be placed upon safe operating procedures.

Unit 2.3—Basic maneuvers. This unit must provide instruction addressing the basic vehicular maneuvers that will be encountered by LCV drivers. This must include instruction relative to backing, lane positioning and path selection, merging situations, and parking LCVs. Emphasis must be placed upon safe operating procedures as they apply to brake performance and directional stability while accelerating, braking, merging, cornering, turning, and parking.

Unit 2.4—Turning, steering, and tracking. This unit must provide instruction addressing turning situations, steering maneuvers, and the tracking of LCV trailers. This must include instruction related to trailer sway and off-tracking. Emphasis must be placed on maintaining directional stability.

Unit 2.5—Proficiency development: basic operations. The purpose of this unit is to enable driver-students to gain the proficiency in basic operation needed to safely undertake on-street instruction in the Safe Operations Practices section of the curriculum.

The activities of this unit must consist of driving exercises that provide practice for the development of basic control skills and mastery of basic maneuvers. Driver-students practice skills and maneuvers learned in the Basic Control and Handling; Basic Maneuvers; and Turning, Steering and Tracking units. A series of basic exercises is practiced at off-highway locations until students develop sufficient proficiency for transition to on-street driving.

Once the driver-student's skills have been measured and found adequate, the driver-student must be allowed to move to on-the-street driving.

Nearly all activity in this unit will take place on the driving range or on streets or roads that have low-density traffic conditions.

Section 3—Safe Operating Practices

The units in this section must cover the interaction between student drivers, the vehicle, and the traffic environment. They must teach driver-students how to apply their basic operating skills in a way that ensures their safety and that of other road users under various road, weather, and traffic conditions.

Unit 3.1—Interacting with traffic. This unit must provide instruction addressing the principles of visual search, communication, and sharing the road with other traffic. Emphasis must be placed upon visual search, mirror usage, signaling and/or positioning the vehicle to communicate, and understanding the special situations encountered by LCV drivers in various traffic situations.

Unit 3.2—Speed and space management. This unit must provide instruction addressing the principles of speed and space management. Emphasis must be placed upon maintaining safe vehicular speed and appropriate space surrounding the vehicle under various traffic and road conditions. Particular attention must be placed upon understanding the special situations encountered by LCVs in various traffic situations.

Unit 3.3—Night operations. This unit must provide instruction addressing the principles of Night Operations. Emphasis must be placed upon the factors affecting operation of LCVs at night. Night driving presents specific factors that require special attention on the part of the driver. Changes in vehicle safety inspection, vision, communications, speed management, and space management are needed to deal with the special problems night driving presents.

Unit 3.4—Extreme driving conditions. This unit must provide instruction addressing the driving of LCVs under extreme driving conditions. Emphasis must be placed upon the factors affecting the operation of LCVs in cold, hot, and inclement weather and in the mountains and desert. Changes in basic driving habits are needed to deal with the specific problems presented by these extreme driving conditions.

Unit 3.5—Security issues. This unit must include a discussion of security requirements imposed by the Department of Homeland Security, Transportation Security Administration; the U.S. Department of Transportation, Research and Special Programs Administration; and any other State or Federal agency with responsibility for highway or motor carrier security.

Unit 3.6—Proficiency development. This unit must provide driver-students an opportunity to refine, within the on-street traffic environment, their vehicle handling skills learned in the first three sections. Driver-student performance progress must be closely monitored to determine when the level of proficiency required for carrying out the basic traffic maneuvers of stopping, turning, merging, straight driving, curves, lane changing, passing, driving on hills, driving through traffic restrictions, and parking has been attained. The driver-student must also be assessed for regulatory compliance with all traffic laws.

Nearly all activity in this unit will take place on public roadways in a full range of traffic environments applicable to this vehicle configuration. This must include urban and rural uncontrolled roadways, expressways or freeways, under light, moderate, and heavy traffic conditions. There must be a brief classroom session to familiarize driver-students with the type of on-street maneuvers they will perform and how their performance will be rated.

The instructor must assess the level of skill development of the driver-student and must increase in difficulty, based upon the level of skill attained, the types of maneuvers, roadways and traffic conditions to which the driver-student is exposed.

Section 4—Advanced Operations

The units in this section must introduce higher level skills that can be acquired only after the more fundamental skills and knowledge taught in sections two and three have been mastered. They must teach the perceptual skills necessary to recognize potential hazards, and must demonstrate the procedures needed to handle an LCV when faced with a hazard.

The Maintenance and Trouble-shooting Unit must provide instruction that addresses how to keep the vehicle in safe and efficient operating condition. The purpose of this unit is to teach the correct way to perform simple maintenance tasks, and how to troubleshoot and report those vehicle discrepancies or deficiencies that must be repaired by a qualified mechanic.

Unit 4.1—Hazard perception. This unit must provide instruction addressing the principles of recognizing hazards in sufficient time to reduce the severity of the hazard and neutralize a possible emergency situation. While hazards are present in all motor vehicle traffic operations, some are peculiar to LCV operations. Emphasis must be placed upon hazard recognition, visual search, and response to possible emergency-producing situations encountered by LCV drivers in various traffic situations.

Unit 4.2—Hazardous situations. This unit must address dealing with specific procedures appropriate for LCV emergencies. These must include evasive steering, emergency braking, off-road recovery, brake failures, tire blowouts, rearward amplification, hydroplaning, skidding, jackknifing and the rollover phenomenon. The discussion must include a review of unsafe acts and the role they play in producing hazardous situations.

Unit 4.3—Maintenance and trouble-shooting. This unit must introduce driver-students to the basic servicing and checking procedures for the various vehicle components and provide knowledge of conducting preventive maintenance functions, making simple emergency repairs, and diagnosing and reporting vehicle malfunctions.

Section 5—Non-Driving Activities

The units in this section must cover activities that are not directly related to the vehicle itself but must be performed by an LCV driver. The units in this section must ensure these activities are performed in a manner that ensures the safety of the driver, vehicle, cargo, and other road users.

Unit 5.1—Routes and trip planning. This unit must address the importance of and requirements for planning routes and trips. This must include classroom discussion of Federal and State requirements for a number of topics including permits, vehicle size and weight limitations, designated highways, local access, the reasonable access rule, staging areas, and access zones.

Unit 5.2—Cargo and weight considerations. This unit must address the importance of proper cargo documentation, loading, securing and unloading cargo, weight distribution, load sequencing and trailer placement. Emphasis must be placed on the importance of axle weight distribution, as well as on trailer placement and its effect on vehicle handling.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 2. The authority citation for 49 CFR part 391 is revised to read as follows:

Authority: 49 U.S.C. 322, 504, 31133, 31136 and 31502; Sec. 4007(b) of Pub. L. 102–240 (105 Stat. 2152); and 49 CFR 1.73.

■ 3. Part 391 is amended by revising the title to read as set forth above and by adding a new § 391.53 to subpart F to read as follows:

§ 391.53 LCV Driver-Instructor qualification files.

(a) Each motor carrier must maintain a qualification file for each LCV driver-instructor it employs or uses. The LCV driver-instructor qualification file may be combined with his/her personnel file.

(b) The LCV driver-instructor qualification file must include the information in paragraphs (b)(1) and (b)(2) of this section for a skills instructor or the information in paragraph (b)(1) of this section for a classroom instructor, as follows:

(1) Evidence that the instructor has met the requirements of 49 CFR 380.301 or 380.303;

(2) A photographic copy of the individual's currently valid CDL with the appropriate endorsements.

Issued on: March 22, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–6794 Filed 3–29–04; 8:45 am]

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Federal Register

Tuesday,
March 30, 2004

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 70

Revision of the Department of Labor Freedom of Information Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

RIN 1290–AA17

Revision of the Department of Labor Freedom of Information Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed revisions of the Department's procedural regulations under the Freedom of Information Act (FOIA). These proposed revisions are not intended to change any rights under the FOIA. The proposed regulations are intended as a routine updating of the Department's procedures—to streamline the existing procedures based on experience, to reflect certain changes in the procedural requirements of the FOIA since the current regulations were issued, and to make the Department's procedures easier for the public to understand.

DATES: Comments must be received on or before May 14, 2004.

ADDRESSES: Comments should be mailed to Robert A. Shapiro, Associate Solicitor for Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210. Alternatively, comments can be faxed to 202–693–5539, or sent by e-mail to *Foia-regulations-comments@dol.gov.* All comments should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, telephone (202) 693–5522.

SUPPLEMENTARY INFORMATION: These comprehensive revisions of Part 70 incorporate changes to the language and structure of the regulations. A number of provisions have been revised, and in some cases reorganized, in order to clarify how the Department implements the procedural requirements of the FOIA.

These proposed revisions are not intended to change any rights under the FOIA. The proposed regulations are intended only as a routine updating of the Department's procedures—to streamline the existing procedures based on experience, to reflect certain changes in the procedural requirements of the FOIA since the current regulations were issued, and to make the Department's procedures easier for the public to understand.

The proposed regulations would add new provisions to explicitly implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231). The Department has been operating in compliance with the amendments, and based on its experience is now proposing to update the regulations to reflect these changes in the law. New provisions implementing the amendments are found at § 70.4(d)(2) (electronic reading rooms); § 70.21(a) (format of disclosure); § 70.21(b)(3) (deletion marking and volume estimation); § 70.25 (timing of responses); and § 70.38(d) (electronic searches).

The Department presumes that since the E–FOIA amendments have been operative now for several years, most of those interested in commenting on the Department's implementation of those provisions will be familiar with the subject. However, those interested in consulting additional resources on any of the procedural requirements of the FOIA, and the E–FOIA amendments in particular, can readily find detailed information at the U.S. Department of Justice Web site. For example, a copy of the FOIA can be located at *http://www.usdoj.gov/04foia/foiastat.htm*; the current (May 2002) edition of the Department of Justice FOIA Reference Guide can be located at *http://www.usdoj.gov/oip/foi-act.htm;* and specific information about the E–FOIA amendments of 1996 can be located at *http://www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page1.htm.*

The proposed regulations would also update the Department's fee schedule. Proposed revisions of the Department's fee schedule can be found at §§ 70.40(d)(1) and (3). The duplication charge will remain the same at fifteen cents per page, while document search and review charges will increase to $5.00 and $10.00 per quarter hour for clerical and professional or supervisory time, respectively. The amount at or below which the Department will not charge a fee will increase from $5.00 to $15.00 at § 70.43(a). The proposed regulations would also clarify the application of fees with respect to administrative appeals.

The proposed regulations would allow for the submission of e-mail FOIA requests to the Department. The regulations will create one e-mail address where all FOIA e-mail requests must be directed. Requests submitted to any other e-mail address will not be accepted. § 70.19(b).

Regulatory Flexibility Act

The Secretary of Labor, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) has reviewed this proposed regulation and has certified to the Chief Counsel for Advocacy of the Small Business Administration that it will not have a significant economic impact on a substantial number of small entities.

The Department of Labor makes a tremendous amount of public information readily available to small entities on its Web site pursuant to the FOIA and other public disclosure requirements, and is committed to expanding this resource to assist small businesses and other members of the public. In this regard, the Department, consistent with the E–FOIA amendments, now maintains an electronic reading room. This electronic reading room provides ready access to many materials of interest to small entities that were previously available only at selected physical sites around the country—*e.g.*, administrative staff manuals used by the Department. In addition, the Department makes "hot FOIAs" available to the public on this Web site pursuant to the requirements of the law. The Department has established a direct link on the Home page of its Web site *http://www.dol.gov/dol/foia/main.htm* to its FOIA resources. In addition to the information in the electronic reading room, a copy of the statute, the Department's procedural regulations, up-to-date information about DOL disclosure officers, links to Department of Justice resources, and a variety of other useful information can be found on this site.

Small entities, like any other individual or entity, may request information in the Department's files that has not been generally made available to the public. One of the major purposes of revising the Department's FOIA regulations is to make it simpler for small entities and others to understand where and how to seek information from the Department, and to ensure that they receive disclosable information (and an appropriate explanation of why any information has been deemed non-disclosable) in a timely way. Like other requesters, small entities seeking information, must in some cases pay fees. The FOIA establishes a fee structure to cover the direct costs of the government in searching for, reviewing, and duplicating requested records. The Department's proposed regulations are fully consistent with these requirements. For example, consistent with the statute, the regulations provide

that no fees will be charged in specified circumstances, establish uniform fees to cover the time expended by professional and clerical employees, and include provisions for fee waivers. Moreover, in fully implementing the provisions of the E–FOIA Act, the proposed regulations will ensure that small entities have the opportunity to obtain information in the format of their choice (including electronic formats) when it is feasible for the Department to produce the information in the requested manner.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This Department and the Office of Management and Budget have determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order, nor has the rule been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments or by the private sector, in the aggregate, of $100,000,000 or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Federalism

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The proposed rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Paperwork Reduction Act

The Department has reviewed the proposed rules with reference to the Paperwork Reduction Act and has concluded that they do not involve any "collection of information" within the requirements of the Act.

These proposed regulations would not require any person to fill out a form or otherwise provide specific information (other than self-identification and appropriate certifications) to the Department in order to make a FOIA request or administrative appeal for records. Pursuant to regulations of the Office of Management and Budget implementing the Paperwork Reduction Act, affidavits, oaths, affirmations, certifications, receipts, changes of address, consents or acknowledgments are not "information collections" under the law (5 CFR 1320.3(h)(1)).

Consistent with the FOIA, the proposed regulations require those seeking fee waivers to address certain specific requirements set forth by the law; and consistent with the law and Executive Order 12600, the proposed regulations require submitters of information who wish to protect that information to address certain specific requirements toward that end. In order to ensure consistency in its treatment of requesters and information submitters in this regard, the components of the Department are encouraged to use standard form letters when soliciting information they need to make determinations on these points. However, each such letter addresses a different factual situation and ordinarily is tailored to the situation at issue in the specific case. Pursuant to regulations of the Office of Management and Budget implementing the Paperwork Reduction Act, facts or opinions requested from a single person are not "information collections" under the law (5 CFR 1320.3(h)(6)).

List of Subjects in 29 CFR Part 70

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, the Department of Labor proposes to revise 29 CFR Part 70, as follows:

PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Subpart A—General

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

Subpart C—Costs for Production of Records

Subpart D—Public Records and Filings

Appendix A to Part 70—Disclosure Officers

Authority: 5 U.S.C. 301, 5 U.S.C. 552, as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix; E.O. 12600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235.

Subpart A—General

§ 70.1 Purpose and scope.

This part contains the regulations of the Department of Labor implementing the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552 and Executive Order 12600. It also implements the public information provisions of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 435, the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1026 (section 106), and the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 11. Subpart A contains general information about Department of Labor policies and procedures;

subpart B sets forth the procedures for obtaining access to records of the Department; subpart C contains the Department's regulations on fees; and subpart D sets forth the procedures for obtaining access to certain public records. Appendix A contains a list of all Department of Labor disclosure officers from whom records may be obtained.

§ 70.2 Definitions.

As used in this part:

(a) The terms *agency*, *person*, *party*, *rule*, *order*, and *adjudication* have the meaning attributed to these terms by the definitions in 5 U.S.C. 551.

(b) *Component* means each separate bureau, office, board, division, commission, service or administration of the Department of Labor.

(c) *Disclosure officer* means an official of a component who has authority to disclose or withhold records under the FOIA and to whom requests to inspect or copy records in his/her custody should be addressed. Department of Labor disclosure officers are listed in appendix A to this part.

(d) *The Secretary* means the Secretary of Labor.

(e) *The Department* means the Department of Labor.

(f) *Request* means any written request for records made pursuant to 5 U.S.C. 552(a)(3) and which meets the requirements of this part.

(g) *Requester* means any person who makes a request.

(h) *Record* means information in any format, including electronic format.

(i) *Search* means to seek, manually or by automated means, Department records for the purpose of locating records in response to a request.

(j) *Business information* means commercial or financial information received or obtained by the Department from a submitter, directly or indirectly, that arguably may be protected from disclosure under Exemption 4 of the FOIA.

(k) *Submitter* means any person or entity from whom the Department receives or obtains commercial or financial information, directly or indirectly. The term *submitter* includes, but is not limited to corporations, labor organizations, non-profit organizations, local, state, tribal and foreign governments.

§ 70.3 Policy.

All agency records, except those exempt from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), will be made promptly available to any person submitting a written request in accordance with the procedures of this part.

§ 70.4 Public reading rooms.

(a) To the extent required by 5 U.S.C. 552(a)(2), each component within the Department will make the materials listed in this section available for public inspection and copying (unless they are published and copies are offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register;**

(3) Administrative staff manuals and instructions to staff that affect a member of the public except to the extent that such records or portions thereof are exempt from disclosure under section 552(b) of the FOIA; and

(4) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Each component of the Department will maintain and make available, including through the Department's Internet/World Wide-Web site (*http://www.dol.gov*), current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each component will publish and make available for distribution copies of such indexes and their supplements at least quarterly, unless it determines by Notice published in the **Federal Register** that publication would be unnecessary and impracticable. After issuance of such Notice, the component will provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

(c) A component may exclude information from records made available to the public pursuant to paragraphs (a)(1), (a)(2) and (a)(3) of this section where release of such information would constitute a clearly unwarranted invasion of privacy and may also exclude identifying details from records made available to the public pursuant to paragraph (a)(4) of this section when disclosure would be harmful to an interest protected by an exemption. When making a deletion for such purposes, the component will explain the reason for the deletion. Also, a component will describe the extent of the deletion and must, if technically feasible, identify the exact location where the deletion was made.

(d) Records described in this section are available for examination or copying without the submission of a formal FOIA request. All records covered by this section are available through public reading rooms, and, to the extent indicated in this paragraph (d), through the Department's Internet/World Wide-Web site (*http://www.dol.gov*).

(1) Some components have public reading rooms only in Washington, DC, while other components provide reading rooms in area, district or regional offices throughout the United States. A disclosure officer in the appropriate component listed in appendix A to this part should be contacted to find out where the public reading room is located. If the appropriate component is unknown, inquiries can be directed to the Office of the Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210. Fees for reproduction of records in public reading rooms are charged consistent with § 70.40.

(2) To the extent feasible, components are required to place copies of any records covered by this section and which were created on or after November 1, 1996 on the Internet/World-Wide Web. In particular, when records are required to be made available to the public pursuant to the requirements of paragraph (a)(4) of this section, the component will also place on the Internet/World-Wide Web, if technically feasible, any records that are released in the response to a FOIA decision. The Department's Internet home page may be searched to obtain these documents. The Department will make available to the public by electronic or other appropriate media any documents covered by this section that cannot be feasibly placed on the Internet/World-Wide Web.

§ 70.5 Compilation of new records.

Nothing in 5 U.S.C. 552 or this part requires that any agency or component create a new record in order to respond to a request for records. A component must, however, make reasonable efforts to search for records that already exist in electronic form or format, except when such efforts would significantly interfere with the operation of the component's automated information systems. The component will determine

what constitutes a reasonable effort on a case-by-case basis.

§ 70.6 Disclosure of originals.

(a) No original record or file in the custody of the Department of Labor, or of any component or official thereof, will on any occasion be given to any agent, attorney, or other person not officially connected with the Department without the written consent of the Secretary, the Solicitor of Labor or the Inspector General.

(b) The individual authorizing the release of the original record or file must ensure that a copy of the document or file is retained in the component that had custody and/or control when an original document or file is released pursuant to this subpart.

§§ 70.7–70.18 [Reserved]

Subpart B—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 70.19 Requests for records.

(a) *How to make a request.* Requests under this subpart for a record of the Department of Labor must be written and received by mail, delivery service/courier, facsimile or e-mail.

(b) *To whom to direct requests.* A request should be sent to the appropriate official/officer for the component that maintains the records at its proper address. The request as well as the envelope itself should be clearly marked "Freedom of Information Act Request." If the request is made by e-mail, it must be sent to *foiarequest@dol.gov*. Requests submitted to any other e-mail address will not be accepted as a request made under this part.

(1) The functions of each major Department of Labor component are summarized in the United States Government Manual which is issued annually. The manual is available in print from the Superintendent of Documents, Washington, DC 20402–9328, and electronically at the Government Printing Office's World Wide-Web site, *www.access.gpo.gov/su_docs*. Appendix A of this part lists the disclosure officers of each component by title and address. This initial list has been included for information purposes only, and the disclosure officers may be changed through appropriate designation. Regional, district and field office addresses have been included in appendix A to this part to assist requesters in identifying the disclosure officer who is most likely to have custody of the records sought.

(2) Requesters who cannot determine the proper disclosure officer to which the request should be addressed, may direct the request to the Office of the Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N2428, Washington, DC 20210 or by e-mail to *foiarequest@dol.gov*. Note, pursuant to § 70.25(a), the time for the component to respond to a request begins to run when the request is received by the proper disclosure officer.

(c) *Description of information requested.* Each request must reasonably describe the record or records sought. The descriptions must be sufficiently detailed to permit the identification and location of the requested records with a reasonable amount of effort. So far as practicable, the request should specify the subject of the record, the date or approximate date when made, the place where made, the person or office that created it, and any other pertinent identifying details.

(d) *Deficient descriptions.* If the description is insufficient, so that a knowledgeable employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the component processing the request should notify the requester and describe what additional information is needed to process the request. Every reasonable effort will be made to assist a requester in the identification and location of the record or records sought. Any amended request must be confirmed in writing and meet the requirements for a request under this part.

(e) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under this part, up to $25.

§ 70.20 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the disclosure officer who receives a request for a record and has possession of that record is the disclosure officer responsible for responding to the request. If requested by component heads, the Co-Counsel for Administrative Law will provide a coordinated response on behalf of the Department to any initial FOIA request.

(b) *Consultations and referrals.* When a disclosure officer receives a request for a record, the disclosure officer will determine whether another disclosure officer of the component, the Department, or of the Federal Government, is better able to determine whether the record can be disclosed or is exempt from disclosure under the FOIA. If the receiving disclosure officer determines that he or she is not best able to process the record, then the receiving disclosure officer will either:

(1) Respond to the request after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that entity is subject to the FOIA). Ordinarily, the component or agency that originated the record will be presumed to be best able to determine whether to disclose it.

(c) *Notice of referral.* Whenever a disclosure officer refers all or any part of the responsibility for responding to a request to another component or agency, the disclosure officer will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred.

(d) *Classified records.* Any request for classified records which are in the custody of the Department of Labor will be referred to the classifying agency under paragraphs (b) and (c) of this section.

§ 70.21 Form and content of responses.

(a) *Form of notice granting a request.* (1) After a disclosure officer has made a determination to grant a request in whole or in part, the disclosure officer will notify the requester in writing. The notice will describe the manner in which the record will be disclosed. The disclosure officer will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by Subpart C of this part. The disclosure officer will determine on a case-by-case basis what constitutes a readily reproducible format. Each component should make reasonable efforts to maintain its records in commonly reproducible forms or formats.

(2) Alternatively, a disclosure officer may make a copy of the releasable portions of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection will not unreasonably disrupt the operations of the component.

(b) *Form of notice denying a request.* A disclosure officer denying a request in whole or in part must notify the

requester in writing. The notice must be signed by the disclosure officer and will include:

(1) The name and title or position of the disclosure officer.

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions relied upon in denying the request.

(3) An estimate of the volume of records of information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under § 70.22 and a description of the requirements of that section.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or it is known or believed to have been destroyed or otherwise disposed of, the disclosure officer will so notify the requester in writing and this determination may be appealed as described in § 70.22.

(d) *Date for determining responsive records.* When responding to a request, a component will ordinarily include only those records existing as of the date the component begins its search for them. If any other date is used, the component will inform the requester of that date.

§ 70.22 Appeals from denial of requests.

(a) When a request for access to records has been denied in whole or in part; where a requester disputes a determination that records cannot be located or have been destroyed; where a requester disputes a determination by a disclosure officer concerning the assessment or waiver of fees; or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal to the Solicitor of Labor. The appeal must be filed within 90 days of the date of the action being appealed.

(b) The appeal will state in writing, the grounds for appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, the appeal should include the appellant's mailing address and daytime telephone number, as well as copies of the initial request and the disclosure officer's response. The envelope and the letter of appeal should be clearly marked: "Freedom of Information Act Appeal." Any amendment to the appeal must be in writing and received prior to a decision on the appeal.

(c) The appeal should be addressed to the Solicitor of Labor, Division of Legislation and Legal Counsel, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2428, Washington, DC 20210.

§ 70.23 Action on appeals.

The Solicitor of Labor, or designee, will review the appellant's appeal and make a determination *de novo* whether the action of the disclosure officer was proper and in accordance with the applicable law.

§ 70.24 Form and content of action on appeals.

The disposition of an appeal will be issued by the Solicitor of Labor or designee in writing. A decision affirming, in whole or in part, the decision below will include a brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon, and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or maintains his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record should be provided in accordance with the decision on appeal. If it is determined that records should be denied in whole or in part, the appeal determination will include an estimate of the volume or records of information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§ 70.25 Time limits and order in which requests must be processed.

(a) *Time limits.* Components of the Department of Labor will comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component will notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it will advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, the component will as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exists possible questions about the

government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on the categories in paragraphs (d)(1)(i), (ii), (iii) and (iv) of this section must be submitted to the component that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 70.26 Business information.

(a) *In general.* Confidential business information will be disclosed under the FOIA only in accordance with this section.

(b) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* A component will provide a submitter with prompt written notice of a FOIA request that seeks its business information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph (e) of this section. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification to a voluminous number of submitters is required, notification may be made by posting or publishing notice reasonably likely to accomplish such notification.

(d) *When notice is required.* Notice will be given to a submitter whenever:

(1) The information requested under the FOIA has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) A component has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4.

(e) *Opportunity to object to disclosure.* A component will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* A component will consider a submitter's timely objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever a disclosure officer decides to disclose business information over the objection of a submitter, the component will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section will not apply if:

(1) The disclosure officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous or such a designation would be unsupportable—except that, in such a case, the component will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(h) *Notice of a FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component will promptly notify the submitter.

(i) *Corresponding notice to requesters.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraphs (d) and (e) of this section, the component will also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (f) of this section, the component will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component will notify the requester(s).

(j) *Notice requirements.* The component will fulfill the notice requirements of this section by addressing the notice to the business submitter or its legal successor at the address indicated on the records, or the last known address. If the notice is returned, the component will make a reasonable effort to locate the business submitter or its legal successor. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.

§ 70.27 Preservation of records.

Each component will preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until disposition or destruction of such correspondence and records is authorized by Title 44 of the United States Code or the National Archives and Records Administration's

General Records Schedule 14. Under no circumstances will records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 70.28—70.37 [Reserved]

Subpart C—Costs for Production of Records

§ 70.38 Definitions.

The following definitions apply to this subpart:

(a) *Request*, in this subpart, includes any request, as defined by § 70.2(f), as well as any appeal filed in accordance with § 70.22.

(b) *Direct costs* means those expenditures which a component actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the Federal employee performing work (the basic rate of pay for the Federal employee plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are kept.

(c) *Reproduction* means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (*e.g.*, magnetic tape or disk).

(d) *Search* means the process of looking for and retrieving records or information that is responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Disclosure officers will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.

(e) *Review* means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, *i.e.*, doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent contacting any submitter, considering and responding to any objections to disclosure made by a submitter under § 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(g) *Educational institution* means an institution which:

(1) Is a preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, and

(2) Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor to assist him or her in writing of a book, independent of his or her institutional responsibilities, would not qualify under this definition, whereas a request predicated upon research funding granted to the institution would meet its requirements. A request from a student enrolled in an individual course of study at an educational institution would not qualify as a request from the institution.

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) Factors indicating such representation status include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others.

(2) For purposes of this definition, news contemplates information that is about current events or that would be of current interest to the public.

(3) A freelance journalist will be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a qualifying news media entity. A publication contract with a qualifying news media entity satisfies this requirement. An individual's past publication record with such organizations is also relevant in making this determination. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals including newsletters (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

§ 70.39 Statutes specifically providing for setting of fees.

This subpart will not apply to fees charged under any statute, other than the FOIA, that specifically requires an agency to set and collect fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

(a) *General.* There are three types of charges assessed in connection with the production of records in response to a request, charges for costs associated with:

(1) Searching for or locating responsive records (search costs),

(2) Reproducing such records (reproduction costs), and

(3) Reviewing records to determine whether any materials are exempt (review costs).

(b)(1) There are four types of requesters:

(i) Commercial use requesters,

(ii) Educational and non-commercial scientific institutions,

(iii) Representatives of the news media, and

(iv) All other requesters.

(2) Depending upon the type of requester, one or all of the charges in paragraph (b)(1) of this section may be assessed. Paragraph (c) of this section sets forth the extent to which such charges may be assessed against each type of requester.

(c) *Types of charges that may be assessed for each type of request.* (1)

Commercial use request. When a requester makes a commercial use request, search costs, reproduction costs and review costs will be assessed in their entirety.

(2) *Educational or non-commercial scientific institution request.* When an educational or non-commercial scientific institution makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(3) *Request by representative of news media.* When a representative of the news media makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(4) *All other requests.* Requesters making a request which does not fall within paragraphs (c)(1), (2), or (3) of this section may be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

(d) *Charges for each type of activity.* (1) *Search costs.* (i) When a search for records is performed by a clerical employee, a rate of $5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of $10.00 per quarter hour will be applicable. Components will charge for time spent searching even if they do not locate any responsive records or they withhold the records located as exempt from disclosure.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, except as provided in paragraph (c)(4) of this section.

(iii) If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of $5.00 may be added to the search cost.

(2) *Reproduction costs.* The standard copying charge for records in paper copy is $0.15 per page. This charge includes the operator's time to duplicate the record. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and disks, the requester may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of reproduction, including operator time. The disclosure officer may request that if a medium is requested other than paper, the medium will be provided by the requester.

(3) *Review costs.* Costs associated with the review of records, as defined in § 70.38(e), will be charged for work performed by a clerical employee at a rate of $5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of $10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph (d)(3), charges may only be assessed for review the first time the records are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review will be assessed.

(4) *Mailing cost.* Where requests for copies are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed $5.00. However, where the volume of paper copy or method of transmittal requested is such that transmittal charges to the Department are in excess of $5.00, the transmittal costs will be added.

(e) *Aggregating requests for purposes of assessing costs.* (1) Where a disclosure officer reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the disclosure officer may aggregate those requests and charge accordingly.

(2) Disclosure officers may presume that multiple requests of this type made within a 30-day period have been submitted in order to avoid fees. Where requests are separated by a longer period, disclosure officers will aggregate them only where a solid basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(f) *Interest charges.* Disclosure officers will assess interest on an unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982, (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(g) *Authentication of copies.* (1) *Fees.* The FOIA does not require certification or attestation under seal of copies of records provided in accordance with its provisions. Pursuant to provisions of the general user-charger statute, 31 U.S.C. 9701 and subchapter II of title 29 U.S.C., the following charges will be made when, upon request, such services are nevertheless rendered by the agency in its discretion:

(i) For certification of true copies, each $10.00.

(ii) For attestation under the seal of the Department, each $10.00.

(2) *Authority and form for attestation under seal.* Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations under the seal of the Department of Labor.

(h) *Transcripts.* Fees for transcripts of an agency proceeding will be assessed in accordance with the provisions of this subpart.

(i) *Privacy Act requesters.* A request from an individual or on behalf of an individual for a record maintained by that individual's name or other unique identifier which is contained within a component's system of records will be treated under the fee provisions at 29 CFR 71.6.

§ 70.41 Reduction or waiver of fees.

(a) Requirements for waiver or reduction of fees. (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of § 70.40 where a Disclosure Officer determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requirement of paragraph (a)(1)(ii) of this section is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Disclosure Officer will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in § 70.38(f)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Disclosure Officer ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted only for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraph (a) of this section, insofar as they apply to each request.

(b) Requests for waiver or reduction of fees must be submitted along with the request or before processing of the request has been commenced.

(c) *Appeal rights.* The procedures for appeal under § 70.22 and § 70.23 will control.

§ 70.42 Consent to pay fees.

(a) The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under this part up to and including $25.00, unless the requester seeks a waiver of fees. When making a request, the requester may specify a willingness to pay a greater or lesser amount.

(b) No request will be processed if a disclosure officer reasonably believes that the fees are likely to exceed the amount to which the requester has originally consented, absent supplemental written consent by the requester to proceed after being notified of this determination.

(c) When the estimated costs are likely to exceed the amount of fees to which the requester has consented, the requester must be notified. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

§ 70.43 Payment of fees.

(a) *De minimis costs.* Where the cost of collecting and processing a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no fee need be charged. Fees which do not exceed $15.00 usually need not be collected.

(b) *How payment will be made.* Requesters will pay fees by check or money order made payable to the Treasury of the United States.

(c) *Advance payments and billing.* (1) Prior to beginning to process a request, the disclosure officer will make a preliminary assessment of the amount that can properly be charged to the requester for search and review time and copying costs. Where a disclosure officer determines or estimates that a total fee to be charged under this section will be more than $250.00, the disclosure officer will require the requester to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The disclosure officer may waive the advance payment where the disclosure officer receives a satisfactory assurance of full payment from a requester who has a history of prompt payment of an amount similar to the one anticipated by the request.

(2) Where a requester has previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within 30 days of the date of billing, a disclosure officer will require the requester to pay the full amount due, plus any applicable interest as provided in § 70.40(f) and to make an advance payment of the full amount of any anticipated fee, before the disclosure officer begins to process a new request or appeal or continues to process a pending request or appeal from that requester.

(3) For a request other than those described in paragraphs (c)(1) and (2) of this section, a disclosure officer will not require the requester to make an advance payment before beginning to process a request. Payment owed for work already completed on a request pursuant to consent of the requester is not an advance payment and a disclosure officer may require the requester to make a payment for such work prior to releasing any records to the requester.

(d) *Time limits to respond extended when advance payments are requested.* When a component has requested an advance payment of fees in accordance with paragraph (c) of this section, the time limits prescribed in § 70.25 will only begin to run after the component has received the advance payment.

§ 70.44 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any records to which such person is not entitled under the FOIA.

§§ 70.45–70.52 [Reserved]

Subpart D—Public Records and Filings

§ 70.53 Office of Labor-Management Standards.

(a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.

(1) Data and information contained in any report or other document filed pursuant to sections 201, 202, 203, 211, 301 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–28, 530, 79 Stat. 888, 73 Stat. 530, 29 U.S.C. 431–433, 441, 461).

(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of 29 CFR part 458, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.

(3) Data and information contained in any report or other document filed pursuant to the Congressional Accountability Act of 1995, 2 U.S.C. 1351, 109 Stat. 19.

(b) The documents listed in paragraph (a) of this section are available from: U.S. Department of Labor, Office of Labor-Management Standards, Public Disclosure Room, N–5608, 200 Constitution Avenue, NW., Washington, DC 20210. Reports filed pursuant to section 201 of the Labor-Management Reporting and Disclosure Act of 1959 and pursuant to 29 CFR 458.3 implementing the Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 for the year 2000 and thereafter are also available at *http://www.union-reports.dol.gov*.

(c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary will by regulation provide for the furnishing of copies of the documents listed in paragraph (a) of this section, upon payment of a charge based upon the cost of the service, these documents are available at a cost of $.15 per page for record copies furnished. Authentication of copies is available in accordance with the fee schedule established in § 70.40. In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions in subpart C of this part do not supersede these charges for these documents.

(d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–528, 79 Stat. 888; 29 U.S.C. 431–433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards will:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or

(2) Require the person who filed such reports and documents to furnish such copies or information and data directly to the State agency thus designated.

§ 70.54 Employee Benefits Security Administration.

(a) The annual financial reports (Form 5500) and attachments/schedules as filed by employee benefit plans under the Employee Retirement Income Security Act (ERISA) are in the custody of the Employee Benefits Security Administration (EBSA) at the address indicated in paragraph (b) of this section, and the right to inspect and copy such reports, as authorized under ERISA, at the fees set forth in this part, may be exercised at such office.

(b) The mailing address for the documents described in this section is: U.S. Department of Labor, Employee Benefits Security Administration, Public Documents Room, 200 Constitution Avenue, NW., Washington, DC 20210.

Appendix A to Part 70—Disclosure Officers

(a) Offices in Washington, DC, are maintained by the following agencies of the Department of Labor. Field offices are maintained by some of these, as listed in the United States Government Manual.

(1) Office of the Secretary of Labor
(2) Office of the Solicitor of Labor
(3) Office of Administrative Law Judges
(4) Office of the Assistant Secretary for Administration and Management
(5) Office of the Assistant Secretary for Congressional and Intergovernmental Affairs
(6) Office of the Inspector General
(7) Office of the Assistant Secretary for Policy
(8) Office of the Assistant Secretary for Public Affairs
(9) Bureau of International Labor Affairs
(10) Bureau of Labor Statistics
(11) Office of the Assistant Secretary for Employment Standards Administration
(12) Office of the Assistant Secretary for Employment and Training Administration
(13) Office of the Assistant Secretary for Mine Safety and Health Administration
(14) Office of the Assistant Secretary for Occupational Safety and Health Administration
(15) Office of the Assistant Secretary for Employee Benefits Security Administration
(16) Office of the Assistant Secretary for Veterans' Employment and Training Service
(17) Office of the Associate Deputy Secretary for Adjudication
(18) Women's Bureau
(19) Employees' Compensation Appeals Board
(20) Administrative Review Board
(21) Benefits Review Board
(22) Office of the Assistant Secretary for Disability Employment Policy

The heads of the foregoing agencies will make available for inspection and copying in accordance with the provisions of this part, records in their custody or in custody of component units within their organizations, either directly or through their authorized representative in particular offices and locations.

(b)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. This list is provided for information and to assist requesters in locating the office most likely to have responsive records. The officials may be changed by appropriate designation. Unless otherwise specified, the mailing addresses of the officials will be: U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Secretary of Labor, *ATTENTION:* Assistant Secretary for Administration and Management, (OASAM)
Deputy Solicitor, Office of the Solicitor (SOL)
Chief Administrative Law Judge, Office of Administrative Law Judges (OALJ)
Legal Counsel, OALJ
Assistant Secretary for Administration and Management, (OASAM)
Deputy Assistant Secretary for Administration and Management (OASAM)
Deputy Assistant Secretary for Security and Emergency Management, OASAM
Director, Business Operations Center, OASAM
Director, Procurement Service Center, OASAM
Director, Civil Rights Center, OASAM
Director, Human Resources Center, OASAM
Director, Information Technology Center, OASAM
Director, Human Resource Services Center, OASAM
Director, Departmental Budget Center, OASAM
Director, Center for Program Planning and Results, OASAM
Chief Financial Officer, Office of the Chief Financial Officer (CFO)
Director, Office of Small Business Programs (OSBP)
Chief Administrative Appeals Judge, Employees' Compensation Appeals Board (ECAB)
Associate Deputy Secretary for Adjudication

Executive Director, Office of Adjudicatory Services
Chief Administrative Appeals Judge, Administrative Review Board (ARB)
Chief Administrative Appeals Judge, Benefits Review Board (BRB)
Director, Women's Bureau (WB)
National Office Coordinator, WB
Assistant Secretary, Office of Congressional and Intergovernmental Affairs (OCIA)
Deputy Assistant Secfetary, OCIA
Assistant Secretary for Policy (ASP)
Deputy Assistant Secretary, ASP
Assistant Secretary, Office of Public Affairs (OPA)
Deputy Assistant Secretary, OPA
Director, Office of Administrative Review Board (ARB)
Disclosure Officer, Office of the Inspector General (OIG)
Deputy Under Secretary, Bureau of International Labor Affairs (ILAB)
Secretary of the National Administrative Office, ILAB
Deputy Assistant Secretary, Office of Disability Policy (ODEP)
Special Assistant to the Deputy Assistant Secretary, ODEP
Assistant Secretary for Employment Standards, Employment Standards Administration (ESA)
Director, Equal Employment Opportunity Unit, ESA
Director, Office of Management, Administration and Planning (OMAP), ESA
Director, Office of Workers' Compensation Programs (OWCP), ESA
Director, Division of Planning, Policy and Standards, OWCP, ESA
Director for Federal Employees' Compensation, OWCP, ESA
Director for Longshore and Harbor Workers' Compensation, OWCP, ESA
Director for Coal Mine Workers' Compensation, OWCP, ESA
Director for Energy Employment Occupational Illness Compensation Program, OWCP, ESA
Administrator, Wage and Hour Division, ESA
Deputy Administrator for Policy, Wage and Hour Division, ESA
Deputy Administrator for Operations, Wage and Hour Division, ESA
Senior Policy Advisor, Wage and Hour Division, ESA
Director, Office of Enforcement Policy, Wage and Hour Division, ESA
Deputy Director, Office of Enforcement Policy, Wage and Hour Division, ESA
Chief, Branch of Service Contracts Wage Determination, Wage and Hour Division, ESA
Chief, Branch of Davis-Bacon Wage Determination, Wage and Hour Division, ESA
Director, Office of Planning and Analysis, Wage and Hour Division, ESA
Director, Office of Wage Determinations, Wage and Hour Division, ESA
Director, Office of External Affairs, Wage and Hour Division, ESA
Deputy Director, Office of External Affairs, Wage and Hour Division, ESA
Deputy Assistant Secretary for Federal Contract Compliance Programs (OFCCP), ESA
Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Deputy Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Director, Division of Program Operations, OFCCP, ESA
Deputy Director, Division of Program Operations, OFCCP, ESA
Director, Division of Management and Administrative Programs, OFCCP, ESA
Deputy Assistant Secretary for Labor-Management Programs, (OLMS), ESA
Assistant Secretary of Labor, Employment and Training Administration (ETA)
Administrator, Business Relations Group, ETA
Administrator, Office of Policy Development, Evaluation and Research, ETA
Director, Office of Equal Employment Opportunity, ETA
Director, Office of Outreach, ETA
Deputy Assistant Secretary of Labor, Employment and Training Administration, ETA
Administrator, Office of Financial and Administrative Management, ETA
Director, Office of Financial and Administrative Services, ETA
Director, Office of Grants and Contracts Management, ETA
Chief, Division of Federal Assistance, ETA
Chief, Division of Contract Services, ETA
Director, Office of Human Resources, ETA
Administrator, Office of Performance and Results, ETA
Administrator, Office of Regional Operations, ETA
Administrator, Office of Technology, ETA
Administrator, Office of National Programs, ETA
Chief, Division of Foreign Labor Certification, ETA
Administrator, Office of Apprenticeship Training, Employer and Labor Services, ETA
Administrator, Office of Job Corps, ETA
Administrator, Office of Workforce Investment, ETA
Director, Office of Adult Services, ETA
Director, Office of Youth Services, ETA
Administrator, Office of Workforce Security, ETA
Deputy Director, Office of Workforce Security, ETA
Administrator, Office of National Response, ETA
Director, Division of Trade Adjustment Assistance, ETA
Assistant Secretary, Occupational Safety and Health Administration (OSHA)
Director, Office of Public Affairs, OSHA
Director, Directorate of Construction, OSHA
Director, Directorate of Federal-State Operations, OSHA
Director, Directorate of Policy, OSHA
Director, Directorate of Administrative Programs, OSHA
Director, Office of Personnel Programs, OSHA
Director, Office of Administrative Services, OSHA
Director, Directorate of Information Technology, OSHA
Director, Office of Management Data Systems, OSHA
Director, Office of Management Systems and Organization, OSHA
Director, Office of Program Budgeting, Planning and Financial Management, OSHA
Director, Directorate of Compliance Programs, OSHA
Director, Directorate of Technical Support, OSHA
Director, Directorate of Safety Standards Programs, OSHA
Director, Directorate of Health Standards Programs, OSHA
Director, Office of Statistics, OSHA
Director, Office of Participant Assistance & Communications, Employee Benefits Security Administration (EBSA)
Assistant Secretary for Veterans' Employment and Training (VETS)
Deputy Assistant Secretary for Veterans' Employment and Training, VETS
Director, Office of Operations and Programs, VETS
Commissioner, Bureau of Labor Statistics (BLS)
Associate Commissioner, Office of Administration, BLS

The mailing address for responsible officials in the Bureau of Labor Statistics is: Room 4040—Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212.

The mailing address for all requests directed to the Mine Safety and Health Administration (MSHA) is: 1100 Wilson Boulevard, 21st Floor, Arlington, Virginia 22209.

Assistant Secretary, MSHA
Deputy Assistant Secretary, MSHA
Chief, Office of Congressional and Legislative Affairs, MSHA
Director, Office of Information and Public Affairs, MSHA
Director of Administration and Management, MSHA
Administrator, Coal Mine Safety and Health (CMS&H), MSHA
Chief, Technical Compliance & Investigation Division, CMS&H, MSHA
Chief, Health Division, CMS&H, MSHA
Chief, Safety Division, CMS&H, MSHA
Accident Investigation Program Manager, CMS&H, MSHA
Administrator, Metal and Nonmetal Mine Safety and Health (M/NM), MSHA
Chief, Technical Compliance & Investigation Division, M/NM, MSHA
Chief, Health Division, M/NM, MSHA
Chief, Safety Division, M/NM, MSHA
Accident Investigation Program Manager, M/NM, MSHA
Director of Assessments, MSHA
Director of Technical Support, MSHA
Director of Educational Policy and Development, MSHA
Director of Standards, Regulations, and Variances, MSHA
Director of Program Evaluation and Information Resources, MSHA

The mailing address for the Office of Administrative Law Judges is: Office of Administrative Law Judges, 800 K Street, NW., Suite N–400, Washington, DC 20001.

(2) The titles of the responsible officials in the regional offices of the various independent agencies are listed below: Unless otherwise specified, the mailing address for these officials by region, will be:

Region I: U.S. Department of Labor, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (For Wage and Hour only: Contact Region III).
Region II: 201 Varick Street, New York, New York 10014 (For Wage and Hour only: Contact Region III).
Region III: The Curtis Center, 170 South Independence Mall West, Suite 825 East, Philadelphia, Pennsylvania 19106.
Region IV:
U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
214 N. Hogan Street, Suite 1006, Jacksonville, Florida 32202 (OWCP only).
Region V:
Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.
1240 East Ninth Street, Room 851, Cleveland, Ohio 44199 (FECA only).
Region VI: 525 Griffin Square Building, Griffin & Young Streets, Dallas, Texas 75202.
Region VII:
City Center Square Building, 1100 Main Street, Kansas City, Missouri 64105 (For Wage and Hour only: Contact Region V).
801 Walnut Street, Room 200, Kansas City, Missouri 64106 (OFCCP only).
Region VIII:
1999 Broadway Street, Denver, Colorado 80202 (For Wage and Hour and OFCCP: Contact Region VI).
1999 Broadway, Suite 600, Denver, Colorado 80202 (OWCP only).
The mailing address for the Regional Director, Bureau of Apprenticeship and Training in Region VIII is: U.S. Custom House, 721–19th Street, Room 465, Denver, Colorado 80202.
Region IX: 71 Stevenson Street, San Francisco, California 94105.
Region X: 1111 Third Avenue, Seattle, Washington 98101 (For Wage and Hour only: Contact Region IX).
Regional Administrator for Administration and Management (OASAM)
Regional Personnel Officer, OASAM
Regional Director for Information and Public Affairs, Office of Public Affairs (OPA)
Regional Administrator for Occupational Safety and Health (OSHA)
Regional Commissioner, Bureau of Labor Statistics (BLS)
Regional Administrator for Employment and Training Administration (ETA)
(For the following regions Boston, New York, Philadelphia, Atlanta, Dallas, Chicago and San Francisco)
Associate Regional Administrator for ETA
(For the following locations Denver, Kansas City and Seattle)
Regional Director, Job Corps, ETA
Director, Regional Office of Apprenticeship and Training, Employer and Labor Services, ETA
Regional Administrator for Wage and Hour, ESA
Deputy Regional Administrator for Wage and Hour, ESA
Regional Operations Manager for Wage and Hour, ESA
Regional Director for Federal Contract Compliance Programs, ESA
Regional Director for the Office of Workers' Compensation Programs, ESA
District Director, Office of Workers' Compensation Programs, ESA

Office of Federal Contract Compliance Programs ESA, Responsible Offices, Regional Offices

JFK Federal Building, Room E–235, Boston, Massachusetts 02203.
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The Curtis Center, 170 South Independence Mall West, Philadelphia, Pennsylvania 19106.
61 Forsyth Street, SW., Suite 7B75, Atlanta, Georgia 30303.
Klucynski Federal Building, 230 South Dearborn Street, Room 570, Chicago, Illinois 60604.
Federal Building, 525 South Griffin Street, Room 840, Dallas, Texas 75202.
71 Stevenson Street, Suite 1700, San Francisco, California 94105.
1111 Third Avenue, Suite 610, Seattle, Washington 98101.

Office of Workers' Compensation Programs ESA, Reponsible Officials, District Directors

John F. Kennedy Federal Building, Room E–260, Boston, Massachusetts 02203 (FECA and LHWCA only).
201 Varick Street, Seventh Floor, Room 750, New York, New York 10014 (LHWCA and FECA only).
The Curtis Center, 170 South Independence Mall West, Philadelphia, Pennsylvania 19106 (LHWCA and FECA only).
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901 (BLBA only).
105 North Main Street, Suite 100, Wilkes-Barre, Pennsylvania 18701 (BLBA only).
Wellington Square, 1225 South Main Street, Suite 405, Greensburg, Pennsylvania 15601 (BLBA only).
The Federal Building, 31 Hopkins Plaza, Room 410–B Baltimore, Maryland 21201 (LHWCA only).
Federal Building, 200 Granby Mall, Room #212, Norfolk, Virginia 23510 (LHWCA only).
2 Hale Street, Suite 304, Charleston, West Virginia 25301 (BLBA only).
425 Juliana Street, Suite 3116, Parkersburg, West Virginia 26101 (BLBA only).
800 North Capitol Street, NW., Room 800, Washington, DC 20211 (FECA only).
164 Main Street, Suite 508, Pikeville, Kentucky 41501 (BLBA only).
402 Campbell Way, Mt. Sterling, Kentucky 40353 (BLBA only).
214 N. Hogan Street, 10th Floor, Room 1026, Jacksonville, Florida 32202 (LHWCA and FECA only).
230 South Dearborn Street, Room 800, Chicago, Illinois 60604 (LHWCA and FECA only).
1240 East 9th Street, Room 851, Cleveland, Ohio 44199 (FECA only).
1160 Dublin Road, Suite 300, Columbus, Ohio 43214 (BLBA only).
525 Griffin Street, Federal Building, Dallas, Texas 75202 (FECA only).
701 Loyola Avenue, Room 13032, New Orleans, Louisiana 70113 (LHWCA only).
8866 Gulf Freeway, Suite 140, Houston, Texas 77017 (LHWCA only).
City Center Square, Suite 750, 1100 Main Street, Kansas City, Missouri 64105 (FECA only).
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71 Stevenson Street, Suite 1705, San Francisco, California 94105 (LHWCA and FECA only).
401 E. Ocean Boulevard, Suite 720, Long Beach, California 90802 (LHWCA only).
300 Ala Moana Boulevard, Room 5–135, Honolulu, Hawaii 96850 (LHWCA only).
1111 3rd Avenue, Suite 620, Seattle, Washington 98101 (LHWCA and FECA only).

Mine Safety & Health Administration Field Offices

The mailing address for all requests directed to the field office of the Mine Safety and Health Administration (MSHA) is: 1100 Wilson Boulevard, 21st Floor, Arlington, Virginia 22209.

Coordinator, Mine Emergency Unit
Superintendent, National Mine Health and Safety Academy
Chief, Safety and Health Technology Center
Chief, Approval and Certification Center
Chief, Information Resource Center
Chief, Office of Injury and Employment Information
District Managers, Coal Mine Safety and Health
District Managers, Metal and Nonmetal Mine Safety and Health

Regional Administrator, Occupational Safety and Health Administration (OSHA)

Area Director, OSHA

639 Granite Street, 4th Floor, Braintree, Massachusetts 02184.
279 Pleasant Street, Suite 201, Concord, New Hampshire 03301.
Federal Building, 450 Main Street, Room 613, Hartford, Connecticut 06103.
1057 Broad Street, 4th Floor, Bridgeport, Connecticut 06604.
1441 Main Street, Room 550, Springfield, Massachusetts 01103.
Federal Office Building, 380 Westminister Mall, Room 543, Providence, Rhode Island 02903.
Valley Office Park, 13 Branch Street, Methuen, Massachusetts 01844
1400 Old Court Road, Room 208, Westbury, New York 11590
42–40 Bell Boulevard, Bayside, New York 11361
401 New Karner Road, Suite 300, Albany, New York 12205
Plaza 35, 1030 St. Georges Avenue, Suite 205, Avenel, New Jersey 07001
299 Cherry Hill Road, Suite 304, Parsippany, New Jersey 07054
3300 Vikery Road, North Syracuse, New York 13212
5360 Genesee Street, Bowmansville, New York 14026
Triple SSS Plaza Building, 1510 F.D. Roosevelt Avenue, Suite 5B, Guaynabo, Puerto Rico 00968
500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604

Marlton Executive Park, Building 2, Suite 120, 701 Route 73 South, Marlton, New Jersey 08053
660 White Plains Road, 4th Floor, Tarrytown, New York 10591
U.S. Customs House, Second & Chestnut Streets, Room 242, Philadelphia, Pennsylvania 19106
Cabeb Boggs Federal Building, 844 N. King Street, Room 2209, Wilmington, Delaware 19801
Federal Office Building, 1000 Liberty Avenue, Room 1428, Pittsburgh, Pennsylvania 15222
3939 West Ridge Road, Suite B12, Erie, Pennsylvania 16506
Federal Office Building, 200 Granby Street, Room 614, Norfolk, Virginia 23510
Stegmaier Building, Suite 410, 7 N. Wilkes-Barre Blvd., Wilkes-Barre, Pennsylvania 18702
850 North 5th Street, Allentown, Pennsylvania 18102
405 Capitol Street, Suite 407, Charleston, West Virginia 25301
1099 Winterson Road, Suite 140, Linthicum, Maryland 21090
Progress Plaza, 49 N. Progress Avenue, Harrisburg, Pennsylvania 17109
2400 Herodian Way, Suite 250, Smyrna, Georgia 30080
450 Mall Boulevard, Suite J, Savannah, Georgia 31419
Vestavia Village, 2047 Canyon Road, Birmingham, Alabama 35216
8040 Peters Road, Building H–100, Fort Lauderdale, Florida 33324
Ribault Building, 1851 Executive Center Drive, Suite 227, Jacksonville, Florida 32207
5807 Breckenridge Parkway, Suite A, Tampa, Florida 33610
1835 Assembly Street, Room 1468, Columbia, South Carolina 29201
3780 I–55 North, Suite 210, Jackson, Mississippi 39211
3737 Government Boulevard, Suite 100, Mobile, Alabama 36693
2002 Richard Jones Road, Suite C–205, Nashville, Tennessee 37215
John C. Watts Federal Building, 330 West Broadway, Room 108, Frankfort, Kentucky 40601
LaVista Perimeter Office Park, 2183 N. Lake Parkway, Building 7, Suite 110, Tucker, Georgia 30084
Century Station Federal Office Building, 300 Fayetteville Mall, Room 438, Raleigh, North Carolina 27601
1600 167th Street, Suite 9, Calumet City, Illinois 60409
701 Lee Street, Suite 950, Des Plaines, Illinois 60016
11 Executive Drive, Suite 11, Fairview Heights, Illinois 62208
365 Smoke Tree Business Park, North Aurora, Illinois 60542
Federal Office Building, 1240 East 9th Street, Room 899, Cleveland, Ohio 44199
Federal Office Building. 200 N. High Street, Room 620, Columbus, Ohio 43215
46 East Ohio Street, Room 453, Indianapolis, Indiana 46204
36 Triangle Park Drive, Cincinnati, Ohio 45246
1648 Tri Parkway, Appleton, Wisconsin 54914
1310 West Clairmont Avenue, Eau Claire, Wisconsin 54701
Henry S. Reuss Building, 310 West Wisconsin Avenue, Room 1180, Milwaukee, Wisconsin 53202
300 South 4th Street, Suite 1205, Minneapolis, Minnesota 55415
420 Madison Avenue, Suite 600, Toledo, Ohio 43604
801 South Waverly Road, Suite 306, Lansing, Michigan 48917
4802 East Broadway, Madison, Wisconsin 53716
2918 W. Willow Knolls Road, Peoria, Illinois 61614
8344 East R.L. Thornton Freeways, Suite 420, Dallas, Texas 75228
903 San Jacinto Boulevard, Suite 319, Austin, Texas 78701
9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, Louisiana 70809
Wilson Plaza, 606 N. Carancahua, Suite 700, Corpus Christi, Texas 78476
Federal Office Building, 1205 Texas Avenue, Room 806, Lubbock, Texas 79401
507 North Sam Houston Parkway, Suite 400, Houston, Texas 77060
17625 El Camino Real, Suite 400, Houston, Texas 77058
55 North Robinson, Suite 315, Oklahoma City, Oklahoma 73102
North Starr II, 8713 Airport Freeway, Suite 302, Fort Worth, Texas 76180
TCBY Building, 425 West Capitol Avenue, Suite 450, Little Rock, Arkansas 72201
700 E. San Antonio Street, Room C–408, El Paso, Texas 79901
6200 Connecticut Avenue, Suite 100, Kansas City, Missouri 64120
911 Washington Avenue, Room 420, St. Louis, Missouri 63101
210 Walnut Street, Room 815, Des Moines, Iowa 50309
217 West 3rd Street, Room 400, Wichita, Kansas 67202
Overland—Wolf Building, 6910 Pacific Street, Room 100, Omaha, Nebraska 68106
2900 Fourth Avenue North, Suite 303, Billings, Montana 59101
1640 East Capitol Avenue, Bismarck, North Dakota 58501
7935 East Prentice Avenue, Suite 209, Greenwood Village, Colorado 80111
1391 Speer Boulevard, Suite 210, Denver, Colorado 80204
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301 West Northern Lights Boulevard, Suite 407, Anchorage, Alaska 99503
1150 N. Curtis Road, Suite 201, Boise, Idaho 83706
505 106th Avenue, Northeast, Suite 302, Bellevue, Washington 98004
1220 Southwest Third Avenue, Room 640, Portland, Oregon 97204

Employee Benefits Security Administration Regional Director or District Supervisor

Regional Director, J.F.K. Federal Building, Room 575, Boston, Massachusetts 02203.
Regional Director, 201 Varick Street, New York, New York 10014.
Regional Director, The Curtis Center, 170 South Independence Mall West, Suite 870 West, Philadelphia, Pennsylvania 19106.
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Regional Director, 61 Forsyth Street, SW., Room 7B54, Atlanta, Georgia 30303.
District Supervisor, 8040 Peters Road, Building H, Suite 104, Plantation, Florida 33324.
Regional Director, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011.
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Regional Director, 200 West Adams Street, Suite 1600, Chicago, Illinois 60606.
Regional Director, 1100 Main Street, Suite 1200, Kansas City, Missouri 64105.
District Supervisor, Robert Young Federal Building, 1222 Spruce Street, Room 6.310, St. Louis, Missouri 63103.
Regional Director, 525 Griffin Street, Room 900, Dallas, Texas 75202.
Regional Director, 71 Stevenson Street, Suite 915, P.O. Box 190250, San Francisco, California 94119.
District Director, 1111 Third Avenue, Room 860, Seattle, Washington 98101.
Regional Director, 1055 E. Colorado Blvd, Suite 200, Pasadena, California 91106.

Regional Administrators, Veterans' Employment and Training Service (VETS)

Region I: J.F. Kennedy Federal Building, Government Center, Room E–315, Boston, Massachusetts 02203.
Region II: 201 Varick Street, Room 766, New York, New York 10014.
Region III: U.S. Customs House, Second and Chestnut Streets, Room 802, Philadelphia, Pennsylvania 19106.
Region IV: Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T85, Atlanta, Georgia 30303.
Region V: 230 South Dearborn, Room 1064, Chicago, Illinois 60604.
Region VI: 525 Griffin Street, Room 858, Dallas, Texas 75202.
Region VII: City Center Square Building, 1100 Main Street, Suite 850, Kansas City, Missouri 64105.
Region VIII: 1999 Broadway, Suite 1730, Denver, Colorado 80202.
Region IX: 71 Stevenson Street, Suite 705, San Francisco, California 94105.
Region X: 1111 Third Avenue, Suite 800, Seattle, Washington 98101.

Signed at Washington, DC, this 22nd day of March, 2004.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 04–6783 Filed 3–29–04; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Tuesday,
March 30, 2004

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 99
Security Control of Air Traffic; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 99

RIN 2120–AI11

Security Control of Air Traffic

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reorganizes the FAA's regulations governing the security control of air traffic. This action is necessary to reflect the changing environment and the increased role of Federal agencies in advising the FAA about matters related to the security of air traffic operations in the National Airspace System (NAS).

DATES: This action is effective on April 29, 2004.

FOR FURTHER INFORMATION CONTACT: Terry Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www1.faa.gov/avr/arm/index.cfm;* or

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at *9-AWA-SBREFA@faa.gov.*

Background

Since the events of September 11, 2001, the FAA initiated a review of 14 CFR part 99 to determine whether the regulation reflects the current environment in light of the increased emphasis on aviation security. As a result of this review, the FAA determined that part 99 should be revised to recognize the role of the newly created Department of Homeland Security, and agreements among Federal agencies regarding security matters related to air traffic operations in the NAS. The changes necessary to part 99 are relatively minor. The FAA is also taking this opportunity to streamline the regulation to improve its organization and readability. The organizational and changes for clarity are non-substantive.

Discussion of Amendments

This action amends FAA regulations that govern security control of air traffic. Specifically, this action reorganizes the content of 14 CFR part 99 as follows:

(1) The applicability section is amended in § 99.1(c) to indicate that an FAA air traffic control (ATC) center may exempt certain operations from the requirements of part 99 with the concurrence of either the military commanders concerned or Federal security/intelligence agencies;

(2) In § 99.3, the definitions of air defense identification zone and defense visual fight rules are amended to delete the use of the word "civil" and replace it with the parenthetical phrase "(except for DOD and law enforcement aircraft)". Thus all civil and public aircraft are covered in those definitions except for Department of Defense and law enforcement aircraft;

(3) Section 99.7 is amended to include the Federal security/intelligence agencies and the Department of Defense, as Federal entities that could work with the FAA in developing special security instructions for aviation;

(4) The provisions of current §§ 99.29 and 99.31 are moved to new paragraphs (c) and (d) of § 99.9;

(5) Section 99.11 (d) is added to cover the current requirements of § 99.15 except the phrase "unless the flight plan states that no notice will be filed." That phrase is being deleted because the FAA has determined that for operation oversight reasons related to aviation safety and security, the "no-notice" option is no longer appropriate. The FAA needs to have notice of when the arrival is made and when the flight plan is closed;

(6) § 99.12 is removed and its language is moved to new § 99.13;

(7) Section 99.15 combines the position report requirements from §§ 99.17, 99.19, 99.21, and 99.23 into one section;

(8) Section 99.17 is a recodification of § 99.27; and

(9) Section 99.41 Defense Area is replaced by the requirements for the Hawaii ADIZ, since the defense area definition contained in § 99.49 duplicated the definition in § 99.3 Definitions.

Paperwork Reduction Act

There are no new requirements for information collection associated with this action. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

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

FAA Authority

Adoption of these amendments is consistent with FAA's authority in 49 U.S.C. 40103(a) to regulate airspace and to promote the safe flight of civil aircraft. Furthermore, 49 U.S.C. 44701(5) specifically instructs the Administrator to promote the safe flight of civil aircraft in air commerce by prescribing "regulations and minimum standards for other practices, methods and procedures the Administrator finds necessary for safety in air commerce and national security."

Justification for Proceeding Without Notice

The FAA is issuing this action without notice and opportunity to comment under the authority of section 4(a) of the Administrative Procedure Act, 5 United States Code (U.S.C.) 553(b). Section 553(b) allows the FAA to issue a final rule without notice and comment when the agency, for good cause, finds that notice and public procedure are "impracticable, unnecessary or contrary to the public

interest." In this instance, public comment is unnecessary because the changes are minor and for the most part non-substantive. These changes are either organizational in nature or recognize the FAA's authority to work with the Department of Homeland Security and other Federal security agencies may have in working with the FAA regarding aviation security.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this action indicates that its economic impact is minimal and the benefits are primarily administrative. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, the FAA has not prepared a "regulatory impact analysis." Similarly, the FAA has not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking actions under the DOT Regulatory and Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of an action is minimal.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612, directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. The FAA is required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as defined in the Act. If the FAA finds that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This action amends FAA regulations that govern security control of air traffic. This action editorially reorganizes the content of part 99 and incorporates language, as a result of agreements between the FAA and other Federal security/intelligence agencies, regarding the security control of aircraft operations in the NAS. This rulemaking action imposes no costs on any entity in the aviation industry. Therefore, the FAA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

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

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This action does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this action under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this action does not have Federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

List of Subjects in 14 CFR Part 99

Air traffic control, Airspace, National defense, Navigation (air), Security measures.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 99 of title 14 Code of Federal Regulations as follows:

PART 99—SECURITY CONTROL OF AIR TRAFFIC

■ 1. The authority citation for part 99 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40106, 40113, 40120, 44502, 44721.

■ 2. Amend § 99.1 by revising paragraph (a), paragraph (b) introductory text, and paragraph (c) to read as follows:

§ 99.1 Applicability.

(a) This subpart prescribes rules for operating all aircraft (except for Department of Defense and law enforcement aircraft) in a defense area, or into, within, or out of the United States through an Air Defense Identification Zone (ADIZ) designated in subpart B.

(b) Except for §§ 99.7, 99.13, and 99.15 this subpart does not apply to the operation of any aircraft-

* * * * *

(c) An FAA ATC center may exempt the following operations from this subpart (except § 99.7) on a local basis only, with the concurrence of the U.S. military commanders concerned, or pursuant to an agreement with a U.S. Federal security or intelligence agency:

(1) Aircraft operations that are conducted wholly within the boundaries of an ADIZ and are not currently significant to the air defense system.

(2) Aircraft operations conducted in accordance with special procedures prescribed by a U.S. military authority, or a U.S. Federal security or intelligence agency concerned.

■ 3. Amend § 99.3 by revising the following definitions:

§ 99.3 Definitions.

* * * * *

Air defense identification zone (ADIZ) means an area of airspace over land or water in which the ready identification, location, and control of all aircraft (except for Department of Defense and law enforcement aircraft) is required in the interest of national security.

* * * * *

Defense visual flight rules (DVFR) means, for the purposes of this subpart, a flight within an ADIZ conducted by

any aircraft (except for Department of Defense and law enforcement aircraft) in accordance with visual flight rules in part 91 of this title.

■ 4. Revise § 99.7 to read as follows:

§ 99.7 Special security instructions.

Each person operating an aircraft in an ADIZ or Defense Area must, in addition to the applicable rules of this part, comply with special security instructions issued by the Administrator in the interest of national security, pursuant to agreement between the FAA and the Department of Defense, or between the FAA and a U.S. Federal security or intelligence agency.

■ 5. Amend § 99.9 by adding paragraphs (c) and (d) to read as follows:

§ 99.9 Radio requirements.

* * * * *

(c) If the pilot operating an aircraft under DVFR in an ADIZ cannot maintain two-way radio communications, the pilot may proceed, in accordance with original DVFR flight plan, or land as soon as practicable. The pilot must report the radio failure to an appropriate aeronautical facility as soon as possible.

(d) If a pilot operating an aircraft under IFR in an ADIZ cannot maintain two-way radio communications, the pilot must proceed in accordance with § 91.185 of this chapter.

■ 6. Amend § 99.11 by revising paragraph (a) and by adding paragraph (d) to read as follows:

§ 99.11 ADIZ flight plan requirements.

(a) No person may operate an aircraft into, within, or from a departure point within an ADIZ, unless the person files, activates, and closes a flight plan with the appropriate aeronautical facility, or is otherwise authorized by air traffic control.

* * * * *

(d) The pilot in command of an aircraft for which a flight plan has been filed must file an arrival or completion notice with an appropriate aeronautical facility.

§ 99.12 [Redesignated as § 99.13].

■ 7–8. Redesignate § 99.12 as § 99.13 and reserve § 99.12.

■ 9. Revise § 99.15 to read as follows:

§ 99.15 Position reports.

(a) The pilot of an aircraft operating in or penetrating an ADIZ under IFR—

(1) In controlled airspace, must make the position reports required in § 91.183; and

(2) In uncontrolled airspace, must make the position reports required in this section.

(b) No pilot may operate an aircraft penetrating an ADIZ under DVFR unless—

(1) The pilot reports to an appropriate aeronautical facility before penetration: the time, position, and altitude at which the aircraft passed the last reporting point before penetration and the estimated time of arrival over the next appropriate reporting point along the flight route;

(2) If there is no appropriate reporting point along the flight route, the pilot reports at least 15 minutes before penetration: The estimated time, position, and altitude at which the pilot will penetrate; or

(3) If the departure airport is within an ADIZ or so close to the ADIZ boundary that it prevents the pilot from complying with paragraphs (b)(1) or (2) of this section, the pilot must report immediately after departure: the time of departure, the altitude, and the estimated time of arrival over the first reporting point along the flight route.

(c) In addition to any other reports as ATC may require, no pilot in command of a foreign civil aircraft may enter the United States through an ADIZ unless that pilot makes the reports required in this section or reports the position of the aircraft when it is not less that one hour and not more that 2 hours average direct cruising distance from the United States.

■ 10. Revise § 99.17 to read as follows:

§ 99.17 Deviation from flight plans and ATC clearances and instructions.

(a) No pilot may deviate from the provisions of an ATC clearance or ATC instruction except in accordance with § 91.123 of this chapter.

(b) No pilot may deviate from the filed IFR flight plan when operating an aircraft in uncontrolled airspace unless that pilot notifies an appropriate aeronautical facility before deviating.

(c) No pilot may deviate from the filed DVFR flight plan unless that pilot notifies an appropriate aeronautical facility before deviating.

§ 99.19 [Removed and reserved].

■ 11. Remove and reserve § 99.19.

§ 99.21 [Removed and reserved].

■ 12. Remove and reserve § 99.21.

§ 99.23 [Removed and reserved].

■ 13. Remove and reserve § 99.23.

§ 99.27 [Removed and reserved].

■ 14. Remove and reserve § 99.27.

§ 99.29 [Removed and reserved].

■ 15. Remove and reserve § 99.29.

§ 99.31 [Removed and reserved].

■ 16. Remove and reserve § 99.31.

■ 17. Revise § 99.41 to read as follows:

§ 99.41 General.

The airspace above the areas described in this subpart is established as an ADIZ. The lines between points described in this subpart are great circles except that the lines joining adjacent points on the same parallel of latitude are rhumb lines.

§§ 99.49 [Removed]

■ 18. Remove § 99.49.

§§ 99.42 through 99.47 [Redesignated]

■ 19. Redesignate §§ 99.42, 99.43, 99.45, and 99.47 as §§ 99.43, 99.45, 99.47, and 99.49 respectively.

Issued in Washington, DC, on March 23, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–6964 Filed 3–29–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
March 30, 2004

Part VI

Department of Housing and Urban Development

24 CFR Parts 91 and 92

HOME Investment Partnerships Program; American Dream Downpayment Initiative; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 92

[Docket No. FR–4832–I–01]

RIN 2501–AC93

HOME Investment Partnerships Program; American Dream Downpayment Initiative

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations for a new downpayment assistance component under the HOME Investment Partnerships Program, referred to as the American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD will make formula grants to participating jurisdictions under the HOME Investment Partnerships Program for the purpose of assisting low-income families achieve homeownership. This interim rule codifies the statutory formula for allocation of ADDI funds to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements.

DATES: *Effective Date:* April 29, 2004.

Comment Due Date: June 1, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Electronic comments may be submitted through Regulations.gov (*www.regulations.gov*). Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–2470. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. Background

The HOME Investment Partnerships Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA). Through the HOME Program, HUD allocates funds by formula among eligible state and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and through tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including grants, loans, advances, equity investments, interest subsidies, and other forms of assistance that HUD approves. HUD's regulations for the HOME Program are located in 24 CFR part 92.

The American Dream Downpayment Act (title I of Pub. L. 108–186, approved December 16, 2003) (ADDI statute) established a separate formula under the HOME Program by which HUD allocates funds to states that are participating jurisdictions under the HOME Program and to participating jurisdictions within those states for the purpose of making downpayment assistance to low-income families who are first-time homebuyers for the purchase of single family housing that will serve as the family's principal residence. The ADDI statute revised section 271 of NAHA to establish specific statutory requirements for administration of ADDI, including the allocation of funds.

With respect to allocation of funds, the ADDI statute establishes a formula that is based primarily on the need for assistance to homebuyers (but does not include the prior commitment requirement from the Fiscal Year (FY) 2003 formula), as measured by the percentage of low-income households residing in rental housing within the participating jurisdiction. This formula will govern the allocation of ADDI funds for FY2004 (and subsequent fiscal years). Among other requirements, the ADDI statute also establishes the definitions applicable to the ADDI, authorizes the use of ADDI funds for certain rehabilitation costs completed in conjunction with ADDI downpayment assistance, establishes new Consolidated Plan requirements, and prescribes other requirements regarding the allocation and use of ADDI funds. Through the statutory requirement that participating jurisdictions have a plan for conducting targeted outreach to public housing tenants and to families receiving rental assistance from public housing agencies, the ADDI statute envisions that among the low-income families who will move from rental to homeownership, are those who are currently public housing residents or receiving rental assistance. ADDI provides a much-needed resource to participating jurisdictions to assist low-income families achieve the dream of homeownership.

Prior to the enactment of the ADDI statute, the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, approved February 20, 2003) authorized and appropriated FY2003 funds for assistance to homebuyers under the HOME Program. The Consolidated Appropriations Resolution, 2003 requires that the FY2003 ADDI funds be made available in accordance with a formula, to be established by HUD, that considers a participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. With the exception of consideration of "prior commitment" to assistance to homebuyers, the formula established by the ADDI statute satisfies the formula to be established for allocating FY2003 funds to participating jurisdictions for assistance to homebuyers, as described in Section H of the preamble.

II. This Interim Rule

This interim rule amends HUD's regulations for the HOME Program to establish the policies and procedures governing the ADDI. The ADDI regulations will be contained in a new subpart M of 24 CFR part 92. This interim rule establishes the formula for allocation of ADDI funding to HOME participating jurisdictions, identifies eligible activities and costs under the ADDI, and establishes other applicable requirements.

To the greatest extent possible, this interim rule establishes a single set of regulatory requirements for FY2003 ADDI funds and those appropriated for subsequent fiscal years. To assist the public in determining the differences in the applicable regulatory requirements, section IV of this preamble contains a chart that provides a side-by-side comparison of the ADDI requirements based on the source of funds.

This section of the preamble provides an overview of the specific regulatory provisions established by this interim rule:

A. Definitions

This interim rule codifies the definitions that apply to the ADDI in § 92.2, which contains the definitions applicable to the HOME Program. The definitions currently contained in § 92.2 apply to the ADDI. In addition, the interim rule establishes several new definitions that will apply to the ADDI.

As noted above, the purpose of the ADDI is to make downpayment assistance for the purchase of a principal residence available to low-income families who are first-time homebuyers. The current HOME Program regulations contain definitions and requirements regarding "low-income families" and "principal residence" that apply to the ADDI. Specifically, § 92.2 defines the term "low-income families" to mean families whose annual incomes do not exceed 80 percent of the median income for the area as determined by HUD, with adjustments for smaller and larger families. Further, the current HOME Program regulations at § 92.254(a) (3) and (4) establish "principal residence" requirements applicable to homeownership assistance, which would also apply to the ADDI.

In addition to the definitions currently contained in the current HOME Program regulations, the following definitions will apply to the ADDI:

1. *First-time homebuyer.* ADDI downpayment assistance may only be used to assist low-income families who are "first-time homebuyers." Section 104 of NAHA defines the term "first-time homebuyer" for purposes of the HOME Program. This definition is no longer codified in the HOME regulations since the "first-time homebuyer" requirement that was originally applicable to the HOME Program was removed by statutory amendment. Given enactment of the ADDI, HUD is again codifying the statutory definition of "first-time homebuyer" in § 92.2. Accordingly, this interim rule provides that the term "first-time homebuyer" means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with ADDI assistance.

In accordance with section 104 of NAHA, the term "first-time homebuyer" includes an individual who is a "displaced homemaker" or "single parent" and who, even if while a homemaker or married, owned a home with his or her spouse or resided in a home owned by the spouse. Section 104 of NAHA establishes statutory definitions of the terms "displaced homemaker" and "single parent," and this interim rule codifies these definitions in § 92.2. Specifically, the interim rule provides that a "displaced homemaker" means an individual who: (1) Is an adult; (2) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment. A "single parent" is defined to mean an individual who: (1) Is unmarried or legally separated from a spouse; and (2) has one or more minor children for whom the individual has custody or joint custody, or is pregnant.

2. *Single family housing.* ADDI assistance may be used for the purchase and rehabilitation of single family housing. The ADDI statute establishes a definition of the term "single family housing" that closely tracks the definition currently used in § 92.254 of the HOME Program regulations. (Section 92.254 contains the affordability requirements for HOME Program homeownership assistance.) To reflect the broadened applicability of this defined term, the interim rule moves the definition of "single family housing" from § 92.254 to the HOME Program definitions section at § 92.2. Specifically, the interim rule defines "single family housing" to mean a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

3. *State.* Under the HOME Program, the term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part. The ADDI statute, however, establishes a separate definition of "state" that excludes Puerto Rico. Accordingly, this interim rule clarifies that, for purposes of the ADDI (beginning with FY2004 ADDI funding), the term "state" does not include the Commonwealth of Puerto Rico.

B. Eligible Activities

ADDI funds may be used for downpayment assistance towards the purchase of single family housing by low-income families who are first-time homebuyers. ADDI funds may also be used for the rehabilitation of the housing acquired with ADDI assistance. Home repair or rehabilitation costs include items: (1) Identified in an appraisal or home inspection; or (2) are completed within one year of the purchase of the home and are necessary to bring the housing into compliance with health and safety housing codes, including the reduction of lead paint hazards and the remediation of other home health hazards. The amount of ADDI funds used for rehabilitation may not exceed 20 percent of the participating jurisdiction's ADDI formula allocation.

C. Eligible Project Costs

ADDI funds may be used for eligible project costs, including: (1) The costs of acquiring single family housing; (2) the eligible development hard costs for rehabilitation projects described in § 92.206(a) of the HOME Program regulations; (3) the costs for reduction of lead paint hazards and the remediation of other home health hazards; and (4) specified related "soft costs" (*i.e.*, reasonable and necessary costs incurred by the homebuyer or participating jurisdiction associated with the financing of single family housing). ADDI funds may not be used for any costs related to new construction of housing or rental assistance.

D. Forms of Investment

ADDI provides low-income families homeownership assistance to enable them to achieve the personal and financial benefits of homeownership. A participating jurisdiction may invest ADDI funds as interest-bearing loans or advances, non-interest bearing loans or advances, interest subsidies consistent with the purposes of the ADDI, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the ADDI. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of the ADDI regulations. It is expected that the ADDI funds will not result in a diminution of private sector efforts to increase homeownership.

E. Minimum and Maximum Amount of Assistance

The minimum amount of ADDI funds in combination with HOME funds that must be invested in a project is $1,000. The amount of ADDI assistance provided to any family may not exceed the greater of six percent of the purchase price of a single family housing unit or $10,000. Participating jurisdictions may choose to provide families less than the maximum amount in order to assist as many families as possible.

F. Limitations on Subrecipients and Contractors

The ADDI statute prohibits seller-financed organizations from participating in the ADDI as subrecipients or contractors. Specifically, a participating jurisdiction may not use any amount of its ADDI grant to provide funding to an entity or organization that provides downpayment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in connection with the sale of specific housing acquired with ADDI funds.

Some seller-financed organizations have artificially inflated the interest fees charged to homebuyers in excess of the amount necessary to compensate sellers for their payment of certain closing charges or contributions to the cost of the downpayment. The intent of the statutory prohibition, which is codified by this interim rule, is to curb this predatory lending practice. The prohibition on the participation by seller-financed organizations will help to ensure that ADDI funds are used to assist low-income homebuyers and not diverted to these potentially predatory transactions.

G. ADDI Allocation Formula

HUD will provide ADDI funds to participating jurisdictions in amounts determined by the statutory allocation formula. The formula is codified in § 92.604 of this interim rule. In accordance with the formula, HUD will provide ADDI funds to each state in an amount that is equal to the percentage of the national total of low-income households residing in rental housing in the state, as determined on the basis of the most recent available U.S. census data. HUD notes that the ADDI statute does not include any provision for providing ADDI funds to insular areas.

HUD will further allocate to each local participating jurisdiction located within a state an amount equal to the percentage of the state-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent available U.S. census data. These allocations will be made only if the local participating jurisdiction: (1) Has a total population of 150,000 individuals or more (as determined on the basis of the most recent available U.S. census data); or (2) would receive an allocation of $50,000 or more. An allocation that would otherwise be made to a local participating jurisdiction that does not meet either of these two requirements will revert back to the state in which the participating jurisdiction is located. A consortium with members in more than one state will receive an allocation from each state in which a member of the consortium is located, if the consortium meets one of these threshold requirements.

In calculating ADDI formula allocations, HUD must rely on special tabulation data provided by the U.S. Census Bureau that measures the number of low-income households residing in rental housing in each participating jurisdiction. The U.S. Census Bureau adjusts all special tabulation data in order to protect respondent confidentiality. Due to these adjustments, the special tabulation data sometimes does not correspond exactly to the information provided on the more widely available Summary File 3 (SF3) data set prepared by the U.S. Census Bureau. The SF3 provides comprehensive population and housing information from the Decennial Census Sample Characteristics form (the census "long form"). To address any discrepancies, HUD will adjust the special tabulation data at the census tract level so that it matches the SF3 data.

H. Allocation of FY2003 ADDI Funds

As noted above in this preamble, the Consolidated Appropriations Resolution, 2003 requires that in allocating FY2003 ADDI funds, HUD must consider two factors—the participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. This interim rule addresses these requirements applicable to FY2003 ADDI funds as follows:

1. *Need.* The need of the participating jurisdiction for assistance to homebuyers is measured by its ADDI formula allocation, as described in § 92.604. The allocation of FY2003 ADDI funds to local participating jurisdictions is subject to the same population and allocation amount thresholds that apply to the allocation of FY2004 (and subsequent fiscal year) ADDI funds. Specifically, a local participating jurisdiction will receive an FY2003 ADDI fund allocation only if the participating jurisdiction has a total population of 150,000 individuals or more, or if it would receive an allocation of $50,000 or more.

2. *Prior commitment.* Only those participating jurisdictions that have demonstrated prior commitment to assistance to homebuyers will receive FY2003 ADDI funds. A participating jurisdiction has demonstrated prior commitment to homebuyers if it has previously committed funds to such purpose under the HOME program, the Community Development Block Grants (CDBG) program, mortgage revenue bonds, or existing funding from state and local governments.

I. Reallocations

If any funds allocated to a participating jurisdiction under the ADDI become available for reallocation, the funds will be reallocated in the next fiscal year to participating jurisdictions in accordance with the formula described in § 92.604.

J. Consolidated Plan

In order to receive an ADDI Formula allocation, a participating jurisdiction must address the use of the ADDI funds in its Consolidated Plan submitted in accordance with 24 CFR part 91. Because the FY2003 ADDI funds are being awarded in FY2004, the participating jurisdiction's Consolidated Plan will cover both FY2003 and FY2004 ADDI funds.

As noted above in this preamble, the ADDI statute established new Consolidated Plan requirements regarding the use of ADDI funds. This interim rule amends HUD's Consolidated Plan regulations to conform to the new statutory requirements. The interim rule requires that a participating jurisdiction that will receive ADDI funding must provide certain information in its Consolidated Plan. The participating jurisdiction must provide an action plan that includes:

1. A description of the planned use of the ADDI funds;

2. A plan for conducting targeted outreach to residents and tenants of public and manufactured housing, and to other families assisted by public housing agencies, for the purpose of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

3. A description of the actions to be taken to ensure the suitability of families receiving ADDI assistance to undertake and maintain homeownership, such as provision of housing counseling to homebuyers.

These requirements are intended to provide suitable public housing tenants and families receiving rental assistance the opportunity to move from dependence on rental housing assistance to homeownership. HUD anticipates that ADDI funds will be used in conjunction with other programs designed to assist such families achieve homeownership, such as the voucher

homeownership option under HUD's Housing Choice Voucher Program (see 24 CFR part 982, subpart M).

In furtherance of the goals of the ADDI, HUD encourages participating jurisdictions to provide some form of pre-or post-purchase housing counseling in conjunction with ADDI assistance. HUD's study on homebuyer activity through the HOME Program indicates that a large majority (between 85 and 94 percent, depending on the type of program) of HOME-funded homebuyer programs require some form of homeownership counseling. The study indicates that participating jurisdictions and counselors have concluded that a combination of group and individual housing counseling is optimal for homebuyer programs. A copy of the study, entitled "Study of Homebuyer Activity through the HOME Investments Partnerships Program" is available for download at *http://www.huduser.org/publications/hsgfin/homebuy.html*.

K. Eligible Administrative Costs and Planning Costs

This interim rule amends § 92.207 of the HOME program regulations to clarify that a participating jurisdiction may expend HOME funds for payment of reasonable administrative and planning costs associated with the use of ADDI funds. Because FY2003 ADDI funds are HOME funds set aside for downpayment assistance, for only FY2003 the administrative cost amount may not exceed 10 percent of the sum of the regular HOME allocation plus the ADDI allocation. While ADDI funds may not be used for administrative costs, HOME funds may be used for such purpose.

L. Applicability of Other Provisions

The interim rule also specifies the other provisions of the HOME Program regulations that apply to the ADDI. Unless otherwise noted in new subpart M, other HOME Program requirements do not apply to the ADDI. The ADDI statute specifies the statutory HOME requirements that apply to the ADDI. Where HUD has been granted the discretion to determine the applicability of particular requirements, it has attempted to exclude those HOME requirements that are either incompatible with downpayment assistance or rehabilitation (such as, for example, requirements concerning rental projects) or that would be unduly burdensome in the administration of such assistance.

The following provides an overview of the HOME Program regulations that apply to the ADDI.

1. *General provisions.* The general provisions contained in subpart A of 24 CFR part 92 apply to the ADDI.

2. *Program requirements.* Certain program requirements contained in subpart E of 24 CFR part 92 apply to the ADDI. Specifically, the private-public partnership provisions (§ 92.200), the distribution of assistance requirements (§ 92.201), the income determination requirements (§ 92.203), and the requirements regarding pre-award costs (§ 92.212) apply to the ADDI. The matching contribution requirements contained in §§ 92.218–92.222 apply to FY 2003 ADDI funds only.

3. *Project requirements.* Certain project requirements contained in subpart F of 24 CFR part 92 apply to the ADDI. Specifically, the interim rule clarifies that the maximum per-unit subsidy limits and the subsidy layering requirements contained in § 92.250 apply to the total HOME and ADDI funds in a project. Further, the interim rule provides that housing assisted with ADDI funds must meet the property standards contained in § 92.251. In addition, housing assisted with ADDI funds is required to meet the affordability requirements contained in § 92.254(a) and (c). If a project receives both HOME and ADDI funds, the total of HOME and ADDI funds in the project is used for calculating the period of affordability described in § 92.254(a)(4) and applied to resales (§ 92.254(a)(5)(i)) and recaptures (§ 92.254(a)(5)(ii)).

4. *Other federal requirements.* The interim rule provides that the federal requirements contained in subpart H of 24 CFR part 92 regarding nondiscrimination, minority outreach, environmental review, labor, lead-based paint abatement, conflicts of interest, and consultant activities are applicable to the ADDI. The other federal requirements contained in subpart H, regarding affirmative marketing and Executive Order 12372 (entitled "Intergovernmental Review"), do not pertain to downpayment assistance or rehabilitation and, therefore, do not apply to the ADDI.

The ADDI statute exempts FY2004 and subsequent fiscal year ADDI funds from the uniform displacement, relocation, and acquisition requirements contained in § 92.353 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201–4655) and the implementing regulations at 49 CFR part 24. However, the displacement, relocation, and acquisition requirements do apply to FY2003 ADDI funds.

5. *Program administration.* Generally, the program administration requirements contained in subpart K of 24 CFR part 92 are applicable to the ADDI, except for those few requirements that are incompatible with downpayment assistance, rehabilitation, or other requirements of the interim rule.

6. *Performance Review and sanctions.* HUD will review the performance of participating jurisdictions in carrying out its responsibilities under the ADDI, in accordance with the policies and procedures contained in subpart L of 24 CFR part 92.

IV. Side-by-Side Comparison of ADDI Requirements Based on Source of Funds

The following chart provides a side-by-side comparison of the ADDI requirements based on the source of funds:

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	ADDI FY2003 Funds (Consolidated Appropriations Resolution, 2003)[1]	ADDI FY2004-2007 Funds (ADDI Statute)[1]	HOME Allocation (NAHA)[1]
FORMULA	Need[2] for, and prior commitment to, assistance to homebuyers	Need[2] by state; then, by local participating jurisdiction. Funds to local participating jurisdictions with populations of more than 150,000 or allocation greater than $50,000 only	HOME Formula
INELIGIBLE PARTICIPATING JURISDICTIONS [3]		The Commonwealth of Puerto Rico and local participating jurisdictions in Puerto Rico	
ELIGIBLE HOMEBUYERS	Must be "first-time" homebuyer	Must be "first-time" homebuyer	No "first-time" homebuyer requirement
ELIGIBLE USES OF FUNDS	Downpayment assistance	Downpayment assistance and rehab. Rehab must be completed within 1 year of purchase	All HOME eligible activities. Rehab property standards must be met within 2 years of purchase
USE OF FUNDS FOR ADMINISTRATIVE COSTS [4]	Not eligible to pay admin costs; included in calculating 10% HOME admin limit	Not eligible to pay admin costs; not included in calculating 10% HOME admin limit	10% of HOME funds may be used for HOME admin and the costs of administering ADDI
ASSISTANCE CAPS	Subject to HOME maximum per-unit subsidy	Per-family limit: the greater of $10,000 or 6% of purchase price. Also subject to HOME maximum per-unit subsidy when	Subject to HOME maximum per-unit subsidy

		used in combination with HOME funds	
MATCH	Match requirement	No match requirement	Match requirement
Uniform Relocation Act (URA)	Subject to URA	Not subject to URA	Subject to URA
PROGRAM INCOME	Program income generated under ADDI treated as HOME program income	Program income generated under ADDI treated as HOME program income	HOME program income requirements
REALLOCATIONS	No reallocation of funds is possible since the 3-year statutory limit on availability of appropriations will result in any funds recaptured after 24 months for failure to meet the commitment deadline being returned to Treasury	Funds reallocated as part of the next fiscal year's ADDI formula distribution	HOME reallocation requirements
Community Housing Development Organizations (CHDOs)	Not subject to CHDO set-aside; not an eligible use of set-aside funds	Not subject to CHDO set-aside; not an eligible use of set-aside funds	15% of HOME allocation set aside for CHDO projects; D/A not an eligible CHDO set-aside activity
CONSOLIDATED PLAN	2004 Action Plan must address the use of FY2003 ADDI funds	Two new narratives ("outreach" and "suitability") required beginning with the 2004 Action Plan in order to be eligible for ADDI funding; the Action Plan must also address the use of ADDI funds	No change

NOTES:

1. Statutory source of requirements.
2. "Need": The percentage of low-income households residing in rental housing based on census data.
3. Insular areas are not included in the definition of PJ in the HOME Program. Therefore, insular areas will not receive ADDI funding in FY2004 and subsequent allocations. Funds allocated to insular areas in FY2003 were 0.2 percent of the combined HOME/ADDI appropriation.
4. Project soft-costs for the delivery of ADDI-funded downpayment assistance and (except for FY2003 ADDI funding) rehabilitation are eligible uses of ADDI funds.

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V. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

As noted throughout this preamble, the ADDI statute establishes very specific requirements governing the allocation and eligible uses of ADDI funds. For example, the ADDI statute prescribes the formula that must be used to allocate ADDI funds, specifies the statutory HOME requirements that apply to the ADDI, establishes the eligible uses of ADDI funds, and specifies several limits and thresholds on the allocation and use of ADDI funds (for example, the thresholds for allocating funds to local participating jurisdictions and the cap on the amount of downpayment assistance that may be provided to homebuyers). To a large extent, this interim rule merely codifies the statutory policies and procedures mandated by the ADDI statute, and HUD would not have the discretion to modify these requirements in response to public comment.

HUD has more flexibility in defining the two statutory factors for the allocation of FY2003 ADDI funds. However, since these factors will only govern a single fiscal year of ADDI funding, HUD has attempted (as much as possible consistent with statutory authority) to use a single set of formula factors for allocating ADDI funds. Given the limited applicability of the FY2003 requirements, to delay issuance of an effective rule to solicit prior public comment on these factors would be of limited use, impose additional complexity and administrative burden into the ADDI, and unnecessarily delay the allocation of FY2003 ADDI funds to participating jurisdictions.

In other areas where HUD has been granted discretion, HUD has attempted to minimize the administrative burden imposed on participating jurisdiction by incorporating the ADDI into the existing regulatory framework for the HOME Program. Accordingly, the interim rule imposes few, if any, unfamiliar requirements on HOME participating jurisdictions.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

VI. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Information Collection Requirements

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0171. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and

does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the majority of jurisdictions that are statutorily eligible to receive HOME formula allocations are relatively larger cities, counties or states. The interim rule will not impose any new regulatory requirements on participating jurisdictions, since the ADDI will operate within the existing regulatory framework of the HOME Program. Rather, the interim rule establishes the policies and procedures that HUD will use to make formula grants to participating jurisdictions under the new ADDI.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the HOME Program is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR parts 91 and 92 as follows:

PART 91—CONSOLIDATED SUBMISSONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. Add § 91.220(g)(2)(iv) to read as follows:

§ 91.220 Action plan.

* * * * *

(g) * * *

(2) * * *

(iv) If the participating jurisdiction will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership.

* * * * *

■ 3. Add § 91.320(g)(2)(iv) to read as follows:

§ 91.320 Action plan.

* * * * *

(g) * * *

(2) * * *

(iv) If the state will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership, such as provision of housing counseling to homebuyers.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 4. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

■ 5. In § 92.2, add definitions of the terms "ADDI funds," "displaced homemaker", "first time homebuyer," "single family housing," and "single parent" in alphabetical order, and revise the definition of "state", to read as follows:

§ 92.2 Definitions.

* * * * *

ADDI funds means funds made available under subpart M through allocations and reallocations.

* * * * *

Displaced homemaker means an individual who:

(1) Is an adult;

(2) Has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

* * * * *

First-time homebuyer means an individual and his or her spouse who have not owned a home during the three-year period prior to purchase of a home with assistance under the American Dream Downpayment Initiative (ADDI) described in subpart M of this part. The term first-time homebuyer also includes an individual who is a displaced homemaker or single parent, as those terms are defined in this section.

* * * * *

Single family housing means a one-to four-family residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

Single parent means an individual who:

(1) Is unmarried or legally separated from a spouse; and

(2) Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.

* * * * *

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the state with regard to the provisions of this part; however, for purposes of the American Dream Downpayment Initiative (ADDI) described in subpart M of this part, the term "state" does not include the Commonwealth of Puerto Rico (except for FY2003 ADDI funds).

* * * * *

■ 6. In § 92.207, revise the introductory paragraph to read as follows:

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program and ADDI, an amount of HOME funds that is not more than ten percent of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that Fiscal Year. A state that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also expend, for payment of reasonable administrative and planning costs of the HOME program and the ADDI described in subpart M of this part, a sum up to ten percent of the program income deposited into its local account or received and reported by its state recipients or subrecipients during the program year. A participating jurisdiction may expend such funds directly or may authorize its state recipients or subrecipients, if any, to expend all or a portion of such funds, provided total expenditures for planning and administrative costs do not exceed the maximum allowable amount. Reasonable administrative and planning costs include:

* * * * *

■ 7. Revise the first sentence of § 92.250(a) to read as follows:

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The total amount of HOME funds and ADDI funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limitations established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. ***

* * * * *

■ 8. In § 92.254, revise paragraph (a)(1) and the second sentence in paragraph (a)(2)(iii), to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1) The housing must be single family housing.

(2) * * *

(iii) * * * The participating jurisdiction must set forth the price for different types of single family housing for the jurisdiction. ***

* * * * *

■ 9. Add Subpart M to read as follows:

Subpart M—American Dream Downpayment Initiative

Sec.

§ 92.600 Purpose.

This subpart describes the requirements for the HOME Program American Dream Downpayment Initiative (ADDI). Through the ADDI, HUD makes formula grants to participating jurisdictions that qualify for allocations to assist low-income families achieve homeownership in accordance with the provisions of this subpart. Unless otherwise noted in this subpart, the HOME Program requirements contained in subparts B through L of this part do not apply to the ADDI.

§ 92.602 Eligible activities.

(a) *Eligible activities.* ADDI funds may only be used for:

(1) Downpayment assistance towards the purchase of single family housing by low-income families who are first-time homebuyers; and

(2) Rehabilitation that is completed in conjunction with the home purchase assisted with ADDI funds. The rehabilitation assisted with ADDI funds, including the reduction of lead paint hazards and the remediation of other home health hazards, must be completed within one year of the purchase of the home. Total rehabilitation shall not exceed 20 percent of the participating jurisdiction's ADDI fiscal year formula allocation. FY2003 ADDI funds may not be used for rehabilitation.

(b) *Eligible project costs.* ADDI funds may be used for the following eligible costs:

(1) *Acquisition costs.* The costs of acquiring single family housing.

(2) *Rehabilitation costs.* The eligible development hard costs for rehabilitation projects described in § 92.206(a) and the costs for reduction of lead paint hazards and the remediation of other home health hazards. FY2003 ADDI funds may not be used for rehabilitation.

(3) *Related soft costs.* Reasonable and necessary costs incurred by the homebuyer or participating jurisdiction and associated with the financing of single family housing acquisition and rehabilitation. These costs include, but are not limited to:

(i) Costs to process and settle the financing for purchase of a home, such as private lender origination fees, credit report fees, fees for title evidence, fees for recordation and filing of legal documents, attorneys fees, and private appraisal fees.

(ii) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(iii) Costs to provide information services, such as fair housing information to prospective homeowners.

(iv) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting a potential homebuyer (*e.g.*, housing counseling), which may be charged to project costs only if the individual purchases single family housing with ADDI assistance.

(v) Costs of environmental review and release of funds (in accordance with 24 CFR part 58) that are directly related to the project.

(4) *Ineligible costs.* ADDI funds may not be used for the development costs (hard costs or soft costs) of new construction of housing or for rental assistance.

(c) *Forms of investment.* A participating jurisdiction may invest ADDI funds as interest-bearing loans or advances, non-interest bearing loans or advances, interest subsidies consistent with the purposes of this subpart, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with this subpart. Each participating jurisdiction has the right to

establish the terms of assistance, subject to the requirements of this subpart.

(d) *Minimum amount of assistance.* The minimum amount of ADDI funds in combination with HOME funds that must be invested in a project is $1,000.

(e) *Maximum amount of assistance.* The amount of ADDI funds provided to any family shall not exceed the greater of six percent of the purchase price of the single family housing or $10,000. This limitation does not apply to FY2003 ADDI funds.

(f) *Limitation on subrecipients and contractors.* A participating jurisdiction may not provide ADDI funds to an entity or organization that provides downpayment assistance, if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with ADDI funds.

§ 92.604 ADDI allocation formula.

(a) *General.* HUD will provide ADDI funds to participating jurisdictions in amounts determined by the formula described in this section.

(b) *Allocation to states that are participating jurisdictions.* HUD will provide ADDI funds to each state in an amount that is equal to the percentage of the national total of low-income households residing in rental housing in the state, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).

(c) *Local participating jurisdictions.* Subject to paragraph (d) of this section, HUD will further allocate to each local participating jurisdiction located within a state an amount equal to the percentage of the state-wide total of low-income households residing in rental housing in such participating jurisdiction, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD).

(d) *Limitation on allocations to local participating jurisdictions.* (1) Allocations under paragraph (c) of this section shall be made only if the local participating jurisdiction:

(i) Has a total population of 150,000 individuals or more, as determined on the basis of the most recent available U.S. census data (as adjusted by HUD); or

(ii) Would receive an allocation of $50,000 or more.

(2) Any allocation that would have otherwise been made to a local participating jurisdiction that does not meet the requirements of paragraph (d)(1) of this section shall revert back to the state in which the participating jurisdiction is located.

(e) *Consortia with members in more than one state.* A consortium with members in more than one state will receive an allocation if the consortium meets the requirements described in paragraph (d) of this section.

(f) *Allocation of FY2003 ADDI funds.* For the allocation of FY2003 ADDI funds, HUD will consider a participating jurisdiction's need for, and prior commitment to, assistance to homebuyers. Puerto Rico is a "state" for FY2003 ADDI funds.

(1) *Need.* The need of the participating jurisdiction for assistance to homebuyers is measured by its ADDI formula allocation, as calculated under paragraphs (b) through (e) of this section.

(2) *Prior commitment.* Only those participating jurisdictions that have demonstrated prior commitment to assistance to homebuyers will receive FY2003 ADDI funds. A participating jurisdiction has demonstrated prior commitment to homebuyers if it has previously committed funds to such purpose under the HOME program, the Community Development Block Grants (CDBG) program, mortgage revenue bonds, or existing funding from state and local governments.

§ 92.606 Reallocations.

If any funds allocated to a participating jurisdiction under § 92.604 become available for reallocation, the funds shall be reallocated in the next fiscal year in accordance with § 92.604.

§ 92.608 Consolidated plan.

To receive an ADDI formula allocation, a participating jurisdiction must address the use of the ADDI funds in its consolidated plan submitted in accordance with 24 CFR part 91.

§ 92.610 Program requirements.

The following program requirements contained in subpart E of this part apply to the ADDI:

(a) *Private-public partnership.* The private-public partnership provisions contained in § 92.200 apply to the ADDI.

(b) *Distribution of assistance.* The distribution of assistance requirements contained in § 92.201 apply to the ADDI.

(c) *Income determinations.* The income determination requirements contained in § 92.203 apply to the ADDI.

(d) *Pre-award costs.* The requirements regarding pre-award costs contained in § 92.212 apply to the ADDI.

(e) *Matching contribution requirement.* The matching contribution requirements contained in §§ 92.218 through 92.222 apply to FY2003 ADDI funds only.

§ 92.612 Project requirements.

The following project requirements contained in subpart F of this part apply to the ADDI:

(a) *Maximum per-unit subsidy amount and subsidy layering.* The maximum per-unit subsidy limits and subsidy layering requirements contained in § 92.250 apply to the total HOME and ADDI funds in a project.

(b) *Property standards.* Housing assisted with ADDI funds must meet the property standards contained in § 92.251.

(c) *Qualification as affordable housing.* Housing assisted with ADDI funds must meet the affordability requirements contained in § 92.254(a) and (c). If a project receives both HOME and ADDI funds, the total of HOME and ADDI funds in the project is used for calculating the period of affordability described in § 92.254(a)(4) and applied to resales (§ 92.254(a)(5)(i)) and recaptures (§ 92.254(a)(5)(ii)).

(d) *Faith-based organizations.* Faith-based organizations are eligible to participate in the ADDI as subrecipients or contractors as provided in § 92.257.

§ 92.614 Other Federal requirements.

(a) The following Federal requirements contained in subpart H of this part apply to the ADDI:

(1) *Other Federal requirements and nondiscrimination.* The Federal and nondiscrimination requirements contained in § 92.350 apply to the ADDI.

(2) *Environmental review.* The environmental review requirements contained in § 92.352 apply to the ADDI.

(3) *Labor.* The labor requirements contained in § 92.354 apply to ADDI.

(4) *Lead-based paint.* The lead-based paint prevention and abatement requirements contained in § 92.355 apply to the ADDI.

(5) *Conflict of interest.* The conflict of interest requirements contained in § 92.356 apply to the ADDI.

(6) *Consultant activities.* The requirements regarding consultant activities contained in § 92.358 apply to the ADDI.

(b) The following Federal requirements contained in subpart H of this part do not apply to the ADDI:

(1) *Affirmative marketing.* The affirmative marketing requirements contained in § 92.351(a).

(2) *Displacement, relocation, and acquisition.* The displacement, relocation, and acquisition requirements

implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4201–4655) and the implementing regulations at 49 CFR part 24, contained in § 92.353 do not apply to ADDI, except the requirements do apply to FY2003 ADDI funds.

(3) *Executive Order 12372.* The requirements of Executive Order 12372 (entitled "Intergovernmental Review) described in § 92.357.

§ 92.616 Program administration.

The following program administration requirements contained in subpart K of this part apply to the ADDI:

(a) *HOME Investment Trust Fund.* The requirements regarding the HOME Investment Trust Fund contained in § 92.500 apply to the ADDI, with the exception of paragraphs (c)(2) and (d)(1)(A).

(b) *HOME Investment Partnership Agreement.* The requirements regarding HOME Investment Partnership Agreements contained in § 92.501 apply to the ADDI.

(c) *Program disbursement and information system.* The requirements regarding program disbursement and information systems contained in § 92.502 apply to the ADDI.

(d) *Program income, repayments and recaptured funds.* The requirements regarding program income, repayments, and recaptured funds contained in § 92.503 apply to the ADDI, except the program income and recaptured funds must be deposited in the participating jurisdiction's HOME investments trust fund local account and used in accordance with the HOME program requirements.

(e) *Participating jurisdiction responsibilities and written agreements.* The requirements regarding participating jurisdiction responsibilities and written agreements contained in § 92.504 apply to the ADDI, with the modification that the written agreement is not required to cover any HOME requirement that is not applicable to the ADDI.

(f) *Applicability of uniform administrative requirements.* The uniform administrative requirements contained in § 982.505 apply to the ADDI.

(g) *Audit.* The audit requirements contained in § 92.506 apply to the ADDI.

(h) *Closeout.* The closeout requirements contained in § 92.507 apply to the ADDI.

(i) *Recordkeeping.* The project records must include records demonstrating that the family qualifies as a first-time homebuyer. The recordkeeping requirements contained in § 92.508 apply to the ADDI, with the exception of the following paragraphs:

(1) Paragraph (a)(1);

(2) Paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (a)(2)(xi), and (a)(2)(xii);

(3) Paragraphs (a)(3)(vi), (a)(3)(vii), (a)(3)(viii), (a)(3)(ix), and (a)(3)(xiii);

(4) Paragraph (a)(4);

(5) Paragraphs (a)(7)(i)(B), (a)(7)(i)(C), (a)(7)(ii)(A), and (a)(7)(ix) (in addition, the requirements of paragraph (a)(7)(iv) apply to FY2003 ADDI funds only); and

(6) Paragraphs (c)(1) and (c)(3) (in addition, the requirements of paragraph (c)(5) apply to FY2003 ADDI funds only).

(j) *Performance reports.* The requirements regarding performance reports contained in § 92.509 apply to the ADDI.

§ 92.618 Performance reviews and sanctions.

HUD will review the performance of participating jurisdictions in carrying out its responsibilities under the ADDI in accordance with the policies and procedures contained in subpart L of this part.

Dated: March 10, 2004.

Alphonso Jackson,

Acting Secretary.

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