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Contents

Federal Register

Vol. 69, No. 152

Monday, August 9, 2004

Separate Parts In This Issue

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR

Proposed Rules:

457.....48166
1775.....48174
1777.....48174
1778.....48174
1780.....48174
1942.....48174
3570.....48174
4274.....48174

14 CFR

39 (5 documents) 48129, 48131, 48133, 48135, 48138
71 (10 documents) 48141, 48142, 48143, 48144
97.....48144

21 CFR

878.....48146

29 CFR

Proposed Rules:

1210.....48177

31 CFR

Proposed Rules:

538.....48183
550.....48183
560.....48183

32 CFR

Proposed Rules:

322.....48183

38 CFR

3.....48148

Proposed Rules:

17.....48184

40 CFR

52 (2 documents) 48150
300.....48153

Proposed Rules:

52.....48186
63.....48338
300.....48187

47 CFR

2.....48157
25.....48157
74.....48157
90.....48157
101.....48157

Proposed Rules:

1.....48188
2.....48192
25.....48192
63.....48188
64.....48188

50 CFR

20.....48163

Rules and Regulations

Federal Register
Vol. 69, No. 152
Monday, August 9, 2004

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–151–AD; Amendment 39–13766; AD 2004–16–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes Equipped With Off-Wing Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes equipped with off-wing escape slides, that requires an inspection of the door-opening actuators for the off-wing slide compartment on the right and left sides of the airplane to determine the actuator cartridge serial number, and corrective actions, if necessary. This action is necessary to prevent the door-opening actuators for the off-wing slide compartment from not firing, which could cause the door to open improperly and prevent the deployment of the off-wing escape slide, leading to the loss of an evacuation route. This action is intended to address the identified unsafe condition.

DATES: Effective September 13, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 13, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; and Universal Propulsion Company, Inc. (formerly OEA Inc.), P.O. Box KK, Highway 12, Explosive Technology Rd., Fairfield, California 94533–0659. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–200 and –300 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5783). That action proposed to require an inspection of the actuators for the off-wing slide compartment door on the right and left sides of the airplane to determine the actuator cartridge serial number, and corrective actions, if necessary.

Comments

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

Agreement With the Proposed Rule

Several commenters agree with the proposed rule.

Request To Revise Applicability

One commenter requests to revise the applicability of the proposed rule to exclude airplanes that have been converted to freighters without off-wing escape slides and airplanes on which the off-wing escape system has been removed or deactivated. The commenter states that airplanes that have the off-wing escape system removed or deactivated are not subject to the requirements of the proposed rule. The commenter contends that operators will need to request an alternative method of compliance to clarify applicable airplanes and, therefore, will tie up FAA resources. The commenter concludes that clarifying the applicability in the proposed AD will make the rulemaking process less burdensome.

We agree in part with the commenter. We agree that the applicability of the proposed rule should be revised to clarify that airplanes not equipped with off-wing escape systems are not subject to the final rule. We have revised the applicability of the final rule as follows: "Model 767–200 and –300 series airplanes equipped with off-wing escape slides; certificated in any category." However, we do not agree to revise the applicability to exclude airplanes with deactivated off-wing escape systems. Due to the safety implications and the variety of methods the off-wing escape systems may be deactivated, airplanes with deactivated off-wing escape systems are subject to the final rule. However, paragraph (d) of the final rule provides affected operators the opportunity to apply for approval of an alternative method of compliance if the operator also presents data that justify the request.

Request To Revise Number of Affected Airplanes

One commenter requests that the number of airplanes of the affected design in the worldwide fleet specified in the "Cost Impact" paragraph of the proposed rule be revised. The commenter contends that the affected number of airplanes worldwide is 690 and not 829 as stated in the proposed rule. The commenter notes that the effectivity is line numbers 2 through 920. The commenter states that after excluding Model 767–400ER, 767–300F, and 767–300 airplanes without off-wing escape slides, the resulting number of affected airplanes is approximately 690.

We agree that the number of affected airplanes worldwide in the "Cost Impact" paragraph of the final rule should be revised. However, we do not agree with the specific change requested by the commenter to revise the number to 690. As stated earlier, the applicability of this final rule has been clarified to "Model 767–200 and –300 series airplanes equipped with off-wing escape slides. * * *" The airplane models affected by this final rule have continued to be manufactured and modified since the issuance of the

proposed rule. Therefore we revised the number of affected airplanes specified in the "Cost Impact" paragraph of the final rule from 829 to 696 airplanes in the worldwide fleet, and the number of airplanes of U.S. registry from 346 to 297.

Request To Revise Work Hours

The same commenter also requests that the work hours in the "Cost Impact" paragraph of the proposed AD be revised from 6 to 8.75. The commenter points out that Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001, specifies 8 work hours per airplane to accomplish the service bulletin and the commenter estimates 0.75 work hour per airplane to accomplish the cartridge inspection per the OEA Aerospace, Inc. Service Bulletin 5262 (02) SB (NC), dated October 2, 2000.

We do not agree with the commenter's request to revise the work hours in the "Cost Impact" paragraph of the final rule. The 8 work hours specified in the Boeing service bulletin includes "incidental" costs, and the work hours estimated for the OEA service bulletin are for an "on-condition" action. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. We recognize that operators may incur "incidental" costs in addition to "direct" costs. However cost analysis of the AD does not typically include "incidental costs," such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. We also do not consider the costs of "on-condition" actions (that is, actions needed to correct an unsafe condition) because, regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

For clarification of the "on-condition" actions, we have revised the "Cost Impact" paragraph of the final rule to show the cost of the "on-condition" inspection and replacement of the actuator cartridge in addition to the "direct costs" of the required inspection of the door-opening actuators for the off-wing slide compartment.

Request To Clarify Certain Wording

One commenter requests to revise certain wording in the "Explanation of Relevant Service Information" paragraphs of the proposed rule and in the body of the proposed rule. The commenter suggests changing "actuators for the off-wing slide compartment door" to "door opening actuators for the off-wing slide compartment" in order to clearly identify that the door-opening actuator is affected instead of the door latch opening actuators. In addition, the commenter suggests changing "actuators of the off-wing slide compartment door" to "actuators for the off-wing slide compartment door" for clarity. The commenter also suggests that the words "additional source" be replaced with "detailed sources" in the paragraphs describing the OEA service bulletin because the OEA service bulletin contains the detailed steps for actuator cartridge inspection after removal from the airplane.

We agree that revising the wording suggested by the commenter would provide clarification of affected actuators and the referenced service bulletin. However, the "Explanation of Relevant Service Information" paragraph is not restated in the final rule so no change is made in this regard. To clarify that the door-opening actuator is affected instead of the door latch opening actuators, we have revised the wording "actuator(s) for the off-wing slide compartment door" in the preamble and body of the final rule to "door-opening actuator(s) for the off-wing slide compartment." We also revised Note 1 of the final rule to state "* * * as an additional detailed source of service information * * *" to clarify the reference to the OEA service bulletin.

Request for Credit for Previous Accomplishment

One commenter requests credit for previous accomplishment of the inspections per Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001.

We agree that credit should be given for previous accomplishment of the inspections per the Boeing service bulletin. However, we do not need to clarify this in the final rule because credit is already given. Operators are always given credit for work previously performed by means of the phrase in the compliance section of the AD that states, "Compliance: Required as indicated, unless accomplished previously." Therefore, inspections accomplished prior to the effective date of the final rule per Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001 (listed as the source of service information for the final rule), are acceptable for compliance with the inspections of the final rule. We have not changed the final rule regarding this issue.

Conclusion

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

Cost Impact

There are approximately 696 airplanes of the affected design in the worldwide fleet. We estimate that 297 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspection of the door-opening actuators for the off-wing slide compartment, 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 $115,830, or $390 per airplane.

Inspection of the actuator cartridge, if required, will take approximately 1 work hour to accomplish, and the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $65 per actuator cartridge.

Replacement of the actuator cartridge, if required, will take approximately 1 work hour per airplane to accomplish, and the average labor rate is $65 per work hour. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $65 per actuator cartridge.

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:

2004–16–10 Boeing: Amendment 39–13766. Docket 2002–NM–151–AD.

Applicability: Model 767–200 and –300 series airplanes equipped with off-wing escape slides; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the door-opening actuators for the off-wing slide compartment from not firing, which could cause the door to open improperly and prevent the deployment of the off-wing escape slide, leading to the loss of an evacuation route, accomplish the following:

Inspection and Corrective Action

(a) Within two years after the effective date of this AD, do an inspection of the door-opening actuators for the off-wing slide compartment on the right and left sides of the airplane to determine the actuator cartridge serial number, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001.

(b) If any actuator cartridge having serial numbers 5481 through 5741 inclusive is found during the inspection required by paragraph (a) of this AD: Before further flight, perform the actions specified in paragraphs (b)(1) through (b)(3) of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001.

(1) Remove the door-opening actuator for the off-wing slide compartment.

(2) Perform an inspection of the actuator cartridge for the presence of a clearance hole and corrective actions, if necessary (includes replacing the actuator cartridge with a new actuator cartridge or a serviceable actuator cartridge from a recharge kit).

(3) Install the door-opening actuator for the off-wing slide compartment.

Note 1: Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001, references OEA Aerospace, Inc. Service Bulletin 5262 (02) SB (NC), dated October 2, 2000, as an additional detailed source of service information for performing the inspection of the actuator cartridge and corrective actions.

Parts Installation

(c) As of the effective date of this AD, no person shall install, on any airplane, an actuator for the off-wing escape slide having OEA part number 5262200 cartridge assembly, with actuator cartridge serial numbers 5481 through 5741 inclusive, that does not have a clearance hole between the two firing pins.

Alternative Methods of Compliance

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

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Special Attention Service Bulletin 767–25–0299, dated January 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on September 13, 2004.

Issued in Renton, Washington, on July 29, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17983 Filed 8–6–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–83–AD; Amendment 39–13767; AD 2004–16–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 and 767 series airplanes, that requires inspection to determine the serial number of the hydraulic pump in the ram air turbine (RAT), and corrective action if necessary. This action is necessary to prevent a cracked hanger arm of the hydraulic pump of the RAT that can fracture under load and lead to failure of the RAT to provide hydraulic power to the primary flight control system during an emergency when both engines have failed. Loss of hydraulic power to the primary flight controls could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 2004.

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

FOR FURTHER INFORMATION CONTACT: Kenneth Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5785). That action proposed to require inspection to determine the serial number of the hydraulic pump in the ram air turbine (RAT), and corrective action if necessary.

Comments

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

Supportive Comments

Two commenters support the proposed AD.

Request To Allow Review of Maintenance Records

Two commenters request that the FAA revise the proposed AD to allow a records search to verify the serial number of a hydraulic pump. One commenter states that using paper/computer component and aircraft installed records for verification would avoid the unnecessary replacement of RAT hydraulic pumps that might be missing data plates. The other commenter states that while complying with Boeing Special Attention Service Bulletin 757–29–0060, dated September 12, 2002; Boeing Special Attention Service Bulletin 757–29–0061, dated September 12, 2002; and Parker Service Bulletin 6513902–29–305, dated November 30, 2001, an operator "* * * controlled its RAT hydraulic pump systems ensuring configuration control that prevents the installation of affected, non-reworked [s]erial [n]umbers," and that "[a] maintenance records review will avoid the duplication of previously accomplished [s]erial [n]umber inspections." The same commenter also asserts that if an operator tracks the installed RAT hydraulic pump by serial number, that operator should be allowed to use its maintenance records to show compliance with the proposed AD.

We agree and have added a new statement to paragraph (b) of this AD, which allows review of airplane maintenance records, instead of an inspection, if the serial number of the hydraulic pump can be positively determined from that review.

Request To Include Manufacturer/Installation Dates of Hangar Arms

Two commenters request that we "include the manufacture dates of the discrepant hangar arms and/or installation dates of the hydraulic pump arms." One commenter assumes that since Parker Service Bulletin 6513902–29–305 was issued in November of 2001, the discrepant hanger arms were manufactured close to this date. The same commenter also states that 37 of its 41 RAT installations were installed on-wing prior to 1996, with 29 units being the original installations since delivery from the airplane manufacturer. Furthermore, the commenter asserts that, should the "discrepant unit dates" be included in the proposed AD, a large portion of its RAT installations might be exempt, since it could eliminate RAT hydraulic pump components and aircraft installations that have been in its system prior to those dates. The other commenter asserts that including the manufacture/installation date range for the affected parts would narrow the scope of the proposed AD and help minimize the impact of the proposed AD on operators, while maintaining an equivalent level of safety.

We do not agree with the request to include the manufacture and/or installation dates of the discrepant hangar arms for the affected hydraulic pumps. We find that it is unnecessary to include either of these dates for the hangar arms, since the Parker service bulletin identifies the serial numbers of the affected hydraulic pumps. These serial numbers are unique to the affected hydraulic pumps and are known to contain the discrepant hangar arms. Therefore, no change is needed to this AD in this regard.

Conclusion

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

Cost Impact

There are approximately 1,851 airplanes of the affected design in the worldwide fleet. We estimate that 1,038 airplanes of U.S. registry will be affected by this AD.

We estimate it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $67,470, or $65 per airplane.

We also estimate that it will take approximately 4 work hours per airplane (affecting approximately 154 airplanes) to accomplish the replacement of the hydraulic pump, if required, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $260 per airplane.

We also estimate that it will take approximately 5 work hours per airplane (affecting approximately 154 airplanes) to accomplish the rework and reidentification of the hydraulic pump, if required, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the rework and reidentification on U.S. operators is estimated to be $325 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. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. As a result, the costs attributable to the AD may be less than stated above.

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:

2004–16–11 Boeing: Amendment 39–13767. Docket 2003–NM–83–AD.

Applicability: Model 757–200, –200CB, –200PF, and –300 series airplanes, line numbers 1 through 998 inclusive; and Model 767–200, –300, –300F, and –400ER series airplanes, line numbers 1 through 869 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a cracked hanger arm of the hydraulic pump of the ram air turbine (RAT) that can fracture under load and lead to failure of the RAT to provide hydraulic power to the primary flight control system during an emergency when both engines have failed, which could result in loss of hydraulic power to the primary flight controls and consequent loss of control of the airplane; accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins in Table 1 of this AD, as applicable:

TABLE 1.—SERVICE BULLETINS

Model	Service bulletin	Date
Model 757–200, –200CB, and –200PF series airplanes	Boeing Special Attention Service Bulletin 757–29–0060	September 12, 2002.
Model 757–300 series airplanes	Boeing Special Attention Service Bulletin 757–29–0061	September 12, 2002.
Model 767–200, –300 and –300F series airplanes	Boeing Special Attention Service Bulletin 767–29–0103	September 12, 2002.
Model 767–400ER series airplanes	Boeing Special Attention Service Bulletin 767–29–0106	September 12, 2002.

Note 1: These service bulletins refer to Parker Service Bulletin 6513902–29–305, dated November 30, 2001, as an additional source of service information for the list of affected hydraulic pump serial numbers and for accomplishment of the reworking and reidentifying of the existing hydraulic pump for Model 757 and 767 series airplanes.

Inspection of Serial Number

(b) Within 36 months after the effective date of this AD, do an inspection to determine the serial number of the hydraulic pump in the RAT, per the service bulletin. Instead of inspecting the hydraulic pump in the RAT, a review of airplane maintenance records is acceptable if the serial number of the hydraulic pump can be positively determined from that review.

Corrective Actions

(c) If the hydraulic pump is found to have an affected serial number during the inspection or review of airplane maintenance records required by paragraph (b) of this AD, within 36 months after the effective date of this AD, do the corrective action(s) in either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace the hydraulic pump with a serviceable hydraulic pump that is outside the range of the affected serial numbers, per the service bulletin.

(2) Rework and reidentify the hydraulic pump, per the service bulletin.

Part Installation

(d) As of the effective date of this AD, no person shall install on any airplane a RAT hydraulic pump, Parker part number (P/N) 65139–02 or Hamilton Sunstrand P/N 5903420, with an affected serial number as listed in Parker Service Bulletin 6513902–29–305, dated November 30, 2001, unless it has been modified per paragraph (c)(2) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, 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 the applicable service bulletin listed in Table 2 of this AD:

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Date
Boeing Special Attention Service Bulletin 757–29–0060.	September 12, 2002.
Boeing Special Attention Service Bulletin 757–29–0061.	September 12, 2002.
Boeing Special Attention Service Bulletin 767–29–0103.	September 12, 2002.
Boeing Special Attention Service Bulletin 767–29–0106.	September 12, 2002.

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

Effective Date

(g) This amendment becomes effective on September 13, 2004.

Issued in Renton, Washington, on July 29, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17982 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–107–AD; Amendment 39–13765; AD 2004–16–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Model 747 series airplanes, that requires repetitive detailed inspections of the aft pressure bulkhead for indications of "oil cans" and previous oil can repairs, and corrective actions, if necessary. An oil can is an area on a pressure dome web that moves when pushed from the

forward side. This action is necessary to detect and correct the propagation of fatigue cracks in the vicinity of oil cans on the web of the aft pressure bulkhead, which could result in rapid decompression and overpressurization of the tail section, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 13, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 13, 2004.

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Model 747 series airplanes was published in the **Federal Register** on February 6, 2004 (69 FR 5765). That action proposed to require a repetitive detailed inspection of the aft pressure bulkhead for indications of "oil cans" and previous oil can repairs, and corrective actions, if necessary. An oil can is an area on a pressure dome web that moves when pushed from the forward side.

Comments

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

Agreement With Proposed Rule

Two commenters agree with the proposed rule.

Request To Change Inspection Intervals

One commenter requests that the repetitive inspection intervals be changed. The commenter notes that the initial compliance time of 30,000 total flight cycles specified in paragraph (b) of the proposed rule would impact its fleet within six to seven years. The commenter suggests that the repetitive inspection interval for webs with allowable oil can damage, specified in paragraph (e)(1) of the proposed rule, be changed from 1,000 flight cycles to 1,200 flight cycles. The commenter also suggests that the repetitive inspection interval for webs with no oil can damage, specified in paragraph (c) of the proposed rule, be changed from 2,000 flight cycles to 2,400 flight cycles. The commenter contends that these changes would allow the repetitive inspections to occur during scheduled heavy maintenance C-check level visits.

The FAA does not agree with changing the repetitive inspection intervals. In developing appropriate compliance times for this action, we considered the safety implications, the manufacturer's recommendations, and the practical aspect of accomplishing the inspections within an interval of time that corresponds to the normal maintenance schedules of most affected operators. The manufacturer determined through tests and analysis that existing inspection programs would not have found a crack in the web of the aft pressure bulkhead prior to the crack reaching critical length. The repetitive inspection intervals are based on the manufacturer's analysis of crack growth in the web of the aft pressure bulkhead.

In light of all these factors, we consider the repetitive inspection intervals required by paragraphs (c) and (e)(1) of the final rule to be appropriate. Therefore, no change to the final rule is necessary in this regard. However, according to the provisions of paragraph (h) of the final rule, we may approve a request to adjust the inspection intervals if the request includes data that prove that the new inspection intervals would provide an acceptable level of safety.

Editorial Changes

We have reformatted paragraphs (f)(2) and (f)(3) of the proposed AD by combining the paragraphs. Paragraph (f)(2) of the final rule contains the actions that were specified in paragraphs (f)(2) and (f)(3) of the proposed AD. We have also removed the reference to paragraph (f)(2) from paragraph (e) of the final rule.

Conclusion

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

Cost Impact

There are approximately 1,140 airplanes of the affected design in the worldwide fleet. The FAA estimates that 254 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 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 $99,060, or $390 per airplane, per inspection cycle.

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:

2004–16–09 Boeing: Amendment 39–13765. Docket 2003–NM–107–AD.

Applicability: All Model 747 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD refers to certain portions of a Boeing service bulletin for inspections and repair information. In addition, this AD specifies requirements beyond those included in the service bulletin. Where the AD and the service bulletin differ, the AD prevails.

To detect and correct the propagation of fatigue cracks in the vicinity of "oil cans" on the web of the aft pressure bulkhead, which could result in rapid decompression and overpressurization of the tail section, and consequent loss of control of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002.

Initial and Repetitive Inspections

(b) Prior to the accumulation of 30,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later, perform a detailed inspection of the aft pressure bulkhead for indications of oil cans and previous oil can repairs, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is "an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors magnifying lenses, etc. may be necessary. Surface cleaning and elaborate procedures may be required."

(c) If no indication of an oil can is found and no indication of a previous oil can repair is found during the detailed inspection required by paragraph (b) of this AD, repeat the detailed inspection thereafter at intervals not to exceed 2,000 flight cycles.

Indication of Oil Can

(d) If any indication of an oil can is found during the detailed inspection required by paragraph (b) or (c) of this AD, before further flight, perform an eddy current inspection of the web around the periphery of the oil can indication for cracks, as shown in Figure 3 of the service bulletin.

(e) If no crack is found during the eddy current inspection required by paragraph (d) of this AD, do the actions specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For the oil can that meets the allowable limits specified in the service bulletin: Repeat the eddy current inspection specified in paragraph (d) of this AD thereafter at intervals not to exceed 1,000 flight cycles. As an option, repair the oil can in accordance with paragraph (e)(2) of this AD.

(2) For the oil can that does not meet the allowable limits specified in the service bulletin: Before further flight, repair the oil can in accordance with the service bulletin. If the repair eliminates the oil can, accomplishment of this repair constitutes terminating action for the repetitive eddy current inspection requirements of paragraph (e)(1) of this AD for that location only. However, the repetitive detailed inspection required by paragraph (c) of this AD is still required. If any oil can remains after the repair, repeat the eddy current inspection specified in paragraph (d) of this AD thereafter at intervals not to exceed 1,000 flight cycles.

Indication of Previous Oil Can Repairs

(f) If any previous oil can repair is found during the detailed inspection required by paragraph (b) or (c) of this AD, before further flight, do a detailed inspection of the web for cracks and oil cans, as shown in Figure 4 or Figure 5 of the service bulletin, as applicable.

(1) If no crack and no oil can are found, repeat the detailed inspection in accordance with paragraph (c) of this AD.

(2) If any oil can is found, before further flight, do the eddy current inspection for cracks, as shown in Figure 3 of the service bulletin. If no crack is found during the eddy current inspection required by this paragraph, do the actions specified in paragraph (e)(1) or (e)(2) of this AD, as applicable, at the time specified in the applicable paragraph.

Repair of Cracks

(g) If any crack is found during any inspection required by this AD, before further flight, repair in accordance with the service bulletin. If any crack or damage exceeds limits specified in the service bulletin and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(i) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2482, dated October 3, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(j) This amendment becomes effective on September 13, 2004.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17979 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–132–AD; Amendment 39–13769; AD 2004–16–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This AD requires an inspection to determine the serial number of the spoiler lift dump valves installed on the inboard and outboard spoilers, and replacement of certain spoiler lift dump valves. This AD also provides for revising the airplane flight manual to include performance penalties, which

allows the replacement of affected spoiler lift dump valves to be deferred. This action is necessary to prevent failure of the ground spoilers to deploy on the ground, which could result in overrunning the end of the runway in the event of a rejected takeoff. This action is intended to address the identified unsafe condition.

DATES: Effective September 13, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of September 13, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–400, –401, and –402 airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10375). That action proposed to require an inspection to determine the serial number of the spoiler lift dump valves installed on the inboard and outboard spoilers, and replacement of certain spoiler lift dump valves. That action also proposed to provide for revising the airplane flight manual to include performance penalties, which would allow the replacement of affected spoiler lift dump valves to be deferred.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has duly considered the comments received.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Give Credit for Original Issue of Service Bulletin

One commenter requests that we give credit for accomplishing the proposed actions per the original issue of Bombardier Service Bulletin 84–27–12, dated September 7, 2001. The commenter states that doing the original issue of the service bulletin achieves the same intent as the later revision of the service bulletin, which is referenced in the proposed AD as the appropriate source of service information for the proposed actions, and no additional work is specified in the later revision of the service bulletin.

We concur that actions required by this AD that were done before the effective date of this AD per the original issue of Bombardier Service Bulletin 84–27–12 are acceptable for compliance with the corresponding requirements of this AD.

In addition, we have become aware that there are two identical service bulletins identified as Bombardier Service Bulletin 84–27–12, Revision "A"—one dated December 12, 2001 (as referenced in the proposed AD), and one dated October 23, 2003. Bombardier investigated this discrepancy and determined that Revision "A" of the service bulletin, dated December 12, 2001, was sent to Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, for review and concurrence at the same time the Canadian airworthiness directive was issued. TCCA concurred with Revision "A" of the service bulletin; however, Bombardier did not receive a written acceptance of Revision "A" at that time. Thus, Revision "A" of the service bulletin was on hold and wasn't released until Bombardier requested and received a written confirmation of TCCA's acceptance of the service bulletin in October 2003. Revision "A" of the service bulletin was officially released on October 23, 2003. However, we recognize that it is possible that members of the public may have copies of Revision "A" of the service bulletin bearing the date December 12, 2001. Thus, we find it necessary to provide credit for actions done per Revision "A" of the service bulletin, dated December 12, 2001. Accordingly, we have revised paragraphs (a) and (b)(1) and Note 1 of this AD to refer to Revision "A" of the service bulletin, dated October 23, 2003, as the acceptable source of service information for the actions required by those paragraphs. We have also added a new paragraph (d), and re-identified subsequent paragraphs accordingly, to give credit for actions done per the original issue of the service bulletin, or Revision "A," dated December 12, 2001.

Conclusion

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

Cost Impact

We estimate that 10 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection to determine the serial number of the spoiler lift dump valves, 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 $650, or $65 per airplane.

For airplanes equipped with spoiler lift dump valves in the affected serial number range, it will take approximately 2 work hours per airplane to accomplish the required replacement, at an average labor rate of $65 per work hour. Required parts will be provided by the parts manufacturer at no charge. Based on these figures, the cost impact of this replacement is estimated to be $130 per airplane.

Should an operator elect to accomplish the AFM revision that allows deferral of the replacement, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AFM revision, if accomplished, will be $65 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:

2004–16–13 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13769. Docket 2002–NM–132–AD.

Applicability: Model DHC–8–400, –401, and –402 airplanes; serial numbers 4005, 4006, 4008 through 4015 inclusive, and 4018 through 4052 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the ground spoilers to deploy on the ground, which could result in overrunning the end of the runway in the event of a rejected takeoff, accomplish the following:

Inspection To Determine Serial Number

(a) Within 45 days after the effective date of this AD, perform a one-time inspection of the spoiler lift dump valves on the inboard and outboard spoilers to determine the serial number, per Bombardier Service Bulletin 84–27–12, Revision "A," dated October 23, 2003.

(1) For any spoiler lift dump valve with a serial number from 5164 through 5264 inclusive or 5267 through 5279 inclusive, accomplish paragraph (b) of this AD.

(2) For any spoiler lift dump valve with a serial number outside the ranges specified in paragraph (a)(1) of this AD, no further action is required by this paragraph.

Replacement of Spoiler Lift Dump Valves

(b) For any spoiler lift dump valve with a serial number from 5164 through 5264 inclusive or 5267 through 5279 inclusive: Accomplish paragraph (b)(1) or (b)(2) of this AD.

(1) Except as provided by paragraph (b)(2) of this AD: Before further flight after the inspection required by paragraph (a) of this AD, replace the affected spoiler lift dump valve with a new or serviceable valve that has a serial number outside the range specified in paragraph (a)(1) of this AD, or with a valve having a serial number with the suffix "A," which indicates that the valve has been modified to correct the defect. Do this replacement per Bombardier Service Bulletin 84–27–12, Revision "A." dated October 23, 2003.

Note 1: Bombardier Service Bulletin 84–27–12, Revision "A." dated October 23, 2003, refers to Parker Service Bulletin 395800–27–229, dated September 11, 2001, as an additional source of service information for accomplishing the replacement of the spoiler lift dump valves. The Parker service bulletin is included within the Bombardier service bulletin.

(2) Do paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Before further flight after the inspection required by paragraph (a) of this AD, revise the Limitations section of the de Havilland DHC–8–400 airplane flight manual (AFM) to include the information on performance penalties included in Table 1 of this AD. This may be accomplished by inserting a copy of this AD into the AFM.

TABLE 1.—PERFORMANCE PENALTY FOR SUSPECT LIFT DUMP VALVES

Accelerate—Stop Distance		
Flap 5°	Increase 2%	(Figures 5–5–4 and 5–5–5).
Flap 10°	Increase 2%	(Figures 5–5–9 and 5–5–10).
Flap 15°	Increase 3%	(Figures 5–5–14 and 5–5–15).
Landing Distance		
Flap 10°	Increase 3%	(Figures 5–11–1 and 5–11–4).
Flap 15°	Increase 5%	(Figures 5–11–2 and 5–11–4).
Flap 35°	Increase 11%	(Figures 5–11–3 and 5–11–4).

(ii) Within 6 months after the effective date of this AD, do paragraph (b)(1) of this AD. Once the requirements of paragraph (b)(1) of this AD have been accomplished, the AFM revision required by paragraph (b)(2)(i) of this AD may be removed from the AFM.

Parts Installation

(c) As of the effective date of this AD, no person may install a spoiler lift dump valve having a serial number listed in paragraph (a)(1) of this AD, unless the valve's serial number includes a suffix of "A" to indicate that it has been modified to remove the defect that is the subject of this AD.

Actions Accomplished per Previous Issues of Service Bulletin

(d) Actions accomplished before the effective date of this AD per Bombardier Service Bulletin 84–27–12, dated September 7, 2001; and actions accomplished per Bombardier Service Bulletin 84–27–12, Revision "A," dated December 12, 2001; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 84–27–12, Revision "A," dated October 23, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–44, dated December 3, 2001.

Effective Date

(g) This amendment becomes effective on September 13, 2004.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17980 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–284–AD; Amendment 39–13770; AD 2004–16–14]

RIN 2120–AA64

Airworthiness Directives; Thales Avionics Traffic Advisory/Resolution Advisory (TA/RA) Vertical Speed Indicator—Traffic Alert and Collision Avoidance System (VSI–TCAS) Indicators, Installed on But Not Limited to Certain Transport Category Airplanes Equipped With TCAS II Change 7 Computers (ACAS II)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Thales Avionics TA/RA VSI–TCAS indicators, installed on but not limited to certain transport category airplanes equipped with TCAS II change 7 computers (ACAS II), that requires a revision to the airplane flight manual (AFM) to advise the flightcrew to follow the audio annunciation when an RA fail message is triggered during a multi-aircraft encounter. This action also requires modification of the software for the TA/RA VSI–TCAS indicator, which would terminate the requirement for the AFM revision. This action is necessary to prevent the TA/RA VSI–TCAS indicator from displaying a conflicting "RA FAIL" message during a multi-aircraft encounter, which could result in the flightcrew ignoring the correct aural command and traffic display information if the flightcrew believes the TCAS II computer has malfunctioned, and consequently lead to a mid-air collision with other aircraft. This action is intended to address the identified unsafe condition.

DATES: Effective September 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Thales Avionics, Air Transport Avionics, 105 avenue du Général Eisenhower, BP 1147, 31036 Toulouse Cedex 1, France; or Thales Avionics, Regional and Business Aircraft Avionics, 105 avenue du Général Eisenhower, BP 1147, 31036 Toulouse Cedex 1, France; or Thales Avionics, Avionics for Military Aircraft, Rue Toussaint Catros, 33187 Le Haillan Cedex, France. 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 FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

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 Thales Avionics TA/RA VSI–TCAS indicators, installed on but not limited to certain transport category airplanes equipped with TCAS II change 7 computers (ACAS II) was published in the **Federal Register** on May 7, 2004 (69 FR 25514). That action proposed to require a revision to the airplane flight manual (AFM) to advise the flightcrew to follow the audio annunciation when an RA fail message is triggered during a multi-aircraft encounter. That action also proposed to require modification of the software for the TA/RA VSI–TCAS indicator, which would terminate the requirement for the AFM revision.

Comments

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

Request To Add New Part Number (P/N)

One commenter states that French airworthiness directive F–2004–042, dated March 31, 2004, which is referenced in the FAA's proposed AD, has been superseded by French airworthiness directive F–2004–053, dated April 14, 2004. The commenter also states that the superseding French airworthiness directive adds missing P/N 457400SB0711. We infer that the commenter requests that we add this missing part number to the final rule.

While we agree with the intent of the inferred request, no change to this final rule is necessary in this regard, since P/N 457400SB0711 is already included in the applicability of this AD. Furthermore, in the preamble of the proposed AD, we explained that affected P/N 457400SB0711, as listed in Thales Avionics Service Bulletin 457400–34–083, Revision 03, dated January 26, 2004, was inadvertently omitted from French airworthiness directive F–2004–042. We had determined that the omitted part number is subject to the same unsafe condition of the proposed AD and, therefore, had included it in Table 1 of the proposed AD. Additionally, we mentioned that the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, had informed us of its plan to revise French airworthiness directive F–2004–042 to include the omitted part number. Therefore, we have revised this final rule to reference the revised French airworthiness directive F–2004–053, dated April 14, 2004.

Request To Revise Service Bulletin References

The same commenter notes that while the proposed AD references the current revision level and date of each vendor service bulletin, the French airworthiness directive does not reference any revision level. The commenter states that the French airworthiness directive specifies instead that the latest revision of the vendor service bulletin is acceptable for compliance. The commenter also notes that if a service bulletin needs to be

revised in the future, then a revision to this AD would also be necessary. We infer that the commenter requests we revise the service bulletin references in this AD to specify that use of "later FAA-approved revisions" is acceptable for compliance with this AD.

We do not agree with the inferred request. When referencing a specific service bulletin in an AD, using the phrase, "later FAA-approved revisions," violates Office of the Federal Register regulations for approving materials that are incorporated by reference. However, affected operators may request approval to use a later revision of a referenced service bulletin as an alternative method of compliance (AMOC), in accordance with paragraph (c) of this AD.

Request To Confirm Affected Part Numbers

One commenter requests that we confirm the validity of P/N 457400GA1311 and P/N 457400GB1311. The commenter states that, although these part numbers are listed in Table 1 of the proposed AD, they are not listed in the effectivity of the referenced Thales Avionics Service Bulletin 457400–34–083, Revision 03, dated January 26, 2004. The commenter notes that it has contacted the manufacturer regarding this issue. If the manufacturer agrees that these two part numbers were overlooked and consequently publishes a revised service bulletin, the commenter asks that we consider referencing the latest revision of that service bulletin in this AD. The commenter believes this will ensure synchronization between the service bulletin and the proposed AD, eliminating any confusion in complying with the proposed AD.

We do not agree that any further action is warranted, since the applicability of an AD takes precedence over the effectivity listed in any service bulletin. Although we recognize that P/Ns 457400GA1311 and 457400GB1311 are not listed in the effectivity of Thales Avionics Service Bulletin 457400–34–083, as referenced in this AD, these affected part numbers are included in the applicability of this AD. In developing this AD, we coordinated with the DGAC to identify the applicability as all Thales Avionics TA/RA VSI–TCAS indicators, with P/N 457400-(*), except P/Ns 457400GA1502, 457400GB1502, 457400MA1502, 457400MB1502, 457400ZA1502, and 457400ZB1502, installed on but not limited to certain transport category airplanes equipped with TCAS II change 7 computers (ACAS II). Moreover, paragraph 3.3 of French airworthiness directive F–2004–042, dated March 31, 2004, lists affected P/Ns 457400GA1311 and 457400GB1311 and references Thales Avionics Service Bulletin 457400–34–083 as the appropriate source of service information for accomplishing the software modification for these TA/RA VSI–TCAS indicators. If Thales Avionics Service Bulletin 457400–34–083 is revised, affected operators may request AMOC approval to use the later revision of the Thales Avionics service bulletin, in accordance with paragraph (c) of this AD.

Conclusion

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

Cost Impact

We do not know how many aircraft, equipped with Thales Avionics TA/RA VSI–TCAS indicators and TCAS II change 7 computers (ACAS II), of the affected design are in the worldwide fleet or on the U.S. Register. We do, however, know that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts, for 2 TCAS displays per airplane, will cost approximately between $1,316 and $1,826 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $1,446 and $1,956 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:

2004–16–14 Thales Avionics (Formerly Sextant Avionique): Amendment 39–13770. Docket 2002–NM–284–AD.

Applicability: Thales Avionics traffic advisory/resolution advisory (TA/RA) vertical speed indicator-traffic alert and collision avoidance system (VSI–TCAS) indicators, part number (P/N) 457400-(*), except P/Ns 457400GA1502, 457400GB1502, 457400MA1502, 457400MB1502, 457400ZA1502, and 457400ZB1502, installed on but not limited to Airbus Model A300 B2, A300 B4, and A310 series airplanes; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes; and Aerospatiale Model ATR42 and ATR72 series airplanes; certificated in any category; equipped with TCAS II change 7 computers (ACAS II).

Compliance: Required as indicated, unless accomplished previously.

To prevent the TA/RA VSI–TCAS indicator from displaying a conflicting "RA FAIL" message during a multi-aircraft encounter, which could result in the flightcrew ignoring the correct aural command and traffic display

information if the flightcrew believes the TCAS II computer has malfunctioned, and consequently led to a mid-air collision with other aircraft; accomplish the following:

Revision of the Airplane Flight Manual (AFM)

(a) Within 15 days after the effective date of this AD, revise the Limitations Section of the AFM to include the following statement (this may be accomplished by inserting a copy of this AD into the AFM):

"Limitation:"

When the TA/RA VSI–TCAS indicates an RA fail message, the flightcrew must follow the audio annunciation "Maintain Vertical Speed, Maintain" until "clear of the conflict" audio annunciation has occurred.

Note: When a preventive Don't Climb/Don't Descend resolution advisory (RA) is triggered by simultaneous, multi-aircraft encounter configuration, the TA/RA VSI–TCAS may indicate an RA fail message. The audio annunciation "Maintain Vertical Speed, Maintain" and traffic display information are correct. In this specific case, the flightcrew must follow the audio annunciation and, therefore, maintain the vertical speed until clearance of the conflict condition has occurred."

Note 1: When a statement identical to that in paragraph (a) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Software Modification

(b) Within 48 months after the effective date of this AD, modify the software for the TA/RA VSI–TCAS indicator by accomplishing all the actions specified in the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD. Doing this modification terminates the requirements of paragraph (a) of this AD. After accomplishing the modification, the AFM limitation required by paragraph (a) of this AD may be removed from the AFM.

TABLE 1.—APPLICABLE SERVICE BULLETIN

P/N	Thales Avionics service bulletin	Revision level	Date
457400EA0311, 457400EB0311, 457400FA0311, 457400FB0311	457400–34–083	03	January 26, 2004.
457400GA0011	457400–34–085	00	February 5, 2004.
457400GA0311, 457400GA0602, 457400GA0911, 457400GA1100, 457400GA1311, 457400GA1312.	457400–34–083	03	January 26, 2004.
457400GA1900	457400–34–082	Original	November 28, 2002.
457400GB0011	457400–34–085	00	February 5, 2004.
457400GB0911, 457400GB1100, 457400GB1311, 457400GB1312	457400–34–083	03	January 26, 2004.
457400GB1900	457400–34–082	Original	November 28, 2002.
457400GB2000	457400–34–084	02	December 19, 2003.
457400GB2100, 457400HA1900, 457400JA1900, 457400KA0602, 457400KA1311, 457400KA1900, 457400KB1311, 457400KB1900.	457400–34–083	03	January 26, 2004.
457400LA2000	457400–34–084	02	December 19, 2003.
457400MA0602, 457400MA1311, 457400MB1311, 457400PA1900, 457400PB1900, 457400RA0711, 457400RB0711, 457400SA0711, 457400SB0711, 457400TB0811, 457400TC0811, 457400UA1311, 457400UA1900, 457400UB1900, 457400UB1311, 457400WA0811, 457400WB0811, 457400ZA1900.	457400–34–083	03	January 26, 2004.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletin listed in the following table:

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Thales Avionics Service Bulletin 457400–34–082	Original	November 28, 2002.
Thales Avionics Service Bulletin 457400–34–083	03	January 26, 2004.
Thales Avionics Service Bulletin 457400–34–084	02	December 19, 2003.
Thales Avionics Service Bulletin 457400–34–085	00	February 5, 2004.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Thales Avionics, Air Transport Avionics, 105 avenue du Général Eisenhower, BP 1147, 31036 Toulouse Cedex 1, France; or Thales Avionics, Regional and Business Aircraft Avionics, 105 avenue du Général Eisenhower, BP 1147, 31036 Toulouse Cedex 1, France; or Thales Avionics, Avionics for Military Aircraft, Rue Toussaint Catros, 33187 Le Haillan Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in French airworthiness directive F–2004–053, dated April 14, 2004.

Effective Date

(e) This amendment becomes effective on September 13, 2004.

Issued in Renton, Washington, on July 30, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–17981 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17722; Airspace Docket No. 04–ACE–34]

Modification of Class E Airspace; McCook, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at McCook, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 27, 2004 (69 FR 30193). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18067 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18012; Airspace Docket No. 04–ACE–41]

Modification of Class E Airspace; Chadron, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Chadron, NE.

DATES: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 23, 2004 (69 FR 34916). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18064 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17912; Airspace Docket No. 04–ACE–38]

Modification of Class E Airspace; Wayne, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Wayne, NE

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 14, 2004 (69 FR 32861). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18070 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17725; Airspace Docket No. 04–ACE–37]

Modification of Class E Airspace; Wahoo, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Wahoo, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on May 28, 2004 (69 FR 30571). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18069 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17721; Airspace Docket No. 04–ACE–33]

Modification of Class E Airspace; Mosby, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Mosby, MO.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on May 25, 2004 (69 FR 29651). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18068 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17724; Airspace Docket No. 04–ACE–36]

Modification of Class E Airspace; Ogallala, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Ogallala, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 28, 2004 (69 FR 30572). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18066 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17723; Airspace Docket No. 04–ACE–35]

Modification of Class E Airspace; North Platte, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at North Platte, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 28, 2004 (69 FR 30573) and again on June 1, 2004 (69 FR 30818). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18065 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17429; Airspace Docket No. 04–ACE–28]

Modification of Class E Airspace; Scottsbluff, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Scottsbluff, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–502A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 9, 2004 (69 FR 32255). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18063 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18011; Airspace Docket No. 04–ACE–40]

Modification of class E Airspace; Lexington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Lexington, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 18, 2004 (69 FR 34061). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulations would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18062 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18010; Airspace Docket No. 04–ACE–39]

Modification of Class E Airspace; Broken Bow, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Broken Bow, NE.

EFFECTIVE DATE: 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 18, 2004 (69 FR 34060). The **Federal Register** subsequently published a correction to the direct final rule on June 28, 2004 in the Corrections Section (69 FR 36164–37162). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 29, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–18061 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30420; Amdt. No. 3102]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 9, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By *Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight

safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 30, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective September 30, 2004

Prescot, AZ, Ernest A. Love Field, RNAV (GPS) Rwy 21L, Amdt 1
Corning, AR, Corning Muni, RNAV (GPS) Rwy 18, Orig
Corning, AR, Corning Muni, RNAV (GPS) Rwy 36, Orig
Corning, AR, Corning Muni, GPS Rwy 18, Orig–A, Cancelled
Corning, AR, Corning Muni, GPS Rwy 36, Orig–A, Cancelled
Corning, AR, Corning Muni, VOR/DME–A, Amdt 2
Magnolia, AR, Magnolia Muni, RNAV (GPS) Rwy 18, Orig
Magnolia, AR, Magnolia Muni, RNAV (GPS) Rwy 36, Orig
Magnolia, AR, Magnolia Muni, GPS Rwy 18, Amdt 1, Cancelled
Magnolia, AR, Magnolia Muni, GPS Rwy 36, Amdt 1, Cancelled
Rogers, AR, Rogers Municipal-Carter Field, RNAV (GPS) Rwy 1, Orig
Rogers, AR, Rogers Municipal-Carter Field, GPS Rwy 1, Orig–A, Cancelled
Rogers, AR, Rogers Municipal-Carter Field, NDB Rwy 19, Amdt 1
Rogers, AR, Rogers Municipal-Carter Field, ILS or LOC Rwy 19, Amdt 3
Rogers, AR, Rogers Municipal-Carter Field, RNAV (GPS) Rwy 19, Orig
Alturas, CA, Alturas Muni, RNAV (GPS) Rwy 31, Orig
Alturas, CA, Alturas Muni, GPS Rwy 31, Orig–A, Cancelled
Oakland, CA, Metropolitan Oakland Intl, VOR Rwy 9R, Amdt 8
Oakland, CA, Metropolitan Oakland Intl, VOR/DME Rwy 27L, Amdt 11B
San Luis Obispo, CA, San Luis County Regional, VOR or TACAN–A, Amdt 6B
Vacaville, CA, Nut Tree, RNAV (GPS) Rwy 20, Orig
Vacaville, CA, Nut Tree, VOR–A, Amdt 4B
Vacaville, CA, Nut Tree, GPS Rwy 20, Amdt 1B, Cancelled
Tallahassee, FL, Tallahassee Regional, RADAR–1, Amdt 5
Tallahassee, FL, Tallahassee Regional, NDB Rwy 36, Amdt 20
Tallahassee, FL, Tallahassee Regional, VOR Rwy 18, Amdt 11
Tallahassee, FL, Tallahassee Regional, ILS or LOC/DME Rwy 36, Amdt 24
Tallahassee, FL, Tallahassee Regional, ILS or LOC Rwy 27, Amdt 8; ILS Rwy 27 (CAT II), Amdt 8
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) Rwy 36, Orig
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) Rwy 18, Orig
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) Rwy 9, Amdt 1
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) Rwy 27, Amdt 1
Arco, ID, Arco-Butte County, RNAV (GPS)–A, Orig
Sandpoint, ID, Sandpoint, LOC/DME–A, Amdt 1
Marion, IN, Marion Muni, RNAV (GPS) Rwy 4, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Y Rwy 19, Orig–A
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Z Rwy 19, Orig–A
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS or LOC Rwy 28, Amdt 6
New Orleans, LA, Louis Armstrong New Orleans Intl, RNAV (GPS) Rwy 28, Orig–A
Tupelo, MS, Tupelo Regional, ILS or LOC Rwy 36, Amdt 7D
St. Louis, MO, Lambert-St. Louis Intl, ILS or LOC Rwy 6, Amdt 1
St. Louis, MO, Lambert-St. Louis Intl, ILS or LOC Rwy 24, Amdt 46
Polson, MT, Polson, RNAV (GPS) Rwy 18, Orig
Polson, MT, Polson, RNAV (GPS) Rwy 36, Orig
Stevensville, MT, Stevensville, GPS–A, Orig–A, Cancelled
Stevensville, MT, Stevensville, RNAV (GPS)–A, Orig
Lexington, NE, Jim Kelly Field, VOR Rwy 14, Amdt 4
Lexington, NE, Jim Kelly Field, NDB Rwy 14, Amdt 3
Lexington, NE, Jim Kelly Field, RNAV (GPS) Rwy 14, Orig
Lexington, NE, Jim Kelly Field, RNAV (GPS) Rwy 32, Orig
Lexington, NE, Jim Kelly Field, GPS Rwy 32, Orig–A, Cancelled
Belen, NM, Alexander Muni, RNAV (GPS) Rwy 21, Orig
Belen, NM, Alexander Muni, GPS Rwy 21, Orig, Cancelled
Clovis, NM, Clovis Muni, RNAV (GPS) Rwy 4, Orig
Clovis, NM, Clovis Muni, RNAV (GPS) Rwy 22, Orig
Clovis, NM, Clovis Muni, RNAV (GPS) Rwy 30, Orig
Clovis, NM, Clovis Muni, GPS Rwy 4, Orig, Cancelled
Clovis, NM, Clovis Muni, GPS Rwy 22, Orig–A, Cancelled
Clovis, NM, Clovis Muni, GPS Rwy 30, Amdt 1, Cancelled
Tucumcari, NM, Tucumcari Muni, RNAV (GPS) Rwy 3, Orig
Tucumcari, NM, Tucumcari Muni, GPS Rwy 3, Orig–A, Cancelled
Tucumcari, NM, Tucumcari Muni, RNAV (GPS) Rwy 21, Orig
Tucumcari, NM, Tucumcari Muni, VOR Rwy 21, Amdt 6

Tucumcari, NM, Tucumcari Muni, RNAV (GPS) Rwy 26, Orig
Tucumcari, NM, Tucumcari Muni, VOR Rwy 26, Amdt 6
Punxsutawney, PA, Punxsutawney Muni, RNAV (GPS) Rwy 25, Orig
Punxsutawney, PA, Punxsutawney Muni, VOR/DME–A, Amdt 1
Isla De Vieques, PR, Antonio Rivera Rodriguez, RNAV (GPS) Rwy 9, Amdt 1A
Eastland, TX, Eastland Muni, RNAV (GPS) Rwy 35, Amdt 1
Palestine, TX, Palestine Muni, VOR/DME Rwy 18, Amdt 5
Palestine, TX, Palestine Muni, NDB Rwy 18, Amdt 4
Palestine, TX, Palestine Muni, RNAV (GPS) Rwy 18, Orig
Palestine, TX, Palestine Muni, NDB Rwy 36, Amdt 8
Palestine, TX, Palestine Muni, RNAV (GPS) Rwy 36, Amdt 1
Petersburg, VA, Dinwiddie County, VOR Rwy 23, Amdt 5
Petersburg, VA, Dinwiddie County, LOC Rwy 5, Amdt 1
Petersburg, VA, Dinwiddie County, NDB Rwy 5, Amdt 5
Petersburg, VA, Dinwiddie County, RNAV (GPS) Rwy 5, Orig
Petersburg, VA, Dinwiddie County, RNAV (GPS) Rwy 23, Orig

[FR Doc. 04–17927 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 2002N–0500]

General and Plastic Surgery Devices; Classification of Silicone Sheeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying silicone sheeting intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars into class I (general controls). As a class I device, the device will be exempt from premarket notification requirements. This action is taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Devices User Fee Modernization Act of 2002 (MDUFMA).

DATES: This rule is effective September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Sam R. Arepelli, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 20, 2003 (68 FR 13639), FDA issued a proposed rule to classify silicone sheeting intended to manage hyperproliferative scars on intact skin into class I based on available information regarding this device, including the recommendation of the General and Plastic Surgery Devices Panel (the Panel). The device is intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars. FDA invited interested persons to comment on the proposed rule by June 18, 2003.

II. Summary of the Comments and FDA's Response

FDA received two comments on the proposed rule. One comment supported the proposed classification. The other comment expressed concerns about the proposal to classify the device into class I and exempt it from premarket notification. The comment recommended that FDA require premarket notification for silicone sheeting as recommended by the Panel. Specifically:

1. The comment stated that the proposed classification conflicts with the July 8, 2002, Panel recommendation of classification into class I subject to general controls, including premarket notification.

We agree that the Panel's recommendation was that this device be classified into class I subject to general controls, including premarket notification. Under the act, however, class I devices are presumptively exempt from premarket notification unless the class I device is "intended for a use which is of substantial importance in preventing impairment of human health," or "presents a potential unreasonable risk of illness or injury" (section 510(l) of the act (21 U.S.C. 360(l))). In response to the specific question of whether this device is "for a use which is of substantial importance in preventing impairment of human health," the Panel responded no. In response to the question of whether the device "present[s] a potential unreasonable risk of illness or injury," the Panel again responded no. Thus, although the Panel's recommendation was that FDA require premarket notification, when asked whether the device presented the specific characteristics that would prevent exempting the device from premarket notification under section 510(l) of the act, the Panel's response was no.

As discussed in the proposed rule (68 FR 13639), FDA's experience with similar device types, specifically four other types of wound dressings, has demonstrated that classification as class I and exemption from premarket notification provide a reasonable assurance of safety and effectiveness. FDA believes that its experience with these devices is directly relevant to this determination and supports the exemption of this device from premarket notification. As discussed later in this document, FDA also believes this device presents a low risk to health and that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device.

Finally, FDA is not required to follow the Panel's recommendations, (section 513(b)(7) of the act (21 U.S.C. 360c(b)(7))) and for the reasons outlined in this preamble, FDA has determined that exempting this device from premarket notification requirements is appropriate.

2. The comment also stated that there is insufficient valid scientific evidence from prospective randomized clinical trials that: (1) Shows that the device is effective in either alleviating the symptoms or improving the appearance of hypertrophic or keloid scars, and (2) explains the device's mechanism of action. The comment further stated that keloid scars are more common among African-Americans and Asian-Americans and that no studies have investigated the effectiveness of silicone sheeting on a representative number of individuals across racial, sexual, or age categories.

FDA agrees in part. FDA reviewed the cited literature relating to this comment, as well as all other publicly available information on the device type. FDA acknowledges that the literature on this preamendments device does not demonstrate that silicone sheeting alone alleviates the symptoms or improves the appearance of hypertrophic or keloid scars, and that the literature does not focus on the performance of the device in specific ethnic or racial groups.

Consistent with the Panel's recommendation, however, FDA believes that class I is the appropriate classification for silicone sheeting

intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars. This device is used in conjunction with other standard scar care treatments and provides a physical barrier between the scar and the environment, keeping the scar moist and clean, thus contributing to an improved overall outcome for the patient. The comment on the lack of consensus on the precise mechanism for action does not bear upon the safety or effectiveness of the device. The panel did discuss whether this device is appropriate for use on open wounds, however. To address these concerns, FDA has amended the intended use statement to more clearly reflect that the device is to be used in the management of closed scars.

FDA also notes that silicone sheeting for this particular intended use has a long history of safe use and that the risks to health posed by the use of the device are low. In fact, the Panel did not identify any risks to health associated with its use. Moreover, there have been only two medical device adverse event reports for this device over a span of several decades of use. The agency believes that classifying the device as class I and exempting it from premarket notification is appropriate for a device that poses a low risk to health and that is used in conjunction with other standard treatments.

3. The comment stated that FDA should consider the risks of off-label uses of silicone sheeting and stated that the device is marketed to surgeons as intended for use in the repair of fractured orbital floors, among other uses. The comment continued

"[i]f manufacturers are permitted to market silicone sheeting for any use, without any proof of safety, then the public's health is at risk. The labeling requirements in a premarket notification provide some measure of assurance. If silicone sheeting is classified as class I, there will be fewer safeguards to protect patients."

FDA disagrees with this part of the comment for the following reasons:

• This comment appears to misunderstand the scope of this classification and exemption. FDA has classified into class I and exempted only silicone sheeting intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars. Silicone sheeting for other intended uses would be subject to a limitations of exemptions analysis under section 510(l) of the act and § 878.9 (21 CFR 878.9). Under this regulation, a premarket notification must be submitted when a device is intended for a use different from the intended use of a legally marketed device in that "generic type" of device (§ 878.9(a)). Thus, silicone sheeting for other intended uses may be required to submit a premarket notification. Certain uses could require a premarket approval application (PMA). This action does not authorize manufacturers to market silicone sheeting for any use other than the intended use stated in the device identification.

• The comment also states that the labeling requirements in a premarket notification provide some measure of assurance. FDA agrees that proposed labeling is required as part of the premarket notification submission (21 CFR 807.87(e)); however, the proposed labeling is submitted only as a means of describing the device and its intended use for the purpose of making a substantial equivalence determination (section 513(i)(1)(E) of the act (21 U.S.C. 360c(i)(1)(E)).

Section 513(i)(1)(E) of the act also states that, as part of a substantial equivalence determination, FDA may require information in the labeling regarding an off-label use if there is a reasonable likelihood that the device will be used for an intended use not identified in the proposed labeling for the device and that such use could cause harm. In the case of silicone sheeting intended for use in the management of closed hyperproliferative scars, however, FDA does not believe that the criteria in section 513(i)(1)(E) of the act would be met. The widespread availability of medical grade silicone materials make it unlikely that silicone sheeting intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars will contribute to any significant off-label use.

The adulteration and misbranding provisions of the act (sections 501 and 502 of the act (21 U.S.C. 351 and 352)) will help ensure that the device is appropriately labeled and has a reasonable assurance of safety and effectiveness. These provisions are applicable to all devices, including class I devices exempt from premarket notification. If these provisions are violated, FDA has the authority to take enforcement action.

4. The comment stated that the proposed intended use of the device in the proposed identification statement regarding use "on hyperproliferative (hypertrophic) scars on intact skin" is inconsistent because hypertrophic scars are considered as compromised (not intact) skin.

FDA partially agrees. On further review of the panel transcript, FDA believes that the intent of the panel was for use of the device "on closed hyperproliferative (hypertrophic and keloid) scars." FDA is accordingly revising the identification to "Silicone sheeting is intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars."

5. Lastly, the comment urged that "as an implanted product" this device should be classified into class III.

FDA notes that the device classified is not an implanted product, but rather one intended for topical use on closed scars. Thus, this comment is not applicable to the device being classified.

III. FDA's Conclusion

Based on a review of the available information in the preamble to the proposed rule and placed on file in FDA's Division of Dockets Management and for the reasons stated previously, FDA concludes that general controls will provide reasonable assurance of the safety and effectiveness of silicone sheeting intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars. Therefore, FDA is classifying the device into class I.

Also, based on the reasons discussed previously, FDA believes that premarket notification is not required to provide a reasonable assurance of the safety and effectiveness of this device. Additionally, FDA believes that silicone sheeting intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars does not meet the reserved criteria in section 510(l) of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement isrequired.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency

believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As noted previously, FDA may classify devices into one of three regulatory classes according to the degree of control needed to provide reasonable assurance of safety and effectiveness. FDA is classifying this device into class I, the lowest level of control allowed. In addition, the device is exempt from premarket notification requirements. The agency, therefore, certifies that this final rule will not have a significant impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount. In addition, it will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

List of Subjects in 21 CFR Part 878

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4025 is added to subpart E to read as follows:

§ 878.4025 Silicone sheeting.

(a) *Identification.* Silicone sheeting is intended for use in the management of closed hyperproliferative (hypertrophic and keloid) scars.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

Dated: July 28, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–18074 Filed 8–6–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL59

Compensation for Certain Cases of Bilateral Deafness

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning how to rate claims of veterans with bilateral hearing impairment when hearing loss in one ear is service connected and hearing loss in the other ear is not. The amendment is necessary to implement a statutory provision of the Veterans Benefits Act of 2002, which will now factor in nonservice-connected hearing loss of one ear when hearing loss in the other ear is service connected and hearing loss manifests to a specified degree. This enables VA to pay compensation for such claims as if the combined hearing loss in both ears is service connected. These amendments are non-substantive because they are restatements of statutes and interpretive rules.

DATES: *Effective Date:* In accordance with statutory provisions, these amendments to 38 CFR 3.383(a)(3) are effective December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave, NW., Washington, DC 20420 telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: On December 6, 2002, the Veterans Benefits Act of 2002, Public Law 107–330 (the Act), was enacted. Certain provisions of the Act directly affect the payment of VA compensation or pension benefits. Section 103 of the Act altered the level at which compensation is payable to a veteran for hearing impairment when both ears are affected.

When veterans have a specified degree of disability that is service connected in certain organs or extremities and there is nonservice-connected disability affecting the corresponding "paired" organ or extremity, section 1160 of title 38, United States Code, authorizes VA to pay disability compensation as if the combination of service- and non-service connected disabilities in those paired organs or extremities were service connected. Bilateral deafness is covered by this statute. Prior to the Act, 38 U.S.C. 1160(a)(3) authorized VA to pay compensation as if deafness in both ears were service connected when a veteran had service-connected *total* deafness in one ear along with *total* deafness in the other ear due to nonservice-connected disability and not the result of the veteran's willful misconduct.

Under the Act, Congress amended section 1160(a)(3) to eliminate the total deafness requirement. The statute now authorizes payment of compensation when a veteran has deafness in one ear compensable to a degree of 10 percent or more as a result of service-connected disability and deafness in the other ear as a result of nonservice-connected disability.

Congress amended 38 U.S.C. 1160(a)(3) to eliminate the extreme requirement that there be complete and total deafness in both ears before compensation is payable for this paired

organ combination. The legislative history reflects that the amendment was introduced as part of Senate Bill 2237 to correct a long-standing inequity in compensating veterans with paired organ hearing loss compared with the way VA compensates involvement of a veteran's other paired organs or paired extremities, such as eyes, kidneys, or hands. (148 Cong. Rec. S 3305, April 24, 2002.) The first version of the bill struck "total" from both places it appeared in section 1160(a)(3) so that the statute would compensate for paired organ hearing loss when a veteran had service-connected deafness in one ear and nonservice-connected deafness in the other ear. (148 Cong. Rec. S 3305–06, April 24, 2002.)

To mirror the exceptions made for other paired organ or extremity combinations in 38 U.S.C. 1160, a manager's amendment to the committee bill was substituted to allow VA to consider partial nonservice-connected hearing loss in one ear when rating disability for veterans with at least 10 percent compensable service-connected hearing loss in the other ear. (148 Cong. Rec. S 9556, September 26, 2002.) The revised language became section 103 of the Act, striking "total deafness" in its first occurrence and replacing it with "deafness compensable to a degree of 10 percent or more" for the service-connected ear and striking "total deafness" in the second occurrence and replacing it with "deafness" for the nonservice-connected ear.

Currently, "deafness" is not defined in VA regulations except in reference to the severest degrees of hearing loss. (*See* 38 CFR 3.350(a)(5), concerning entitlement to special monthly compensation for deafness of both ears based on absence of air and bone conduction, and 38 CFR 4.84a, Table IV, concerning rating of blindness combined with varying degrees of hearing loss, including total deafness.) *Dorland's Medical Dictionary*, 28th edition, defines "deafness" as "lack of the sense of hearing, or profound hearing loss. Moderate loss of hearing is often called hearing loss."

We understand that while Congress intended to eliminate the requirement of total deafness in both ears before applying the paired organ exception, a veteran must have a specified degree of hearing loss independently ratable in the service-connected ear, *i.e.*, 10 percent or more, before nonservice-connected hearing disability in the other ear can be considered for compensation.

In determining what constitutes hearing loss or impairment for the nonservice-connected ear, we also look to the common meaning of deafness, which *Webster's New World Dictionary*, 3rd college edition, defines broadly as "totally or partially unable to hear." VA regulations specify the point at which hearing impairment is considered a disability for VA purposes in 38 CFR 3.385 based on the auditory thresholds in five specified frequencies and speech recognition scores. Thus, as to paired organ hearing loss in the nonservice-connected ear, we are applying the provisions of § 3.385 to define the point at which hearing impairment is considered a disability. However, we are not requiring that the degree of hearing loss in the nonservice-connected ear be ratable at 10 percent or more because Congress did not impose this requirement.

Because the legislative history of Senate Bill 2237 refers to "hearing loss" in discussing the changes to the paired organ rule and because Congress retained the term "deafness" in the revised statute but did not specify the degree of hearing loss required in the nonservice-connected ear, we understand the intent of the statute is to include any degree of hearing loss disability, including a 0 percent, manifested in the nonservice-connected ear.

We are amending § 3.383(a)(3) of title 38, Code of Federal Regulations, which is VA's implementing regulation, accordingly. Also, we are adding a Cross References paragraph at the end of § 3.383 to alert veterans and adjudicators to the provisions of § 3.385, Disability due to impaired hearing, and § 4.85, Evaluation of hearing impairment, which have bearing on the application of the paired organ rule for hearing disability. Since the above amendments involve the restatement and interpretation of the Act, they are non-substantive and do not require publication for notice and comment.

Administrative Procedure Act

Changes made by this final rule merely reflect and interpret new statutory provisions. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, dates September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance program number for this benefit.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Approved: June 2, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.383 is amended by:
■ A. Revising paragraph (a)(3).
■ B. Revising the authority citation at the end of the section.
■ C. Adding a Cross References paragraph immediately after the authority citation at the end of the section.

The revisions and addition read as follows:

§ 3.383 Special consideration for paired organs and extremities.

(a) * * *

(3) Hearing impairment in one ear compensable to a degree of 10 percent or more as a result of service-connected disability and hearing impairment as a result of nonservice-connected disability that meets the provisions of § 3.385 in the other ear.

* * * * *

(Authority 38 U.S.C. 501(a), 1160(a)(3))

Cross-References: § 3.385 Disability due to impaired hearing; § 4.85 Evaluation of hearing impairment.

[FR Doc. 04–18105 Filed 8–6–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–GA–0001–200420c; FRL–7798–7]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA published in the **Federal Register** of July 19, 2004 (69 FR 42880), a document concerning the Georgia Post-1999 Rate-of-Progress Plan. A volatile organic compound (VOC) motor vehicle emission budget (MVEB) of 160.68 was inadvertently stated in the July 19, 2004, document. This document corrects that error.

DATES: Effective on August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA published a document in the **Federal Register** of July 19, 2004, (69 FR 42880) concerning the Georgia Post-1999 Rate-of-Progress Plan. A VOC MVEB of 160.68 was inadvertently stated in the July 19, 2004, document. The last sentence of the second paragraph in the first column of page 42882 should read as follows: "The new budget for VOCs is 160.80 tons per day (tpd) and 318.24 tpd of NO_X."

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 27, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–18025 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA146–5080a; FRL–7798–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Major Stationary Source Applicability for Reasonably Available Control Technology in the Northern Virginia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). The revision specifies that the Northern Virginia Ozone Nonattainment Area is now subject to the severe major source permitting requirements and lowers the major stationary source threshold for nitrogen oxide (NO_X) from 50 tons per year to 25 tons per year. EPA is approving this revision to the Commonwealth of Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 8, 2004 without further notice, unless EPA receives adverse written comment by September 8, 2004. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by VA146–5080 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. VA146–5080. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA issued a determination that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by the statutory date of November 15, 1999, and reclassified the area from "serious" to "severe" for one-hour ozone. As a

severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the states that comprise the DC Area (Maryland, Virginia, and the District of Columbia) must implement additional control measures and submit SIP revisions for post-1999 Rate of Progress Plans, Contingency Plans, and the Attainment Demonstration.

On February 4, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of amendments to the Northern Virginia Ozone Nonattainment Area. This regulation applies only to sources in the Northern Virginia counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

II. Summary of SIP Revision

On February 4, 2004, the Virginia Department of Environmental Quality (VADEQ) submitted a formal revision to its SIP. The SIP revision consists of amendments to (1) specify that the Northern Virginia Ozone Nonattainment Area is now classified as severe nonattainment and now subject to Virginia's severe ozone nonattainment major source permitting requirements; and (2) lower the major stationary source threshold for NO_X from 50 tons per year to 25 tons per year. Virginia regulation 9 VAC 5–40–310, as revised, specifies that facilities achieve compliance with emission standards as expeditiously as possible but no later than the following dates:

1. For facilities in the Northern Virginia Emissions Control Area with a theoretical potential to emit 50 tons per year or greater, May 31, 1995.

2. For facilities in Northern Virginia Emissions Control Area with a theoretical potential to emit 25 tons per year or greater, but less than 50 tons per year, November 15, 2005.

This regulation applies to all facilities in the Northern Virginia Emissions Control Area and has the theoretical potential to emit 25 tons per year or greater. The theoretical potential to emit shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the facility is subject to a state and federally enforceable permit conditions which limits production rates or hours of operation.

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

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

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

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

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

IV. Final Action

EPA is approving as revision to the Commonwealth of Virginia SIP the amendments to Virginia's air pollution control regulations which reclassify the Northern Virginia Ozone Nonattainment Area from serious to severe and lower the major stationary source threshold for NO_X from 50 tons per year to 25 tons per year. Implementation of this revision will strengthen the Virginia SIP, and result in emission reductions that will assist the DC area in meeting the additional requirements associated with its reclassification as a severe nonattainment area for one-hour ozone.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 8, 2004 without further notice unless EPA receives adverse comment by September 8, 2004. If EPA receives adverse comment, EPA

will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the Commonwealth of Virginia's regulations to specify reclassification of the Northern Virginia Ozone Nonattainment Area from serious to severe and lower the major stationary source threshold for NO_X from 50 tons per year to 25 tons per year, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 29, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising entries to 9 VAC 5 Chapter 20, Section 5–40–204 and Chapter 40, Section 5–40–310A.–E. to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP section)
* * *	* * *	* * *	* * *	* * *
	Chapter 20 General Provisions			
* * *	* * *	* * *	* * *	* * *
	Part II—Air Quality Programs			
* * *	* * *	* * *	* * *	* * *
5–20–204	Nonattainment areas	6/4/03	8/9/04 FR page citation]	
* * *	* * *	* * *	* * *	* * *
	Chapter 40—Existing Stationary Sources			
* * *	* * *	* * *	* * *	* * *
	Part II—Emission Standards			
* * *	* * *	* * *	* * *	* * *
	Article 4—Emission Standards for General Process Operations (Rule 4–4)			
* * *	* * *	* * *	* * *	* * *
5–40–310A.–E	Standard for nitrogen oxides	6/4/03	8/9/04 FR page citation]	
* * *	* * *	* * *	* * *	* * *

[FR Doc. 04–18023 Filed 8–6–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7798–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Sharon Steel Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a Direct Final Notice of Deletion of the Sharon Steel Superfund Site (Site), located in Midvale, Utah, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B to 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Utah, through the Utah Department of Environmental Quality (UDEQ), based on EPA's determination that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 24, 2004, unless EPA receives adverse comments on or before September 8, 2004. If EPA receives significant adverse comment(s), EPA will withdraw the Direct Final Notice of Deletion and it will not take effect.

ADDRESSES: Comments should be mailed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR-SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Information Repositories: Comprehensive information is available for viewing and copying at the following information repositories for the Site: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116, Monday through Friday, 8 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, Remedial Project Manager (RPM), (303) 312–6559, Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 8 is publishing this Direct Final Notice of Deletion of the Sharon Steel Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action, pursuant to EPA's authority under CERCLA and the NCP.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective September 24, 2004, unless EPA receives adverse comments on this document on or before September 8, 2004. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of this Notice and the comments already received. There will be no additional opportunity to comment on this deletion process.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Sharon Steel Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

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

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

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

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, EPA policy requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate or order remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with Utah on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Utah concurred with deletion of the Site from the NPL.

(3) Concurrent with the publication of this Direct Final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete was published today in the "Proposed Rules" section of the **Federal Register,** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If significant adverse comments are received within the 30-day public comment period on this notice, EPA will publish a timely notice of withdrawal of this Direct Final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Location & History

The Sharon Steel Superfund Site is located in Midvale, Utah, approximately 12 miles south of Salt Lake City and consists of two operable units. Operable Unit 1 (OU1) consists of approximately 260 undeveloped acres and is a primary source of contamination. OU1 included a mill, processing plants, outbuildings and the 10 million cubic yard waste tailings pile. OU1 underwent a cleanup remedy that capped the large contaminated soil and tailings pile and construction was declared complete in 1999. Operable Unit 2 (OU2) consists of approximately 200 acres of formerly contaminated residential and commercial properties adjacent to OU1. OU2's cleanup of almost 600 properties was completed in 1998.

OU1 is bounded on the north by 7800 South Street and the Midvale Slag Site, on the south and west by the Jordan River and on the east by a residential/commercial section of Midvale City. OU2 includes approximately 200 acres of formerly contaminated residential and commercial properties adjacent to OU1. OU2 is bounded on the north by 9th Avenue Street, on the South by Ivy Drive, on the east by Chapel Street and on the west by Sharon Steel OU1.

The area is drained by the Jordan River that is used primarily for agricultural irrigation. The subsurface beneath Salt Lake Valley includes substantial groundwater resources, consisting of shallow unconfined, confined, and deep confined aquifers some of which are used for domestic, agricultural, and industrial applications. Approximately 44,000 people live within a 2-mile radius of the Site.

The Site was previously the location of various ore processing operations. Various companies processed huge quantities of ore that had high concentrations of heavy metals from 1906 to 1971. Byproducts, with high levels of arsenic and lead from milling operations, were transported from the processing plant to a large waste tailings pile west of the mill, as well as to a small 2.3-acre area on the west side of the Jordan River. Sharon Steel Corporation signed an agreement to purchase the Site in 1979 and took ownership in November of 1981.

In 1982, the Utah Department of Environmental Quality (UDEQ) and EPA

determined that there was a serious threat to public health in Midvale associated with the Sharon Steel Site. Investigations conducted by local, State, and Federal agencies from 1982 to 1990 determined that soils on the Sharon Steel property, as well as on nearby residential and commercial properties, had arsenic and lead concentrations at levels that posed unacceptable risks to residents. The Site was proposed for the National Priorities List (NPL) in 1984 and listed on the NPL on February 14, 1991.

Pursuant to a Partial Consent Decree (PCD) entered by the United States District Court for the District of Utah in 1990, EPA settled with the three Potentially Responsible Parties (ARCO, UV Industries and Sharon Steel) for approximately $64 million dollars. The money was designated to assist with remedial action activities for both the Sharon Steel and Midvale Slag Superfund Sites.

From May through June of 1991, EPA's Emergency Response Branch (ERB) removed dangerous chemicals and bottled gases from the remaining mill buildings on the Site. From September of 1992 through December of 1993, EPA's ERB demolished the remaining mill buildings. Building debris was placed on the tailings pile and eventually covered when the remedy for OU1 was completed in January 1999. The remedy for OU2 was completed in November 1998.

Remedial Investigations (RIs)

An RI was completed in June of 1988. A more extensive groundwater investigation was also conducted from 1988 to 1990. The investigations determined that tailings from the Site were blowing into the surrounding communities and citizens were using the tailings as yard/garden fill. It was determined that a significant endangerment existed due to exposure to the tailings either from on-site direct contact, wind deposition and/or use as yard fill. In addition, arsenic and lead contamination in residential and commercial soils from historical smelting and milling presented a significant risk to human health. Several heavy metals were found in the shallow groundwater under the tailings, but arsenic was the primary metal of concern as it was the most mobile.

Remedial Actions

OU1. The Remedial Action (RA) for OU1 has been completed in accordance with the OU1 Record of Decision (ROD) dated December 9, 1993 and the OU1 Remedial Design (RD). The following remedial activities were conducted from May 1995 to January 1999:

- Tailings within 150 feet of the center line of the Jordan River were excavated and distributed on top of the existing tailings pile. The tailings pile contained an estimated 10 million cubic yards of material and was up to 60 feet thick in places;
- The top two feet of soil in the mill building area was excavated and distributed on top of the existing tailings pile. Clean fill was brought in to replace the soil which was removed and the area re-vegetated;
- Wetlands along the Jordan River were dredged to remove contaminated sediments. The dredged material was distributed on top of the existing tailings pile and the wetlands were returned to their natural state;
- Tailings on a 2.3 acre area on the west bank of the Jordan River were excavated and distributed on top of the existing tailings pile;
- A RCRA-equivalent composite cap was installed over the entire tailings pile. The cap includes a geo-composite drain underlain by a flexible membrane liner which, in turn, is underlain by a geo-synthetic clay liner that reduce the potential for water infiltration through the tailings pile. The cap is overlain by 18 inches of earth fill and 6 inches of top soil and re-vegetated throughout. In case of slope failure, the cap is designed to contain tailings within a buffer zone to protect the Jordan River. The cap was also designed to allow access to pedestrian traffic;
- An interceptor trench was installed along the eastern edge of the tailings pile to control lateral shallow groundwater flow;
- The OU1 ROD called for the Galena Canal to be cleaned up and filled in. When the ROD was signed, information was missing that showed the flow in the Galena Canal had been discontinued and the canal decommissioned. According to the Remedial Action Report, the canal was removed and not rehabilitated. This was the only change in the remedy;
- Fifteen groundwater monitoring wells were installed on OU1; and,
- The OU2 ROD called for the placement of contaminated soils from the cleanup of 600 properties on the OU1 tailings pile. Contaminated soil from the Midvale Slag OU1 cleanup was also placed on the OU1 tailings pile.

The RD for OU1 was completed in October 1994. The United States Bureau of Reclamation (BOR) performed the RD for EPA. UDEQ formally awarded the RA contract on May 30, 1995, thereby initiating the RA activities described below:

Description	Start date–end date
Mobilization	June 1995–November 1995.
General earth work	August 1995–September 1996.
Interceptor trench installation	March 1996–October 1996.
Cap installation	June 1996–October 1996.
Wetlands construction	August 1996–September 1996.
Well installation/Site improvements	August 1996–May 1997.

A pre-final inspection of OU1 was conducted on August 13, 1998. The inspection covered punch-list items remaining to complete the RA. The punch list included items such as removing fences, replacing minor sections of eroded sod, removing equipment from the Site and controlling weeds.

The final inspection was conducted on January 6, 1999. Present were EPA, UDEQ, BOR, U.S. Fish and Wildlife Service, the RA contractor and the land owners representative. Each item of the remaining punch list was discussed. The cap, fences, wetlands, and other properties were inspected and UDEQ determined that all items were complete and EPA concurred.

OU2. The RA for OU2 has been completed in accordance with the OU2 ROD dated September 24, 1990, the OU2 Explanation of Significant Differences (ESD) dated June 23, 1994, the OU2 ESD dated December 1998 and the OU2 RD. The following remedial activities were conducted from July 1991 to November 1998:

- Contaminated soils and associated vegetation were removed from 595 residential and commercial properties in Midvale City. Clean fill was brought in to replace the soil, the area was

graded to the original contour and re-vegetated;

• Soils removed from the residential areas were transported to OU1. The remedy selected for OU1 addressed the tailings at the mill site as well as the contaminated soils from OU2 placed there as a result of this action;

• Following outdoor cleanup, homes were tested to determine if household dust exceeded the action levels for arsenic and lead (70 and 500 mg/kg, respectively). If action levels were exceeded, the homes were cleaned;

• Trees and shrubs were removed and replaced, if soil removal affected their viability.

The RA for OU2 was conducted using a phased approach. Six phases were originally planned and separate RDs were prepared for each phase.Implementation of the phased approach is described below:

Phase	Description	Start date–end date
I	Curb/gutter improvement	July 1991–November 1991.
II	Remediation of 114 properties	May 1993–November 1993.
III	Remediation of 192 properties	March 1994–November 1994.
IV	Remediation of 142 properties	March 1995–November 1995.
V	Remediation of 135 properties	May 1996–October 1997.
Va	Remediation of 2 properties	July 1998–November 1998.
VI	Cancelled.	

Phase VI was to be conducted to clean up potentially contaminated soils along the interstate highway and railroad right-of-ways. However, re-construction of Interstate 15 within OU2 boundaries addressed this issue. The BOR designed the remedy and was the oversight contractor during remedy construction.

Each property cleaned up was inspected at the time of completion and each landowner signed a document accepting the work as completed. A one-year warranty period was also provided by UDEQ and their contractor to provide for repairs should any remediation related problems arise. EPA issued a letter to each landowner, certifying that his/her property was clean up and no human health problems existed.

Institutional Controls

OU1. The 1990 Partial Consent Decree (PCD, Civil Action No. 86–C–924J, U.S. District Court of Utah) contained several institutional controls in the form of restrictive covenants as follows:

• A grant of access to EPA and UDEQ at all reasonable times for purposes of conducting, supervising, supporting and monitoring the remedy, including operation or maintenance;

• A requirement that the property owners not interfere with, obstruct or disturb performance of the remedy, including any operation or maintenance activities, and not take any action which may affect the integrity or effectiveness of the remedy; and,

• A requirement that the property owner provide notice to later purchasers of the conditions of the PCD. The OU1 ROD includes the following ICs:

• Only structures determined to be suitable for placement on the cap will be permitted in order to prevent breaches in the integrity of the cap and to ensure that erosion is prevented. The determination of the type and number of structures will be finalized by EPA during remedial design; and,

• No domestic wells will be permitted onsite through deed restrictions to prevent any ingestion of contaminated groundwater. This restriction is regulated by the State of Utah. Utah will retain final authority to restrict or appropriate groundwater use at this Site.Additional ICs to protect nearby residents/businesses from any contaminated groundwater are the requirements of Salt Lake Valley Health Department Regulation #11 providing criteria for water quality and legitimate water rights for any development choosing not to access the public water system of Midvale City. Also, under Section II of the Salt Lake Valley Interim Groundwater Management Plan, well applications will not be granted in areas where a public water system is available. Nearby residents and businesses are all connected to the municipal water system.

Future redevelopment at the Site will be governed by the Site Modification Plan for Redevelopment (ERM, February 2004), the OU1 ESD dated July 2, 2004, and the Institutional Control Process Plan (Midvale City, May 2004) which is Appendix A of the OU1 ESD and corresponding modifications to the 1990 PCD.

The Institutional Control Process Plan establishes legal requirements to maintain protectiveness during and after redevelopment of the Site. Redevelopment of the Site will require the use of more diverse and complex ICs than originally planned in the OU1 ROD. Public and private ICs will be integrated to effectively address changes to the current remedy due to future redevelopment.

OU2. The OU2 ROD included ICs to provide special provisions for future excavation of contaminated soils due to gardening and construction. These ICs were reevaluated and lifted in 1994 and 1998. The June 1994 ESD determined that garden soils outside the 500 mg/kg lead and 70 mg/kg arsenic boundary did not need to be cleaned up to 200 mg/kg lead and subjected to ICs. The December 1998 ESD (confirmed later in July 2003) narrowed the scope of the OU2 RA by excluding properties owned and selected by Midvale City and transportation right-of-ways. ICs associated with garden soils and future residential construction were also removed based on post-remedial soil data and analysis.

Remedial Action Objectives and Cleanup Standards

OU1. The RA for OU1 has met all RA objectives as defined in the OU1 ROD. The RA has met the following objectives:

• Prevented exposure to contaminated soil/tailings on the Site by isolating tailings and soils with contaminant concentrations exceeding health-based action levels for lead (500 mg/kg) and for arsenic (70 mg/kg).

• Prevented migration of and exposure to contaminated groundwater with arsenic concentrations greater than the health-based action levels of 50 ug/L for wells on the north side of the Site and 190 ug/L for wells on the west side of the Site.

• Reduced flow of water through the tailings and further contamination of the shallow groundwater.

The OU1 ROD contained a contingency remedy for groundwater. Groundwater monitoring wells were installed along the northern and western boundaries to function as points of compliance to determine if shallow groundwater contaminated with arsenic was migrating from the Site. If groundwater action levels for arsenic

were exceeded in these compliance wells, EPA and UDEQ could institute a pump and treat system for the groundwater at these boundaries to prevent off-site migration of groundwater contamination.

EPA and UDEQ have determined that no pump and treat action is necessary for the groundwater component of the remedy given seven years of monitoring data. Data collected from the Jordan River (which borders the western boundary of OU1) does not indicate measurable increases in arsenic levels. Also, only one of fifteen compliance wells has exceeded the arsenic action level of 190 ug/L (along the western boundary) on a consistent basis.

Additional investigations of the well have shown that the source of arsenic contamination is not the Sharon Steel tailings pile, but the Bingham Creek tailings. The well is completed in the old Bingham Creek channel which contains tailings washed down from the Kennecott Site. The Bingham Creek tailings will be addressed under the separate cleanup of the Kennocott Site. The investigations also indicated that a pump and treat system would not be technically feasible nor cost effective given the hydro-geological characteristics of the area of the well.

OU2. The RA for OU2 has met all RA objectives as defined in the OU2 ROD and OU2 ESDs dated June 23, 1994 and December 1998 (later confirmed in July 2003). The RA has eliminated the exposure to contaminated soil in residential and commercial properties with the removal of soil with contaminant concentrations exceeding health-based action levels for lead (500 mg/kg) and arsenic (70 mg/kg) and replacement of the soil with clean fill.

Operation and Maintenance (O&M)

All O&M activities pertain to OU1. OU2 does not require O&M. O&M activities are required at the Site to maintain and monitor the performance and protectiveness of the implemented remedy. The objectives of O&M for OU1 are to: (1) Maintain the engineered cover and vegetation; (2) maintain the drainage systems and erosion protection features; (3) monitor the groundwater on an annual basis; (4) prevent the Jordan River from invading the Site and eroding the cap and/or tailings; (5) control future development and groundwater use at the Site; and (6) provide reports to document conditions at the Site including problems, repairs and development activities.

O&M activities are currently being conducted by UDEQ pursuant to a cooperative agreement with EPA and in accordance with the Operation, Maintenance, and Monitoring Manual for Sharon Steel Superfund Site, Operable Unit 1 (BOR, October 2001). Groundwater is being monitored annually and no pump and treatment is currently needed at the Site. The Site is inspected quarterly to monitor the remedy and detect maintenance needs. There are currently no structures over the composite cap and the remedy is functioning as intended.

Future redevelopment of the Site will modify the scope, but not the objectives of O&M. Accordingly, specific changes to current O&M activities and roles/responsibilities will be addressed in the Operation, Maintenance, and Monitoring Manual.

Five-Year Reviews

Pursuant to CERCLA section 121(c), 42 U.S.C. 9621(c), five-year reviews are required at sites with remaining hazardous substances, pollutants, or contaminants above levels that allow for unlimited use and unrestricted exposure. Hazardous substances above health-based levels were left on-site and, therefore, five-year reviews are required at this Site. The first Five-Year Review Report was completed on February 26, 1999. The next five-year review is due in 2004.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket, which EPA relied on for recommendation of the deletion from the NPL, are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence from the State of Utah through UDEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than five-year reviews and operation & maintenance, are necessary. Therefore, EPA is taking this action to delete the Site from the NPL.

Because EPA considers this action to be noncontroversial, this action is being taken without prior publication of a notice of intent to delete. This action will be effective September 24, 2004 unless EPA receives adverse comments on or before September 8, 2004. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment on this deletion process.

List of Subjects in 40 CFR Part 300

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

Dated: July 28, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site "Sharon Steel Corp. (Midvale Tailings), Midvale, UT."

[FR Doc. 04–17875 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 74, 90, and 101

[IB Docket No. 02–364; ET Docket No. 00–258; FCC 04–134]

Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Allocation of Spectrum Below 3 GHz for Mobile and Fixed Services To Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (Commission) adopts a spectrum sharing plan in the Big LEO bands to promote more efficient use of spectrum without causing harmful interference operators in those bands.

DATES: Effective September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer Gorny, Howard Griboff, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order and Fourth Report and Order*, adopted on June 10, 2004, and released on July 16, 2004 (FCC 04–134). The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Commission Reference Center. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–134A1.doc*. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *Commission@bcpiweb.com*.

Summary of the Report and Order and Fourth Report and Order

On January 29, 2003, the Commission adopted a *Notice of Proposed Rulemaking* in IB Docket No. 02–364 (*Big LEO Spectrum Sharing NPRM*) (68 FR 33666–01, June 5, 2003) to obtain comment on relevant proposals for spectrum use at 1610–1626.5 MHz (L-band) and 2483.5–2500 MHz (S-band) (collectively referred to as Big LEO bands or Big LEO spectrum) and prompted interested parties to provide detailed information regarding the operations of existing mobile-satellite service (MSS) providers and future spectrum requirements for each system. The Commission also adopted a *Third Notice of Proposed Rulemaking* in ET Docket No. 00–258 (*Third Notice*) (68 FR 12015–03, March 13, 2003) seeking comment on the location and amount of spectrum needed to relocate multipoint distribution service (MDS) operations at 2150–2160/62 MHz. On June 10, 2004, the Commission adopted this *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*. The *Further Notice of Proposed Rulemaking* relating to this proceeding is published elsewhere in this issue of the **Federal Register**. The *Report and Order and Fourth Report and Order* set forth a spectrum sharing plan in the Big LEO bands. Under this spectrum sharing plan, code division multiple access (CDMA) MSS operators will share certain portions of Big LEO spectrum with time division multiple access (TDMA) MSS operators in the L-band, and fixed and mobile terrestrial wireless operators in the S-band. In particular, we: (1) Allow TDMA MSS operators to share the 1618.25–1621.35 MHz band with CDMA MSS operators; and (2) allocate the 2495–2500 MHz band for fixed and mobile except aeronautical mobile services on a primary basis, which will share this band with CDMA MSS operators providing MSS service. Current and future CDMA MSS operators must accept any interference from the terrestrial services in that portion of the S-band. In addition, we find that the hearing requirements of sections 316 and 312 of the Communications Act of 1934, as amended, do not apply to this proceeding. We also move ancillary terrestrial component (ATC) operations from 2492.5–2498 MHz to 2487.5–2493 MHz in the S-band due to fixed and mobile terrestrial wireless operators having access to the upper portion of that band. We decline, however, to increase the amount of Big LEO spectrum available for ATC operations. In addition, we find that the Big LEO spectrum sharing band plan complies with relevant International Telecommunication Union radio regulations. Finally, we adopt this *Report and Order and Fourth Report and Order* concurrently with another order in which we: (1) Incorporate the spectrum at 2495–2500 MHz into the 2500–2690 MHz band currently used for MDS and instructional television fixed service (ITFS) operators; (2) restructure the services occupying 2495–2690 MHz into a new Broadband Radio Service (BRS)/ Educational Broadband Service (EBS) band plan; (3) provide spectrum to accommodate MDS operators currently located at 2150–2162 MHz within the new 2495–2690 MHz band; and (4) adopt the licensing and service rules for those operators in that band.

In our decision today, we make changes to the Big LEO band plan in an effort to promote spectral efficiency while ensuring that operators in the Big LEO bands can provide service without causing or experiencing harmful interference. When the Commission initially adopted the Big LEO band plan, it licensed five companies to provide MSS in the Big LEO bands. Two Big LEO systems were implemented and are now providing MSS—one TDMA system and one CDMA system. In this proceeding, we consider how this development impacts usage of Big LEO spectrum and, as a result, make changes to the existing band sharing plan. We believe that the new band plan promotes more efficient use of the spectrum than the existing band plan by requiring MSS providers to share certain portions of the spectrum in the L-band, and by allowing non-MSS operators to share a portion of spectrum in the S-band.

Final Regulatory Flexibility Certification—Report and Order

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA). The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue.

Pursuant to the RFA, the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *Big LEO Spectrum Sharing NPRM*. We received no comments in response to the IRFA. For the reasons described below, we now certify that the policies and rules adopted in the present *Report and Order* will not have a significant economic impact on a substantial number of small entities.

In this *Report and Order* the Commission adopts a spectrum sharing plan that allows TDMA MSS operators to share the L-band at 1618.25–1621.35 MHz with CDMA MSS operators. The Commission also allocates spectrum in the S-band at 2495–2500 MHz for fixed and mobile except aeronautical mobile services on a primary basis, which will share this band with CDMA MSS operators providing MSS services. We believe that the spectrum sharing plan in the Big LEO bands will improve spectral efficiency by increasing the number of providers and consumer users without harming current MSS operations. We find that our action will not affect a substantial number of small

entities because only MSS operators in the Big LEO L- and S-bands will be affected. In particular, two Big LEO MSS licensees currently are authorized to provide MSS in the United States. We find that neither of these licensees are small businesses. Small businesses often do not have the financial ability to become MSS system operators due to high implementation costs associated with launching and operating satellite systems and services. Therefore, we certify that the requirements of this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order* including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, this *Report and Order* and this Final Regulatory Flexibility Certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Final Regulatory Flexibility Analysis—Fourth Report and Order

As required by the RFA, an IRFA was incorporated in the *Third Notice*. The Commission sought written public comments on the proposals in the *Third Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Fourth Report and Order

This *Fourth Report and Order* continues our efforts to promote the provision of advanced wireless services (AWS) to the public, which in turn supports our obligations under section 706 of the Communications Act of 1934, as amended and, more generally, serves the public interest by promoting rapid and efficient radio communication facilities. Adding a fixed and mobile except aeronautical mobile allocation to the 2495–2500 MHz band potentially provides suitable spectrum for relocation of MDS licensees in the 2150–2160/62 MHz band. Also, adopting this allocation has the potential to help free up the entire 2150–2160/62 MHz band for the provision of AWS, the 2150–2155 MHz portion of which has already been reallocated for AWS, and the 2155–2160/62 MHz portion of which has been tentatively identified as suitable for AWS. In addition, an MDS relocation to the 2495–2500 MHz band could provide an opportunity to integrate the spectrum at 2495–2500 MHz into a larger 2495–2690 MHz band plan and establish the new BRS.

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

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

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

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

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

Broadcast Auxiliary Service (BAS). BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The SBA has developed small business size standards, as follows: (1) For TV BAS, we will use the small business size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12 million; (2) for Aural BAS, we will use the small business size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million; (3) for Remote Pickup BAS, we will use the small business size standard for Television Broadcasting when used by a TV station and the small business size standard for Radio Stations when used by a radio station.

According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

MDS, Multichannel Multipoint Distribution Service. Multichannel

Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of MDS and ITFS. In connection with the 1996 MDS auction, the Commission defined "small business" as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

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

Although the *Fourth Report and Order* imposes no compliance requirements, future Commission decisions may impose some requirements.

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

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

The *Fourth Report and Order* recognizes that there are grandfathered stations in the BAS and private radio services that may need to be relocated to accommodate the addition of a fixed and mobile except aeronautical mobile allocation in the 2495–2500 MHz band, and the potential use of this band by the BRS. But because the BAS and private radio services have been sharing use of the 2495–2500 MHz band on an interference-free basis for some time, the addition of a fixed and mobile except aeronautical mobile allocation to this band may not cause interference to these operations. A specific relocation plan for the remaining grandfathered incumbents in the 2495–2500 MHz band, including BAS and private radio service operators, will be provided, if necessary, when the remaining issues concerning AWS relocation are addressed.

Finally, no significant alternatives were suggested by commenters and nor do we think there are any other alternatives that would have a lesser impact on small businesses.

Report to Congress

The Commission will send a copy of the *Fourth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fourth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fourth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Pursuant to sections 4(i), 7, 302(a), 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 302(a), 303(c), 303(e), 303(f) and 303(r), the *Report and Order, Fourth Report and Order, and Further Notice of Proposed Rulemaking are adopted* and that parts 2, 25, 74, 90 and 101 of the Commission's Rules *are amended,* as specified in the Final Rules, effective September 8, 2004.

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *Report and Order, Fourth Report and Order, and Further Notice of Proposed Rulemaking,* including the Final Regulatory Flexibility Analysis, Final Regulatory Flexibility Certification, and the Initial Regulatory Flexibility Certification to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 25, 74, 90, and 101.

Land Mobile Radio Services, Radio, Satellites, Telecommunications, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 25, 74, 90, and 101 as follows:

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

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

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

■ 2. Section 2.106 is amended as by revising page 52 of the Table of Frequency Allocations, adding a new footnote U.S. 391, and revising footnote NG 147 to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * * *

BILLING CODE 6712–01–P

2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A Radiolocation 5.150 5.371 5.397 5.398 5.399 5.400 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402	2483.5-2500 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A RADIOLOCATION Radiodetermination-satellite (space-to-Earth) 5.398 5.150 5.400 5.402	2483.5-2500 MOBILE-SATELLITE (space-to-Earth) US319 US380 US391 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41	2483.5-2495 MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 NG147 2495-2500 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) US319 US380 RADIODETERMINATION-SATELLITE (space-to-Earth) 5.398 5.150 5.402 US41 US391 NG147	ISM Equipment (18) Satellite Communications (25) Private Land Mobile (90) Fixed Microwave (101)
2500-2520 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.405 5.407 5.412 5.414	2500-2520 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A MOBILE-SATELLITE (space-to-Earth) 5.403 5.351A 5.404 5.407 5.414 5.415A		2500-2655	2500-2655 FIXED US205 MOBILE except aeronautical mobile	Domestic Public Fixed (21) Instructional TV Fixed (74)
2520-2655 FIXED 5.409 5.410 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.405 5.412 5.418 5.418B 5.418C	2520-2655 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.403 5.418B 5.418C	2520-2535 FIXED 5.409 5.411 FIXED-SATELLITE (space-to-Earth) 5.415 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.403 5.415A 2535-2655 FIXED 5.409 5.411 MOBILE except aeronautical mobile 5.384A BROADCASTING-SATELLITE 5.413 5.416 5.339 5.418 5.418A 5.418B 5.418C	5.339 US205	5.339	

* * * * *

United States (US) Footnotes

* * * * *

US391 In the band 2495–2500 MHz, the mobile-satellite service (space-to-Earth) shall not receive protection from non-Federal Government stations in the fixed and mobile except aeronautical mobile services operating in that band.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG147 In the band 2483.5–2500 MHz, stations in the fixed and mobile services that are licensed under part 74 (Television Broadcast Auxiliary Stations), part 90 (Private Land Mobile Radio Services), or part 101 (Fixed Microwave Services) of the Commission's Rules, which were licensed as of July 25, 1985, and those whose initial applications were filed on or before July 25, 1985, may continue to operate on a primary basis with the mobile-satellite and radiodetermination-satellite services, and in the segment 2495–2500 MHz, these grandfathered stations may also continue to operate on a primary basis with stations in the fixed and mobile except aeronautical mobile services that are licensed under part 27 (Miscellaneous Wireless Communication Services) of the Commission's Rules.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 4. Section 25.149 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5/1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

(a) * * *

(2) * * *

(iii) In the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO bands), ATC operations are limited to the 1610–1615.5 MHz, 1621.35–1626.5 MHz, and 2487.5–2493.0 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 5. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h), 554.

■ 6. Section 74.602 is amended by adding paragraph (a)(2) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(2) In the band 2483.5–2500 MHz, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, and licensees whose initial applications were filed on or before July 25, 1985, are grandfathered and their operations are on a co-primary basis with the mobile-satellite and radiodetermination-satellite services, and in the segment 2495–2500 MHz, their operations are also on a co-primary basis with part 27 fixed and mobile except aeronautical mobile service operations.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 7. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 8. Section 90.20 is amended by revising paragraph (d)(73) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(d) * * *

(73) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the band 2483.5–2500 MHz, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, and licensees whose initial applications were filed on or before July 25, 1985, are grandfathered and their operations are on a co-primary basis with the mobile-satellite and radiodetermination-satellite services, and in the segment 2495–2500 MHz, their operations are also on a co-primary basis with part 27 fixed and mobile except aeronautical mobile service operations.

* * * * *

■ 9. Section 90.35 is amended by revising paragraph (c)(74) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *

(74) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the band 2483.5–2500 MHz, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, and licensees whose initial applications were filed on or before July 25, 1985, are grandfathered and their operations are on a co-primary basis with the mobile-satellite and radiodetermination-satellite services, and in the segment 2495–2500 MHz, their operations are also on a co-primary basis with part 27 fixed and mobile except aeronautical mobile service operations.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

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

Authority: 47 U.S.C. 154, 303.

■ 11. Section 101.147 is amended by revising paragraph (f)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(f) * * *

(2) Stations licensed in this band under this part prior to March 1, 1996, are grandfathered and may continue their authorized operations. Stations licensed in the 2483.5–2500 MHz portion of the band as of July 25, 1985, and licensees whose initial applications were filed on or before July 25, 1985, are grandfathered, and may continue operations, subject only to license renewal, on a co-primary basis with with the mobile-satellite and radiodetermination-satellite services, and in the segment 2495–2500 MHz, their operations are also on a co-primary basis with part 27 fixed and mobile except aeronautical mobile service operations.

* * * * *

[FR Doc. 04–18148 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT32

Migratory Bird Hunting; Approval of Three Shot Types—Tungsten-Bronze, Tungsten-Iron, and Tungsten-Tin-Bismuth—as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We (us or Fish and Wildlife Service) approve three shot types, Tungsten-Bronze [formulated of tungsten, bronze (copper and tin), and less than 1 percent iron], Tungsten-Iron (formulated of tungsten and iron), and Tungsten-Tin-Bismuth (formulated of tungsten, tin, and bismuth), as nontoxic for hunting waterfowl and coots. We assessed possible effects of all three shot types, and have determined that none of the types presents a significant toxicity threat to wildlife or their habitats. Therefore, further testing is not necessary for any of the types. An Environmental Assessment for each of the shot types is available from us.

In our proposed rule we called tungsten-bronze shot tungsten-bronze-iron (TBI) shot. However, we have concluded that it is more appropriate to call it tungsten-bronze shot because it contains less than 1 percent iron.

DATES: This rule takes effect on September 8, 2004.

ADDRESSES: Copies of the Final Environmental Assessments are available from the Chief of the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MBSP–4107, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, telephone 703–358–1714; John J. Kreilich, Jr., Wildlife Biologist, telephone 703–358–1928; or Dr. George T. Allen, Wildlife Biologist; telephone 703–358–1825; Division of Migratory Bird Management.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada, Mexico, Japan, and Russia (then the Soviet Union). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of shot and release of shot components in waterfowl hunting locations is potentially harmful to a variety of organisms. Research has shown that the effects of ingestion of spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We first addressed the issue of lead poisoning in waterfowl in a 1976 Environmental Impact Statement (EIS), and later readdressed the issue in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, and set a ban on lead for waterfowl and coot hunting beginning in 1991. Since then, we have sought to consider other potential nontoxic shot candidates; we believe that other nontoxic shot types should be made available for public use in hunting, and steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, and tungsten-tin-iron-nickel types are now approved as nontoxic (50 CFR 20.21(j)). Compliance with the use of nontoxic shot for waterfowl hunting has increased over the last few years (Anderson *et al.* 2000). We believe that it will continue to increase as other nontoxic shot types are approved and available in growing numbers and possibly at lower cost.

On March 15, 2004, we published a proposed rule to approve these three shot types in the **Federal Register** (69 FR 12105). The applications for the three shot types included information on chemical characterization, production variability, use, expected production volume, toxicological effects, environmental fate and transport, and evaluation, and the proposed rule included this information, a comprehensive evaluation of the likely effects of each shot, and an assessment of the affected environment.

The Director of the U.S. Fish and Wildlife Service has concluded that the spent shot material will not pose a significant danger to migratory birds or other wildlife or their habitats, and therefore approves the use of Tungsten-Bronze (TB), Tungsten-Iron (TI), and Tungsten-Tin-Bismuth (TTB) as nontoxic for hunting waterfowl and coots. Our previously approved tungsten-iron shot, an alloy of approximately 40 percent tungsten and 60 percent iron differs in composition from the 22 percent tungsten and 78 percent iron shot approved in this rule.

We received 22 comments in response to the proposed rule; 3 from state agencies and 19 from individuals. Most supported approval of all three shot types. However, as discussed below, several issues raised warranted further evaluation of our proposal.

One individual suggested that the low percentage of iron in the TB shot was not sufficient to allow detection of the shot in the field. TB shot is slightly magnetic, and TB shotshells are only very slightly attracted to a typical magnet. We tested inert loaded shotshells containing TB shot with rare-earth magnets, which we determined are sufficient to identify the shotshells in the field.

It was suggested by one commenter that the composition of TB shot should be confirmed and the reported section density should be confirmed. Analysis of the shot showed it to be 50.4 percent tungsten, 44.1 percent copper, 4.7 percent tin, and 0.8 percent iron, compared to the 51.1 percent tungsten, 44.4 percent copper, 3.9 percent tin, and 0.6 percent iron formulation submitted for approval as nontoxic. We conclude that the shot conforms with the formulation for which the submitter sought approval. The section density of the shot was 11.68 grams per cubic centimeter (g/cc), compared to the reported 12.1 g/cc.

One State agency commenter suggested that "It is getting confusing for hunters with all the non-toxic shot types * * * that perform differently. Right now, the ballistic equivalent to #2 steel is #3 bismuth, #4 Tungsten-iron, -matrix and -polymer, and #5 Hevi-shot [sic]. We have no idea how these 3 new shot types compare to steel and would not know what to recommend to hunters for use on ducks or geese." This commenter noted that it will be difficult to regulate the new shot types until more is known about their density and performance. Further, the commenter suggested that manufacturers should "be required to conduct lethality testing and publish their results before these shot types are legalized."

We agree that the increasing number of approved nontoxic shot types may be confusing. Nevertheless, we believe that it is in the best interest of waterfowl populations and the public to approve new shot types that we believe to be nontoxic. Information on sectional density of the shot types can be the

basis for simple comparisons of their likely effectiveness. We will try to make information available on the different types of approved nontoxic shot. However, lethality testing is not required by the regulations governing approval of nontoxic shot for waterfowl hunting, and it is a function of shot type, velocity, pellet buffering, and perhaps other factors that can be readily varied in different shotshell loadings. We do not believe we can effectively address lethality in nontoxic shot approvals.

Cumulative Impacts

We foresee no negative cumulative impacts of approval of the three shot types for waterfowl hunting. Approval of an additional nontoxic shot type should help to further reduce the negative impacts of the use of lead shot for hunting waterfowl and coots. We believe the impacts of approval of the three shot types for waterfowl hunting should be positive both in the United States and elsewhere. Approval of additional nontoxic shot types should help to further reduce lead poisoning of waterfowl that migrate south of the United States for the winter and of animals that prey on them or consume their carcasses.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have complied with NEPA by completing draft and final Environmental Assessments and a Finding of No Significant Impact for each of the shot types. These documents are available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat." We completed a Section 7 consultation under the ESA for each shot covered by this rule. Approval of these shot types is not likely to adversely affect threatened or endangered species. The results of our ESA consultations are available at the location indicated in the **ADDRESSES** section.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. This rule is to add the three additional types of nontoxic shot that may be sold and used to hunt migratory birds to the list of those that are already approved. We have determined, however, that this rule will not affect small entities because the approved shots merely will supplement nontoxic shot types already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Small Business Regulatory Enforcement Fairness Act

Similarly, this is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866. This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to do so. This action will not raise novel legal or policy issues because the Service has already approved several other nontoxic shot types.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We received no comments suggesting improvements to this rule.

Paperwork Reduction Act

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 information collection associated with this rule (*see* 50 CFR 20.134) is already approved under OMB control number 1018–0067, which expires December 31, 2006.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We have determined that this rule meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally-protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable, and therefore will reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This rule is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons discussed in the preamble, we hereby amend part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742 a–j; Pub. L. 106–108.

■ 2. Section 20.21 is amended by revising paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) While possessing loose shot for muzzleloading or shotshells containing other than the following approved shot types.

Approved shot type	Percent composition by weight
bismuth-tin	97 bismuth, 3 tin.
steel	iron and carbon.
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron.
tungsten-iron (2 types)	40 tungsten, 60 iron and 22 tungsten, 78 iron.
tungsten-matrix	95.9 tungsten, 4.1 polymer.
tungsten-nickel-iron	50 tungsten, 35 nickel, 15 iron.
tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11.
tungsten-tin-bismuth	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth.
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel.

(2) Each approved shot type must contain less than 1 percent residual lead (see § 20.134).

(3) This shot type restriction applies to the taking of ducks, geese (including brant), swans, coots (Fulica americana), and any other species that make up aggregate bag limits with these migratory game birds during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

Dated: July 26, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–18073 Filed 8–6–04; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 69, No. 152
Monday, August 9, 2004

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB80

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Nursery Crop Insurance Provisions to: Make container and field grown plants separate crops; provide coverage for plants in containers that are equal to or greater than 1 inch in diameter; provide separate basic units by share which will be further divided into basic units by plant type and a basic unit for all liners when additional coverage is purchased; offer one coverage level and price election for each basic unit when additional coverage is purchased; offer optional units by location for field grown plants; allow increases to the plant inventory value report if made on or before August 31st of the crop year; change the provision that precludes acceptance of an application for insurance for any current crop year after May 31st of the crop year; and make other policy changes to improve coverage of nursery plants. FCIC also proposes to amend the Nursery Peak Inventory Endorsement to reflect changes made in the Nursery Crop Provisions and add a new Rehabilitation Endorsement to provide a rehabilitation payment for field grown plants that will recover from an insured cause of loss. The intended effect of this action is to provide policy changes to better meet the needs of the insureds and to restrict the effect of the current Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to the 2005 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business October 8, 2004, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through October 8, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled Nursery Crop Insurance Provisions may be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov*, or the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that the expected benefits associated with this proposed rule outweigh costs to the government. The Nursery Policy changes, as proposed, would stimulate sales and encourage nursery growers to purchase buy-up coverage.

Government outlays were calculated based on, what were considered to be, the four most significant changes: (1) Insurability of plants in containers between 1 inch and 3 inches in diameter; (2) extension of the date for acceptance of an application for insurance; (3) extension of the date for acceptance of a revised plant inventory value report; and (4) addition of a Rehabilitation Endorsement. Under the most likely scenario, these proposed policy changes would increase government outlays by approximately 11.2 million dollars and would result in approximately 505 million dollars of increased liability to nursery growers.

Few problems are expected in servicing insurance policies and data reporting systems due to the changes in this proposed rule.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, DC 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our 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 (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053, which expire February 28, 2005.

Title: Multiple Peril Crop Insurance (Nursery).

Abstract: This rule amends the Common Crop Insurance Regulations (7 CFR part 457) by revising the Nursery Crop Insurance Provisions (7 CFR 457.162) and the Nursery Peak Inventory Endorsement (7 CFR 457.163) and by adding a new Nursery Rehabilitation Endorsement at (7 CFR 457.164).

The Nursery Crop Insurance Provisions are revised to: (1) Make container and field grown plants separate crops; (2) provide coverage for plants in containers that are equal to or greater than 1 inch in diameter; (3) provide separate basic units by share which will be further divided into basic units by plant type and a basic unit for all liners when additional coverage is purchased; (4) offer one coverage level and price election for each basic unit when additional coverage is purchased; (5) offer optional units by location for field grown plants; (6) allow increases to the plant inventory value report if made on or before August 31st of the crop year; (7) change the provision that precludes acceptance of an application for insurance for any current crop year after May 31st of the crop year; and (8) make other policy changes to improve coverage of nursery plants.

The Nursery Peak Inventory Endorsement is revised to reflect changes made in the Nursery Crop Provisions and clarify calculation of premium.

A new Nursery Rehabilitation Endorsement is added to provide a rehabilitation payment for field grown plants that are damaged by an insured cause of loss but will recover.

Purpose: The purpose of this proposed rule is to provide policy changes to better meet the needs of insureds and to restrict the effects of the current Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to the 2005 and prior crop years.

Burden statement: The information that FCIC collects will be used in offering crop insurance coverage, determining program eligibility, establishing an amount of insurance, calculating losses qualifying for a payment, combating fraud, waste, and abuse, etc. The burden hours have increased because FCIC assumes more producers will obtain crop insurance coverage to help protect their investments against risk and producers will be required to provide more documentation and records and notify the insurance provider more often.

Estimate of Burden: We estimate that it will take the producer and the insurance provider, including the agent, an average of 1.9 hours to provide the required information.

Respondents: Producers and insurance providers including their agents.

Estimated annual number of respondents: 3,886.

Estimated annual number of responses per respondent: 6.2.

Estimated annual number of responses: 24,096.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 7,313 hours.

Record keeping requirements: FCIC requires complete records of shipping, sale, or other disposition of all the insured crop on the unit for three years after the end of the crop year. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating burden related to this record keeping requirement.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have a substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. This rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. If FCIC takes any specific action under this policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.162 (Nursery crop insurance provisions) and 7 CFR 457.163 (Nursery peak inventory endorsement) and adding a new Nursery rehabilitation endorsement at 7 CFR

457.164. The provisions will be effective for the 2006 and succeeding crop years. The changes to the provisions for insuring nursery production are as follows:

Section 457.162 Nursery Crop Insurance Provisions

1. Definitions of "American Standard for Nursery Stock," "container grown," "crop value," "fabric grow bag," "FCIC," "good nursery practices," "liners," "monthly proration factors," "nursery crop," "nursery plants," "survival factor," and "wholesale" are added for clarification. The definitions of "amount of insurance," "occurrence deductible," and "under report factor" are revised to reflect the removal of the term "practice." The definition of "under report factor" is also revised to exclude any payments made under the Rehabilitation Endorsement when subtracting previous losses from the crop value. The definition of "practice value" is renamed "basic unit value" because container grown plants and field grown plants are separate insurable crops and not a separate practice. The definition of "field grown" is revised to clarify that in-ground fabric grow bags and balled and burlapping are not artificial root containment devices and plants grown in containers that allow the plants to root in the ground are considered field grown. The definitions of "field market value A" and "field market value C" are revised to clarify that the total number of liner plants applicable to each insurable plant and price listed in the Eligible Plant List is multiplied by the survival factor for liners. The definition of "field market value C" is also revised to specify that the value is based on the insurable plants within the crop immediately prior to the occurrence of any loss. The definition of "in-ground fabric bag" is removed because it has been combined with the definition of "fabric grow bag." The definition of "plant price schedule" is revised to clarify that the schedule is an actuarial document. The definition of "practice" is removed because container grown plants and field grown plants are separate crops and no longer separate practices. The definition of "standard nursery containers" is revised to clarify that fabric grow bags are insurable containers and to provide insurability for plants in containers that are equal to or greater than 1 inch (reduced from 3 inches) in diameter at the widest point of the container interior to allow most liners to be insurable. Trays that contain 288 or fewer cells will be considered standard nursery containers.

2. Section 2(a)—Remove provisions that provide basic units by container grown and field grown practices because container grown plants and field grown plants will be insured as separate crops and not practices. New provisions are added to allow basic units by share to be further divided into additional basic units for additional coverage policies by: (1) Plant type, if the plants are not liners, and (2) all insurable liners. Producers with catastrophic risk protection (CAT) coverage will continue to be limited to basic units by share. Provisions relating a basic unit structure's relationship to an optional unit structure are moved to section 2(b).

3. Section 2(b)—Clarify that the basic unit will be used to establish the amount of insurance, crop year deductible, premium, and the total amount of indemnity payable under the policy. The insured will be subject to the under report factor if, at the time of loss, the aggregate value of the plants in all basic units exceeds the "crop value." Provisions that provide optional units by plant type are removed because plant types will now be insured as separate basic units. Provisions for optional unit division are moved to section 2(d).

4. Section 2(c)—Clarify that the listed plant types are insurable. The reference to "Other plant types listed in the Special Provisions" is removed as an insurable type because the listed types cover all wholesale nursery plants, so reference to "other types" is not necessary.

5. Add a new section 2(d), and redesignate the following section, to provide optional units for field grown plants if each optional unit is located on non-contiguous land. Optional units are limited to field grown plants to avoid the potential for shifting of container grown plants between growing locations to facilitate losses.

6. Section 3(b)—Revise the provisions to allow insureds with additional coverage to select a single price election and coverage level for each basic unit (plant type) under their nursery crop. Insureds who select CAT coverage for one plant type or for liners must select CAT coverage for all plant types and all liners. The ability to select a single price election and coverage level for each plant type will allow insureds, who have purchased additional coverage, to structure their amount of coverage based on the perceived risk associated with each plant type.

A contract was recently awarded by RMA to evaluate the need for premium rate adjustments to reflect the additional risks associated with this change and the other proposed changes contained in this rule. RMA is aware that potential risks may vary by plant type. Based on the results of the contracted study and other available information, RMA anticipates that it will be necessary to initially apply a surcharge to the current premium rates to reflect these risk variations. As data are collected, RMA will continue to make premium rate adjustments based on actual insurance experience. Public comments related to risk variability by plant type and subsequent premium rate adjustments are welcomed. RMA will not publish a final rule prior to completion of the contracted study.

7. Add a new section 3(c), and redesignate the following sections, to clarify that changes to the price election and coverage level will not be made after the date of application for new policies and after September 30th for carryover policies. The sales closing date is removed to allow applications for coverage to be submitted throughout the crop year. Premium will be prorated based on the number of months insured during the crop year.

8. Add a new section 3(f) to clarify that for subsequent crop years, following the year of application, if the insured increases the coverage level or price election on a basic unit, coverage will attach to the unit the later of October 1st or 30 days after the date the request is submitted unless the increase is rejected.

9. Section 6(b)—Revise this section to now require all producers to submit a plant inventory value report each crop year by September 1st prior to the start of the crop year. The insured's policy will be canceled for the subsequent crop year if a plant inventory value report is not submitted by September 1st. This change is necessary because the inventory values of most nursery growers change from one crop year to the next. Therefore, reporting is required for each crop year to accurately establish coverage and premium amount of each insured. If an insured's policy is canceled due to failure to provide a plant inventory value report, the insured may still submit a new application for coverage for the crop year for which the policy was canceled. Coverage will attach 30 days after the date the crop insurance agent receives the application and plant inventory value report, unless the insurance provider determines the inventory is not acceptable.

10. Section 6(c)—Change the term "practice value" to "basic unit value" since the term "practice" is no longer applicable. Clarify that failure to provide requested documentation on the plant inventory value report will result in denial of insurance, and misreporting on the plant inventory value report will

result in denial of an indemnity for the crop year although full premium will still be owed. The requirement that producers with CAT level policies report previous plant sales on their plant inventory value report is removed. Documentation of previous plant sales is no longer required because coverage is based on the value of insurable plants declared on the insured's plant inventory value report and is not restricted to limitations over previous years' sales.

11. Section 6(e)—Clarify that the price for each plant and size listed on the insured's plant inventory value report is the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's nursery catalog or price list. The amount of assumed liability is not in excess of plant values contained in the Plant Price Schedule.

12. Add a new section 6(f), and redesignate the following sections, to clarify that prices for insurable plants that are damaged prior to the attachment of insurance coverage will be reduced for inventory reporting purposes to reflect their true values.

13. Redesignated section 6(g)—Change the final plant inventory value report revision date from May 31st to on or before August 31st to allow the report to be increased throughout the crop year. A new provision is added to clarify that an inspection is required if the plant inventory value is increased 50 percent or more of the previous value on a policy basis.

14. Redesignated section 6(h)—Change "practice value" to "basic unit value" since the term "practice" is no longer applicable.

15. Redesignated section 6(i)—Remove the limitations for catastrophic insurance coverage that specify a producer's plant inventory value cannot exceed the lesser of the actual value based on prices contained in the Plant Price Schedule or 150 percent of previous years' sales for container grown plants or 250 percent of previous years' sales for field grown plants unless a waiver is received. Although a waiver is no longer required, the report must accurately reflect insurable plant inventory and valuations based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's catalog or price list. Insureds with catastrophic risk protection coverage or additional coverage are still permitted to increase their plant inventory value during the crop year, subject to company approval, by submitting a revised plant inventory value report. New provisions are added to clarify that a plant in an oversized container will be valued as if the plant was in an appropriate sized container and each cell in a multiple cell container is considered a separate container for insurability and valuation purposes.

16. Add a new section 6(j) to incorporate into the nursery policy that two copies of the insured's most recent wholesale catalog or price list, that are in accordance with stated requirements, must be submitted at the time of application and on or before September 1st for each crop year following the year of application. Catalogs from each insured nursery are required to establish insurable plant prices in the event of a loss and to update the Plant Price Schedule each crop year. This requirement was previously in the Special Provisions. Failure to provide the wholesale catalog or price list, or if they are not in accordance with FCIC procedure, will result in no indemnity being due for the crop year.

17. Section 7(a)—Clarify that premium is determined by multiplying the amount of insurance by the appropriate premium rate and the monthly proration factor contained in the actuarial documents.

18. Add a new section 7(c), and redesignate the following section, to specify that the insured's premium amount is due and must be paid at the time of application if the application for the crop year is received on or after July 1st of that same crop year. This is the same date that premium is due for all other nursery policies. Failure to pay the premium at the time of application, if the application is received on or after July 1st, will result in no insurance coverage for the crop year.

19. Section 8—Clarify in the introductory paragraph that the insured nursery plant inventory is all the nursery plants in the county for each nursery crop insured since container grown and field grown are now considered as separate crops.

20. Section 8(i)—Clarify that plants being grown solely for harvest of buds, flowers, or greenery are not insurable under the Nursery Crop Provisions.

21. Section 8(j)—Revise the provision to allow harvest of fruits or nuts provided the plants are primarily intended for sale while in the nursery. The removal of fruits or nuts from nursery plants does not adversely affect plant values. Therefore, insurability should not be restricted if the plants are being grown primarily for sale.

22. Section 9(a)—Remove the requirement that an application for insurance must be submitted on or before May 31st for coverage to attach during the current crop year. This change provides insureds with greater control over their risk management plan by allowing crop insurance coverage to be purchased throughout the entire crop year. Since there is a 30 day waiting period before coverage begins, if an application is received after August 31, coverage will not begin until the following crop year. Provisions pertaining to coverage for the 1999 crop year are no longer applicable and are removed.

23. Remove section 10(a)(7) because it provided insurance coverage for a delay in marketability which was vague and open to interpretation. In addition, section 10(a) specifies causes of loss on which insurance coverage is provided. Marketing impacts are a result rather than a cause of loss. Therefore, the provision addressing coverage of loss in plant value due to marketing ability is moved to new section 10(b).

24. Add a new section 10(b). and redesignate the following sections, to provide coverage for loss in plant values because of an inability to market plants, if such plants would have been marketed during the crop year, due to an insured cause of loss that occurs within the insurance period. Changing the coverage criteria from delayed marketing to inability to market provides a more definitive guideline for coverage of plant valuations based on marketing ability. Delayed marketing can result in highly variable plant valuations that may be difficult to determine accurately. Inability to market can be ascertained more accurately and generally results in plants having little or no value.

25. Redesignated section 10(c)—Clarify that insurance is not provided against causes of loss specified in sections 12(a) and (c) through (e) of the Basic Provisions. Section 12(b) of the Basic Provisions excludes insurability of a loss due to failure to follow "good farming practices." However, these Nursery crop insurance provisions use the term "good nursery practices" in lieu of the term "good farming practices."

26. Redesignated section 10(c)(3)—Clarify that insurance is not provided against any loss caused by the inability to market the nursery plant as a result of a refusal of a buyer to accept production, boycott, or an order from a public official prohibiting sales including but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales.

27. Redesignated section 10(c)(6)—Revise the provision to clarify that no cause of loss will be covered if the damage suffered is only a failure of the plants to grow to an expected size. The reference to drought in this provision

was confusing because nursery plants must be irrigated unless the Special Provisions allow coverage of non-irrigated, field grown plants.

28. Add a new section 10(c)(7) to clarify that failure to follow recognized good nursery practices is not a covered cause of loss.

29. Section 11(a)(2)—Clarify that submission of a claim for indemnity may be waived if final loss adjustment is partially or totally deferred because the adjuster cannot make an accurate determination of amount of damage to the insured plants and what will occur if the claim is deferred. A deferred claim may be required to allow nursery plants to go through a dormancy period followed by a period of growth. The deferral period will result in more precise information on both the severity and amount of damage thereby improving the accuracy of the loss adjustment process.

30. Section 12(g)—Revise the provision to specify that the total of all indemnities and rehabilitation payments cannot exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, to ensure that the total amounts paid in any crop year do not exceed the value of the insurable plants.

Section 457.163 Nursery Peak Inventory Endorsement

1. The definition of "peak amount of insurance" is revised to coincide with the change that allows insureds with additional coverage to select a single coverage level and price election for each basic unit (*i.e.* for each plant type and for all liners) in the Nursery Crop Provisions. A definition of "premium adjustment factor" is added to clarify calculation of the factor.

2. Section 2(b)—Revise the provision to remove the term "limited" because all coverage in excess of catastrophic risk protection is now termed "additional coverage."

3. Section 2(d)—Revise the provision to reflect the removal of the term "practice" and clarify that an additional Peak Inventory Endorsement may be purchased after each insured loss if the nursery is restocked.

4. Add a new section 3(c) to clarify that a Peak Inventory Endorsement can only be used to temporarily increase the value reported on the insured's initial or revised plant inventory value report for the crop year and cannot be used in lieu of a revised plant inventory value report to provide coverage of insurable plants that are added because of physical expansion of the nursery facilities (*e.g.* a newly acquired structure or location).

5. Section 5(a)—Clarify that the premium for this endorsement is calculated by multiplying the peak amount of insurance by the appropriate premium rate and the premium adjustment factor. An example of a Peak Inventory Endorsement premium calculation is added for clarity.

6. Section 7—Change "practice value" to "basic unit value" since the term "practice" is no longer applicable.

Section 457.164 Nursery Rehabilitation Endorsement

This endorsement provides a rehabilitation payment for field grown plants that are damaged by an insured cause of loss but will recover to their pre-damaged stage of growth if appropriate rehabilitation measures are taken (*i.e.* pruning and setup) and rehabilitation costs equal or exceed the established trigger amount. Nursery growers who purchase the endorsement, have insurable plant damage, and qualify for a rehabilitation payment have an incentive to take necessary procedures to enhance the recovery and subsequent value of damaged plants. This payment will be the lesser of the actual cost of rehabilitation of the insurable damaged plants or 7.5 percent of the value (based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's nursery catalog or price list) of all insurable, rehabilitated plants in each basic or optional unit at the time damage occurred, multiplied by the under report factor, multiplied by the coverage level, multiplied by the price election, and multiplied by the share. Based on reported rehabilitation costs of field grown material, calculation of the rehabilitation payment using 7.5 percent of the value of the insurable damaged plants is an approximation of such costs. Actual costs incurred by growers during the rehabilitation process must be verifiable through receipts and records.

List of Subjects in 7 CFR Part 457

Crop insurance, Nursery.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 the Common Crop Insurance Regulations effective for the 2006 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS;

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

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

2. Section 457.162 is amended as follows:

a. Revise the first sentence of the introductory text.

b. In section 1, remove the definitions of "In-ground fabric bag," "practice value" and "practice;" add definitions of "American Standard for Nursery Stock," "basic unit value," "container grown," "crop value," "fabric grow bag," "FCIC," "good nursery practices," "liners," "monthly proration factors," "nursery crop," "nursery plants," "survival factor" and "wholesale;" and revise the definitions of "amount of insurance," "field grown," "field market value A," "field market value C," "occurrence deductible," "plant price schedule," "standard nursery containers," and "under report factor."

c. Revise section 2.

d. Revise section 3(b).

e. In section 3 redesignate paragraphs (c) and (d) as paragraphs (d) and (e) respectively.

f. Add new sections 3(c) and (f).

g. In section 6 redesignate paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i) respectively.

h. Revise sections 6(h), (c), (e), and newly redesignated paragraphs (g), (h), and (i).

i. Add a new section 6(f).

j. Add a new section 6(j).

k. Revise section 7(a).

l. Redesignate section 7 paragraph (c) as paragraph (d).

m. Add a new section 7(c).

n. Revise the introductory paragraph of section 8.

o. Revise section 8(i) and (j).

p. Revise section 9(a).

q. Remove section 10(a)(7).

r. Redesignate section 10(b) as 10(c).

s. Add a new section 10(b).

t. Revise newly redesignated section 10(c) introductory text and paragraphs (3), (6), and add paragraph (7).

u. Revise section 11(a)(2).

v. Revise section 12(g).

The revisions and additions to § 457.162 read as follows:

§ 457.162 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 2006 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

American Standard for Nursery Stock. A publication of the American Association of Nurserymen issued in accordance with the rules of the American National Standards Institute, Inc. that provides common terminology and standards for nurseries.

Amount of insurance. For each basic unit, your basic unit value is multiplied by the coverage level percentage you elect, multiplied by your price election, and multiplied by your share.

Basic unit value. The full value of all insurable plants in each basic unit on your plant inventory value report including any revision that increases the value of your insurable plant inventory.

Container grown. Nursery plants planted and grown in standard nursery containers. Nursery plants in standard nursery containers that are placed in the ground, either directly or when placed in pots in the ground (*i.e.* pot-in-pot), are considered as container grown plants.

Crop value. The sum of all basic unit values for the crop reported on all plant inventory value reports, including any revised reports and any peak inventory value reports during the coverage term of the Peak Inventory Endorsement.

* * * * *

Fabric grow bag. (root control bag) A fabric bag, including a woven or matted bag, with a plastic or fabric bottom, used for growing woody plants in-ground or as an above-ground nursery plant container, that provides adequate drainage and is appropriate in size for the plant.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within the USDA, or a successor agency.

Field grown. Nursery plants planted and grown in the ground without the use of an artificial root containment device. In-ground fabric grow bags and balled and burlapping are not considered artificial root containment devices. Plants that are grown in the field in containers that allow the plants to root into the ground (for example, a container without a bottom) are also considered field grown.

Field market value A. The value of undamaged insurable plants, based on the prices contained in the Plant Price Schedule, in the basic or optional unit, as applicable, immediately prior to the occurrence of any loss as determined by our appraisal. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of loss for the purpose of determining whether you are entitled to an indemnity for insured losses in the optional or basic unit, as applicable. The total value of undamaged liners is multiplied by the survival factor for the purpose of determining the value of undamaged insurable plants.

* * * * *

Field market value C. The value of undamaged insurable plants, based on the prices contained in the Plant Price Schedule for insurable plants within the crop immediately prior to the occurrence of any loss as determined by our appraisal. This value is used to calculate the actual value of the plants in the crop at the time of loss to ensure that you have not under reported your plant values. The total value of undamaged liners is multiplied by the survival factor for the purpose of determining the value of undamaged insurable plants.

Good nursery practices. In lieu of the definition of "good farming practices" contained in section 1 of the Basic Provisions, the horticultural practices generally in use in the county for nursery plants to make normal progress toward the stage of growth at which marketing can occur and generally recognized by agricultural experts for the area as compatible with the nursery plant production practices and weather conditions in the county. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be "good nursery practices."

* * * * *

Liners. Plants produced in standard nursery containers that are equal to or greater than 1 inch, including trays containing 288 or fewer individual cells, but less than 3 inches in diameter at the widest point of the container or cell interior, have an established root system reaching the sides of the containers, are able to maintain a firm root ball when lifted from the containers, and meet all other conditions specified in the Special Provisions.

* * * * *

Monthly proration factors. Factors contained in the actuarial documents that are used to calculate premium when you do not insure the nursery plants for the entire crop year.

* * * * *

Nursery crop. All eligible nursery plants:

(1) Grown in standard nursery containers; or

(2) Field grown.

Nursery plants. Plants grown in wholesale nurseries.

Occurrence deductible. (1) This deductible allows a smaller deductible than the crop year deductible to be used when:

(i) Inventory values are less than the reported basic unit value; or

(ii) You elected optional units, if applicable.

(2) The occurrence deductible is the lesser of:

(i) The deductible percentage multiplied by field market value A multiplied by the under report factor; or

(ii) The crop year deductible.

Plant price schedule. A schedule of insurable plant prices published by FCIC in the actuarial documents in electronic format that establishes the value of undamaged insurable plants and the maximum amount we will pay for damaged insurable plants. A paper copy is available from your crop insurance agent.

* * * * *

Standard nursery containers. Rigid containers not less than 1 inch in diameter at the widest point of the container interior, including trays that contain 288 or fewer individual cells, above-ground fabric grow bags, and other types of containers specified in the Special Provisions that are appropriate in size and provide adequate drainage that is appropriate for the plant. In-ground fabric grow bags, burlap, and trays (flats) without individual cells are not considered standard nursery containers.

* * * * *

Survival factor. A factor shown on the actuarial documents that specifies the expected percentage of liners that normally survive the period from insurance attachment to market.

Under report factor. The factor that adjusts your indemnity for under reporting of inventory values. The factor is always used in determining indemnities. For each crop, the under report factor is the lesser of: 1.000; or the crop value minus the total of all previous losses, as adjusted by any previous under report factor, divided by field market value C. Payments made under the Rehabilitation Endorsement will not be considered a previous loss when calculating the under report factor.

Wholesale. To sell:

(a) In large quantities;

(b) at a price below that offered on low-quantity sales; and

(c) to retailers or commercial users or other end-users for business purposes (*e.g.,* sales to landscape contractors and commercial fruit producers.)

2. *Unit Division.*

(a) If you elect additional coverage, a basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by:

(1) Each insurable plant type designated in section 2(c) if the plants are not liners; and

(2) All insurable liners (inclusive of all insurable plant types).

(b) Although the basic unit may be divided into optional units in

accordance with section 2(d), the basic unit will be used to establish the amount of insurance, crop year deductible, premium, and the total amount of indemnity payable under this policy. If, at the time of loss, the aggregate value of the plants in all your basic units exceeds your crop value, you will be subject to the under report factor.

(c) Only the following plant types contained on the eligible plant list are insurable:

(1) Deciduous Trees (Shade and Flower);

(2) Broad-leaf Evergreen Trees;

(3) Coniferous Evergreen Trees;

(4) Fruit and Nut Trees;

(5) Deciduous Shrubs;

(6) Broad-leaf Evergreen Shrubs;

(7) Coniferous Evergreen Shrubs;

(8) Small Fruits;

(9) Herbaceous Perennials;

(10) Roses;

(11) Ground Cover and Vines;

(12) Annuals; and

(13) Foliage.

(d) In lieu of the optional unit provisions in the Basic Provisions, if you elect additional coverage, and for an additional premium, field grown inventory that would otherwise be one basic unit may be divided into optional units by growing location if each location is located on non-contiguous land.

3. *Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.*

* * * * *

(b) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election and coverage level for each basic unit insured under this policy if additional coverage is selected. If you select catastrophic risk protection coverage, you must select catastrophic risk protection coverage for all plant types and all liners insured under your nursery crop policy.

(c) In lieu of the definition of "sales closing date" in section 1 of the Basic Provisions and in lieu of section 3(b) of the Basic Provisions, changes to the price election and coverage level that would become effective for the current crop year are limited as follows:

(1) For new policies, changes will not be made for the crop year after the date of the application; and

(2) For carryover policies, changes will not be made for the crop year after September 30th.

* * * * *

(f) For subsequent crop years, following the year of application, if you increase your coverage level or price election, insurance will attach at the increased level or election on the basic units to which the increase applies on October 1st or 30 days after the date you submitted your request, whichever is later, unless we reject the proposed increase because a loss occurs within 30 days of the date the request is made.

* * * * *

6. *Plant Inventory Value Report.*

* * * * *

(b) You must submit a plant inventory value report to us with your application and for each subsequent crop year not later than September 1 prior to the start of the crop year. If you fail to provide a plant inventory value report by September 1, we will cancel your policy for the subsequent crop year. You may submit a new application for coverage for the crop year for which your policy was canceled. Coverage will attach 30 days after your crop insurance agent receives the application and the plant inventory value report signed by you, unless we notify you that your inventory is not acceptable.

(c) The plant inventory value report must include all growing locations, the basic unit value of each basic unit, and your share. At our option, you will be required to provide documentation in support of your plant inventory value report, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; sales and purchases of plants for the 3 previous crop years; and your ability to properly obtain and maintain nursery stock. Failure to provide such documentation will result in denial of insurance. Misreporting of any material information on the plant inventory value report will result in denial of any indemnity due for the crop year and because such denial is based on a breach of policy, the full premium will still be owed.

* * * * *

(e) Your plant inventory value report must reflect your insurable nursery plant inventory value. The price for each plant and size listed on your plant inventory value report will be the lower of the Plant Price Schedule price or the lowest wholesale price in your nursery catalog or price list submitted in accordance with section 6(j). In no instance will we be liable for plant values greater than those contained in the Plant Price Schedule.

(f) The applicable price for insurable plants damaged prior to the attachment of insurance coverage will be reduced for inventory reporting purposes if we accept such plants for insurance coverage, or they will be removed from the plant inventory value report if they are not accepted. We will calculate the insurable value of damaged plants that are accepted for coverage as follows:

(1) Determine the number of months required for the plant to reach the stage of growth at which damage occurred;

(2) Determine the number of months required for the plant to recover to the stage of growth at which damage occurred;

(3) Divide 6(f)(2) by 6(f)(1);

(4) Subtract the results of 6(f)(3) from 1.00; and

(5) Multiply the results of 6(f)(4) by the insurable plant price.

(g) You may revise your plant inventory value report on or before August 31st to increase the reported inventory value for the crop year. Any revision must be made in writing. An inspection will be performed when the value shown on the plant inventory value report is increased 50 percent or more from the previous values on a policy basis. At our discretion, we may inspect the inventory if an increase of less than 50 percent is reported on a policy basis. Your revised plant inventory value report will be considered accepted by us and insurance will attach on any proposed increase in inventory value 30 days after your written request is received unless we reject the proposed increase in your plant inventory value in writing. We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(h) You must report the full value of your basic unit value in accordance with section 6(e). Failure to report the full value of each basic unit value will result in the reduction of any claim in accordance with section 12(d).

(i) Insurable plants in over-sized containers will be valued for purposes of reporting inventory and loss adjustment as if the plants were in appropriate sized containers in accordance with the standards contained in the current American Standard for Nursery Stock. Each cell in a multiple cell container is considered a separate container. (*See* the Eligible Plant List at *http://www.rma.usda.gov/* for additional information and requirements on container specifications and volume calculation.)

(j) You must submit two copies of your nursery's most recent wholesale catalog or price list at the time of application and on or before September 1st for each crop year following the year of application. If your nursery publishes more than one edition of its wholesale catalog or price list offering different plants (*e.g.*, a fall plant catalog and a spring plant catalog), you must submit two copies of the most recent edition of

each at the time the initial plant inventory value report is submitted. If you fail to provide copies of your wholesale catalog or price list or they are not in accordance with FCIC's procedures, no indemnity will be payable for the crop year. At a minimum, your wholesale catalog or price list must:

(1) Be legible;

(2) Contain the name, address, and phone number of your nursery; and

(3) List each plant's name (scientific or common), size, and wholesale price.

7. *Premium.*

(a) In lieu of section 7 (c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and the monthly proration factor contained in the actuarial documents, if applicable.

* * * * *

(c) In lieu of section 7(a) of the Basic Provisions, if you apply for insurance on or after July 1st, the premium for the partial crop year will be due and must be paid at the time of application. Failure to pay the premium at the time of application will result in no insurance, and no indemnity being owed, for the crop year.

* * * * *

8. *Insured Plants.*

In lieu of the provisions of section 8 and 9 of the Basic Provisions, the insured nursery plant inventory will be all insurable nursery plants in the county for each insured nursery crop that:

* * * * *

(i) Are not stock plants or plants being grown solely for harvest of buds, flowers, or greenery; and

(j) Produce edible fruits or nuts provided the plants are intended for sale. (If intended for harvest of the fruits or nuts and not for sale, the nursery plants are not insurable.)

9. *Insurance Period*

(a) In lieu of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins 30 days after your crop insurance agent receives an application signed by you, unless we notify you in writing that your inventory is not acceptable;

(2) For subsequent crop years, the insurance period begins at 12:01 a.m. each October 1st; and

(3) If you apply for coverage after August 31st, coverage will not begin until the next crop year, subject to the 30 day delay specified in this section.

* * * * *

10. *Causes of Loss.*

* * * * *

(b) Insurance is provided against a loss in plant values because of an inability to market such plants, if such plants would have been marketed during the crop year, due to a cause of loss specified in section 10(a)(1) through (6) that occurs within the insurance period. For example, coverage is provided for reduced value, due to an insured cause of loss, if a plant is not marketable during its usual and recognized marketing period (*e.g.*, poinsettias with a marketing window between November 1st and December 25th).

(c) In addition to the causes of loss excluded in sections 12(a) and (c) through (e) of the Basic Provisions, we do not insure against any loss caused by:

* * * * *

(3) The inability to market the nursery plants as a result of refusal of a buyer to accept production, boycott, or an order from a public official prohibiting sales including, but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales.

* * * * *

(6) Any cause of loss, including those specified in section 10(a), if the only damage suffered is a failure of plants to grow to an expected size.

(7) Failure to follow recognized good nursery practices.

11. *Duties in the Event of Damage or Loss.*

(a) * * *

* * * * *

(2) You must submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later than 60 days after the end of the insurance period. This requirement will be waived by us if the final adjustment of your claim is totally or partially deferred because we are unable to make an accurate determination of the amount of damage to the insured plants. If within the time frame specified we notify you that we are unable to make an accurate determination of damage on all or some of your damaged plants:

(i) For those damaged plants on which the loss adjustment and claim have not been deferred, you must submit a partial claim within the time frame specified in section 11(a)(2) and we will settle your claim on such plants;

(ii) For those damaged plants on which the loss adjustment and claim have been deferred, we will determine amount of damage at the earliest possible date but no later than 1 year after the end of the insurance period for the crop year in which the damage occurred; and

(iii) You must maintain the identity of the plants on which loss adjustment is deferred throughout the deferral period.

* * * * *

12. *Settlement of Claim.*

* * * * *

(g) The total of all indemnities and rehabilitation payments for the crop year will not exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, if this endorsement is elected.

* * * * *

3. Section 457.163 is amended as follows:

a. In section 1, revise the definition of "peak amount of insurance" and add a definition for "premium adjustment factor";

b. Revise sections 2(b) and (d);

c. Add a new section 3(c);

d. Revise section 5(a); and

e. Revise section 7.

The additions and revisions read as follows:

§ 457.163 Nursery peak inventory endorsement.

* * * * *

1. *Definitions*

* * * * *

Peak amount of insurance. The additional inventory value reported on the peak inventory value report for each basic unit multiplied by your coverage level, price election, and share.

* * * * *

Premium adjustment factor. A factor calculated by subtracting the monthly proration factor for the month following the month containing the coverage termination date from the proration factor for the month that coverage commenced. Peak inventory endorsements with a coverage termination date during the month of September will have a premium adjustment factor equal to the proration factor for the month containing the coverage commencement date.

* * * * *

2. *Eligibility*

* * * * *

(b) You must have elected additional coverage.

* * * * *

(d) You may purchase no more than two Peak Inventory Endorsements for each basic unit during the crop year unless you have suffered insured losses and have restocked your nursery, in which case an additional Peak Inventory Endorsement may be purchased after each insured loss and is limited to the amount of the restock.

3. *Coverage*

* * * * *

(c) This endorsement can only be used to temporarily increase the value reported on your initial or revised plant inventory value report for the crop year. If you expand your nursery growing facilities (*e.g.* newly acquired growing location or structure), you must revise your plant inventory value report.

* * * * *

5. *Premium*

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by the premium adjustment factor.

Example of Peak Endorsement Total Premium Calculation: Assume a grower reports a peak amount of insurance on a basic unit of $100,000 with a 65 percent coverage level, a price election of 1.00, and a share of 1.000. The base premium rate is $0.051. The proration factors for the Peak Endorsement starting month and month following the month containing the coverage termination date are 0.68 and 0.52, respectively, as stated in the actuarial documents, which results in a premium adjustment factor of 0.16 (0.68—0.52). The total premium amount for the Peak Endorsement is $530.00 ($100,000 × 0.65 × 1.00 × 1.000 × $0.051 × 0.16).

* * * * *

7. *Liability limit.*

The peak amount of insurance is limited to the basic unit value you declare under the Nursery Crop Insurance Provisions.

4. Add § 457.164 to read as follows:

§ 457.164 Nursery rehabilitation endorsement.

Nursery Crop Insurance

Optional Rehabilitation Endorsement

In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made a part of your Nursery Crop Insurance Provisions subject to the terms and conditions herein. In the event of a conflict between the Nursery Crop Insurance Provisions and this endorsement, this endorsement will control.

1. *Eligibility.*

(a) You must have purchased additional coverage under the Nursery Crop Insurance Provisions, and you must comply with all terms and conditions contained in the applicable Nursery Crop Insurance Provisions and endorsements.

(b) You must elect this endorsement at the time of application for the initial crop year your field grown nursery plants will be insured under the Nursery Crop Insurance Provisions or by October 1st if your field grown plants are already insured under the Nursery Crop Insurance Provisions.

(c) All field grown nursery plants insured under the Nursery Crop Insurance Provisions must be insured under this endorsement. Nursery plants produced in standard nursery containers are not covered under this endorsement.

2. *Coverage.*

(a) Rehabilitation costs covered by this endorsement are limited to expenditures for labor and materials for pruning and setup (righting, propping, and staking) of field grown plants requiring rehabilitation that:

(1) Are damaged by an insured cause of loss specified in section 10 of the Nursery Crop Insurance Provisions; and

(2) Have a reasonable expectation of recovery.

(b) A rehabilitation payment may be made under this endorsement only if:

(1) Verifiable records are provided showing actual expenditures for rehabilitation;

(2) Rehabilitation procedures are performed directly following occurrence of damage before additional deterioration of the damaged plants occurs;

(3) We determine it is practical to rehabilitate the damaged plants; and

(4) The total actual rehabilitation costs for the basic or optional unit is, at least, the lesser of 2.0 percent of field market value A or $5,000.

(c) The maximum amount of the rehabilitation payment for each basic or optional unit will be the lesser of:

(1) Your total actual rehabilitation costs multiplied by the under report factor contained in the Nursery Crop Insurance Provisions; or

(2) An amount equal to 7.5 percent of the value (based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in the insured's nursery catalog or price list) of all your insurable field grown plants that were rehabilitated subsequent to an insured cause of loss, multiplied by the under report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, multiplied by your price election, and multiplied by your share. Insurable, rehabilitated plants that have not recovered from damage that occurred prior to attachment of this endorsement will have a reduced value in accordance with section 6(f) of the Nursery Crop Insurance Provisions.

(d) Only one rehabilitation payment will be paid on insurable plants that are rehabilitated on each basic or optional unit during any crop year regardless of the number of losses that occur on the unit during the insurance period.

3. *Cancellation.*

This endorsement will continue in effect until canceled. It may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date, contained in the Nursery Crop Insurance Provisions, preceding the crop year for which the cancellation of this endorsement is to be effective.

Signed in Washington, DC, on August 3, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–18059 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1775, 1777, 1778, and 1780

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1942

Rural Housing Service

7 CFR Part 3570

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4274

RIN 0572–AB96

Definition Clarification of State Nonmetropolitan Median Household Income (SNMHI)

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and the Rural Utilities Service (RUS), agencies delivering the United States Department of Agriculture's Rural Development Housing, Business, and Utilities Programs, are proposing to amend their regulations to reflect the clarification of the definition of SNMHI. The definition will in essence state "the median

household income of the state's non-metropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population." This minor modification will enable Rural Development to serve more communities across rural America. The loan and grant eligibility or priority scoring will be positively impacted for Rural Development Housing, Business, and Utilities Programs.

DATES: Comments must be received by RUS or bear a postmark or equivalent, no later than September 8, 2004.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message "Definition Clarification of State Non-metropolitan Median Household Income (SNMHI)."
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading "Definition Clarification of State Non-metropolitan Median Household Income (SNMHI)." All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Linda Scott, Loan Specialist, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2235–S, Stop 1570, Washington, DC 20250–1570. Telephone (202) 720–9639. E-mail: *Linda.Scott@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.760—Water and Waste Disposal Systems for Rural Communities; 10.761—Technical Assistance and Training Grants; 10.762—Solid Waste Management Grants; 10.763—Emergency Community Water Assistance Grants; 10.766—Community Facilities Loans and Grants; 10.767—Intermediary Relending Program; and 10.770—Water and Waste Disposal Loans and Grants (Section 306C). This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

The programs described by this rule that are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015, are 10.760—Water and Waste Disposal Systems for Rural Communities; 10.763—Emergency Community Water Assistance Grants; 10.766—Community Facilities Loans and Grants; 10.767—Intermediary Relending Program; and 10.770—Water and Waste Disposal Loans and Grants (Section 306C).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and, in accordance with section 212 (e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating any action against the Department or its agencies.

Regulatory Flexibility Act Certification

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control numbers 0572–0109, 0572–0110, 0572–0112, 0572–0121, 0575– that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Background

Pursuant to 44 U.S.C. 3504(e)(3) and 31 U.S.C. 1104(d) and Executive Order No. 10253 (June 11, 1951), the Office of Management and Budget (OMB) defines Metropolitan Statistical Areas, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas for use in Federal statistical activities. Once-a-decade OMB performs a comprehensive review of statistical area standards and definitions and publishes a list which includes counties where Metropolitan Statistical Areas are located. The entire county in which a metropolitan statistical area is located is determined

by OMB to be a metropolitan area, and, therefore, is not eligible for Rural Development assistance. (OMB issues periodic updates of the areas between decennial censuses based on Census Bureau data.) Because pockets of rural areas in need of Rural Development's financial assistance are located within these counties, Rural Development is proposing to define State Nonmetropolitan Median Household Income to include the portions of such metropolitan counties outside of cities, towns or places of 50,000 or more population.

The purpose of the proposed rule, with respect to the Water and Environmental Programs (WEP), is to create a standard definition of SNMHI to be used in priority scoring for WEP Technical Assistance and Training Grants, Section 306 Water and Waste Disposal Loans and Grants, and Emergency and Imminent Community Water Assistance Grants, and for loan and grant eligibility determinations for Water and Waste Loans and Grants. Standardizing the definition of SNMHI will allow for more efficient administration of these WEP loan and grant programs consistent with the purposes of the Consolidated Farm and Rural Development Act (codified at 7 U.S.C. 1921 *et seq.*).

The proposed rule also amends the Intermediary Relending Program (IRP) and Community Facilities (CF) loan and grant regulations by adding a definition of SNMHI. The term is actually used to help determine loan funding priority for the IRP and CF programs. The proposed change, for the IRP and CF programs, merely recognizes a test which is already being used and whose parameters have not been changed by inclusion of the definition.

The 30-day comment period for this proposed regulation is needed to make an equitable adjustment in eligibility and priority criteria to coincide with the beginning of Fiscal Year (FY) 2005. When the Census Bureau released the new median household income data based on the 2000 census, a number of rural communities across the country became ineligible for grants and low interest loans. These communities' median household income increased at a much faster rate than the indicator rate used by the agency, giving the appearance that the communities were relatively wealthier when compared to the state's median household income. However, the agency's median household income indicator was faulty since it did not account for a change in the definition of metropolitan counties from the 1990 census to the 2000 census. Based upon a review of applications on hand and using the 2000 census median household income data for non-metropolitan counties, there was approximately a 25 percent reduction in the number of communities eligible for a grant and a 50 percent reduction in the number of communities eligible for a reduced interest rate. An Administrative Notice is in effect until. September 30, 2004, enabling Rural Development program areas to continue using the 1990 census data for eligibility and scoring purposes for these communities with applications on hand as of October 1, 2003, provided that the loan and/or grant are funded before the end of FY 2004. After that date, all applications must be processed using the 2000 census data. By having this definition modification in effect as of October 1, 2004, the negative impact to numerous rural communities will be greatly reduced, and they will continue to be eligible for Rural Development financial assistance.

List of Subjects

7 CFR Part 1775

Business and industry; Community development; Community facilities; Grant program—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

7 CFR Part 1777

Community development; Community facilities; Grant programs—housing and community development; Loan programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

7 CFR Part 1778

Community development; Community facilities; Grant programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

7 CFR Part 1780

Community development; Community facilities; Grant programs—housing and community development; Loan programs—housing and community development; Reporting and recordkeeping requirements; Rural areas; Waste treatment and disposal; Water supply; Watersheds.

7 CFR Part 1942

Community development; Community facilities; Loan program—Housing and community development; Loan security; Reporting and recordkeeping requirements; Rural Areas; Waste treatment and disposal—Domestic; Water supply—Domestic.

7 CFR Part 3570

Accounting; Administrative practice and procedure; Conflicts of interests; Environmental impact statements; Foreclosure; Fair Housing; Grant programs—Housing and community development; Loan programs—Housing and community development; Rural areas; Subsidies.

7 CFR Part 4274

Community development; Economic development; Loan programs—business; Reporting and recordkeeping requirements; Rural areas.

For reasons set forth in the preamble, RUS proposes to amend 7 CFR chapters XVII, XVIII, and XVIV as set forth below:

CHAPTER XVII—Rural Utilities Service, Department of Agriculture

PART 1775—TECHNICAL ASSISTANCE AND TRAINING GRANTS

1. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

2. Amend § 1775.4 by adding a definition for "Statewide Nonmetropolitan Median Household Income" in alphabetical order to read as follows:

§ 1775.4 Definitions.

* * * * *

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

PART 1777—SECTION 306C WWD LOANS AND GRANTS

3. The authority citation for part 1777 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

4. Amend § 1777.4 by adding a definition for "Statewide Nonmetropolitan Median Household Income" in alphabetical order to read as follows:

§ 1777.4 Definitions.

* * * * *

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of the State's nonmetropolitan counties and portions

of metropolitan counties outside of cities, towns or places of 50,000 or more population.

PART 1778—EMERGENCY AND IMMINENT COMMUNITY WATER ASSISTANCE GRANTS

5. The authority citation for part 1778 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

6. Amend § 1778.4 by adding a definition for "Statewide Nonmetropolitan Median Household Income" in alphabetical order to read as follows:

§ 1778.4 Definitions.

* * * * *

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

PART 1780—WATER AND WASTE LOANS AND GRANTS

7. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

8. Amend § 1780.3(a) by revising the definition for "Statewide Nonmetropolitan Median Household Income" to read as follows:

§ 1780.3 Definitions and grammatical rules of construction.

(a) * * *

Statewide nonmetropolitan median household income means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

* * * * *

CHAPTER XVIII—Rural Housing Service, Rural Business—Cooperative Service, and Farm Service Agency, Department of Agriculture

PART 1942—ASSOCIATIONS

9. The authority citation for part 1942 continues to read:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

10. Amend subpart A by adding a new § 1942.21 to read as follows:

§ 1942.21 Statewide Nonmetropolitan Median Household Income.

Statewide Nonmetropolitan Median Household Income includes counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

CHAPTER XXXV—Rural Housing Service, Department of Agriculture

PART 3570—COMMUNITY PROGRAMS

11. The authority citation for part 3570 continues to read:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart B—Community Facilities Grant Program

12. Amend § 3570.53 by revising the definition for "State nonmetropolitan median household income" to read as follows:

§ 3570.53 Definitions.

* * * * *

State nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

* * * * *

CHAPTER XLII—Rural Business—Cooperative Service, Rural Utilities Service, Department of Agriculture

PART 4274—DIRECT AND INSURED LOANMAKING

13. The authority citation for part 4274 continues to read:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

14. Amend § 4274.302 (a) by adding a definition for "Statewide Nonmetropolitan Median Household Income" in alphabetical order to read as follows:

§ 4274.302 Definitions and abbreviations.

(a) * * *

Statewide Nonmetropolitan Median Household Income (SNMHI). Median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

* * * * *

Dated: July 16, 2004.

Gilbert G. Gonzalez,

Under Secretary, Rural Development.

[FR Doc. 04–18087 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–15–P

NATIONAL MEDIATION BOARD

29 CFR Part 1210

Administration of Arbitration Programs

AGENCY: National Mediation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The NMB has been considering changes to its rules and procedures to facilitate the more timely resolution of grievances ("minor disputes") among grievants and carriers in the railroad industry. Because of its role in the administration of this program, the NMB has solicited public input on the factors that it should consider in accomplishing this goal. In particular, because of the NMB's statutory responsibility for the appointment and compensation of neutral arbitrators ("referees") to resolve deadlocks within NRAB divisions, and the NMB's overall statutory responsibility for the administrative processing of grievances to facilitate the timely resolution of disputes in the rail industry through PLBs and SBAs, the NMB has been considering what initiatives it may undertake to further the resolution of minor disputes on a more timely and expeditious basis. The Board is today proposing to establish a new Part 1210 to its rules appearing at 29 CFR, Chapter X, to accomplish these goals.

DATES: Comments must be in writing and must be received by September 8, 2004.

ADDRESSES: Submit written comments to: Roland Watkins, Director of Arbitration/NRAB Administrator, National Mediation Board, 1301 K Street, NW., Suite 250 "East, Washington, DC 20005. Attn: NMB Docket No. 2003–01N. You may submit your comments via letter, or electronically through the Internet to the following address: *arb@nmb.gov*. If you submit your comments electronically, please put the full body of your comments in the text of the electronic message and also as an attachment readable in MS Word. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 692–5086. Please cite NMB Docket No. 2003–01N in your comment.

FOR FURTHER INFORMATION CONTACT: Roland Watkins, NRAB Administrator, 1301 K Street, NW., Suite 250 East, Washington, DC 20005 (telephone: 202–692–5000).

SUPPLEMENTARY INFORMATION:

A. Background and Summary

The Railway Labor Act (RLA), 45 U.S.C. 151 *et seq.* establishes the National Mediation Board (NMB) whose functions, among others, are to administer certain provisions of the RLA with respect to the arbitration of labor disputes in the rail industry, including the administration of the National Railroad Adjustment Board (NRAB), established under 45 U.S.C. 153, First, and the Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs) established pursuant to 45 U.S.C. 153, Second. 45 U.S.C. 154, Third, provides the NMB with authority for administration, including making expenditures for necessary expenses, of the NRAB, the PLBs and SBAs.

Pursuant to its authority under 45 U.S.C. 154, Third, the NMB has been considering changes to its rules to better facilitate the timely resolution of minor disputes between grievants and carriers in the railroad industry. Because of its fundamental role in the administration of the NRAB, PLBs and SBAs, the NMB solicited public comment on the various factors that might be considered in accomplishing this goal.

On August 7, 2003, the NMB issued an Advance Notice of Proposed Rulemaking (ANPRM) (68 FR 46983) soliciting public comment on six different issues that had been identified by the Board as critical to the improvement of the minor dispute resolution process in the rail industry. In addition, the NMB held a public hearing on December 19, 2003 (*see* 68 FR 66500, Nov. 26, 2003) to receive in person testimony from interested parties.

As a result of the ANPRM and the public hearing, the NMB received numerous comments from interested parties. In response to the public comments, the Board is now proposing to add a new Part 1210 to its rules appearing at 29 CFR, Chapter X. Proposed Part 1210, "Administration of Arbitration Program—National Railroad Adjustment Board, Public Law Boards (PLBs) and Special Boards of Adjustment (SBAs)" establishes the NMB's procedures and policies with respect to the arbitration of minor disputes in the rail industry.

Highlights of proposed Part 1210 focus on the NMB's administrative responsibilities with respect to the various arbitration fora; NMB criteria for establishment and maintenance of rosters of arbitrators; criteria for listing on the roster of arbitrators; procedures for parties to request arbitration services from the NMB; case consolidation; time frames for processing of decision and awards; and, the NMB's proposed fee schedule for arbitration services.

B. Public Comments

The NMB solicited public comments via an ANPRM issued on August 7, 2003 (68 FR 46983). Six public timely sets of public comments were received in response to the ANPRM. The Board posed six written question sets to commenters. These six question sets, and a summary of the responses received are discussed below. The NMB is very appreciative of the time, effort and thoughtfulness expressed by the commenters in their written responses.

Question One: If the NMB promulgates procedures for the administrative processing of NRAB cases in which the parties request that the Government compensate the neutral ("referee"), what should be the criteria or guidelines for these procedures?

It has been suggested to the NMB, that a desirable goal is to have minor disputes resolved within one year of the filing of a Notice of Intent to File a Submission. At present, it is not uncommon for cases to remain unresolved for two years.

Summary of public comments received: Although there was a diversity of responses, most commenters believed that it was a reasonable goal for NRAB proceedings to be completed within one year of the filing of a grievance. Commenters, however, differed, on the NMB's role in the process. Some commenters, from both the carriers and labor, believed that the NMB has no role in providing for the procedures of the NRAB. Other commenters recognized that the NMB is responsible for funding the NRAB, the PLBs and the SBAs, and urged the Board to use its administrative authority with respect to budgeting and funding to make sure that the various arbitration boards completed their functions in a timely manner—generally within one year of the filing of a grievance.

Board's response: The NMB has considered the commenters responses and agrees, for the present time, that it will not participate in the substantive decision-making process with respect to cases before the NRAB. However, the NMB's role with respect to the funding of the NRAB and the other arbitration boards, means that the NMB has an important role to play. More specifically, the NMB must ensure that its program of arbitration services is conducted in a manner that promotes economy and efficiency in the NMB's use of public funds, and the timely resolution of the NRAB's case backlog. Accordingly, while the NMB does not intend, at this time, to prescribe specific case handling procedures for the NRAB and the other arbitration boards, the NMB is proposing a funding schedule in proposed § 1210.10, that the parties will be expected to adhere to unless exempted by the NMB's Director of Arbitration Services. The purpose of the proposed schedule is to ensure that cases are resolved in a manner that is consistent with the efficient expenditure of public funds.

Question Two: If a stated goal of any new procedures to be adopted by the NMB is to have the cases decided by an arbitrator within one year from the date of the filing of the Notice of Intent, what steps do you recommend comprise this procedure? Do you believe that a one year goal is reasonable? If not, why not?

Summary of public comments received: Virtually all the commenters agreed that a one year case resolution goal is a reasonable one for the parties to achieve. The only significant difference among commenters in their responses was the manner it which it was proposed to achieve this goal.

Some commenters believed that the goal could be achieved solely by better cooperation among the parties without NMB involvement. Other commenters believed that a lack of funding is precluding the timely resolution of cases. Still other commenters suggested that the entire system of arbitration, lacking any established time lines for case resolution was contributing to the lengthy case resolution process.

Board's response: The issues involving the length of time necessary to conduct arbitration proceedings before the NRAB and the other arbitration fora date back almost to the beginning of the passage of the RLA. The Act has been amended over the years, and other initiatives have been undertaken, all with the stated goal of achieving minor disputes resolution within one year of the initial filing of a Notice of Intent.

It is the NMB's belief that the present system of arbitration, lacking any incentives or "teeth" simply does not offer the parties any reason to adhere to a one year time frame for the resolution of cases. Accordingly, the Board is proposing in § 1210.10, a time frame for the payment of arbitration services that will require, in order to be paid with public funds, that arbitrators must issue decisions within one year of the filing of a Notice of Intent, unless an exemption is granted by the NMB's Director of Arbitration Services. In order

to ensure that case processing is expedited, proposed § 1210.10 also establishes specific case processing requirements that must be met in order to ensure that the NMB makes payment to the arbitrator.

Question Three: If the parties do not agree to follow the procedures adopted by the NMB, should there be any adverse consequences? Should the parties have options with respects to these procedures? What would you recommend be the steps that comprise an efficient case resolution procedure?

Summary of public comments received: Since many commenters did not believe that the NMB has any role—other than that of funding the arbitration process—they did not believe that the Board had a role to play with respect to the questions posed. Conversely, some commenters suggested that arbitrators be barred from hearing cases if they did not meet established decision time frames.

Nevertheless, certain common themes emerged, as discussed above, that strongly suggested that a one year case resolution goal was a reasonable one with respect to minor disputes.

Board's response: Since this proposed rule effectively establishes a one-year time frame for the resolution of arbitration cases, the NMB has tentatively decided to bar the assignment of additional cases to those arbitrators who do not meet the proposed stated time frames. Additionally, the NMB will not pay for arbitration decisions that are not rendered within the proposed time frames.

Question Four: What should happen to those cases that are still pending after one year in which the parties have not placed the cases before a Public Law Board, pursuant to 45 U.S.C. § 153, Second? If the cases are placed before a Public Law Board, should a time limit be imposed for the resolution of those cases?

This question addressed cases at the NRAB which have been pending for more than one year.

Summary of public comments received: The commenters generally believed that the establishment of case resolution time standards (for NMB payment of arbitration) would adequately address the issue of cases pending before an NRAB Division for more than one year. With respect to PLBs, some commenters opined that the NMB had no role to play whatsoever (with the exception of funding of the PLBs). Other commenters suggested that any case resolution time frames established for the NRAB, should apply equally to the PLBs.

Board's response: The NMB concurs with those commenters who believe that the establishment of a one-year case resolution standard for NRAB proceedings should adequately address the NMB's concerns. The NMB also agrees with those commenters who believe that the same basic case resolution time frame should be applicable to proceedings of the PLBs. Accordingly, proposed § 1210.10(c) states that the NMB will only pay for the arbitration of cases on PLBs heard and decided within one year of the addition of the matter to the respective PLB.

Question Five: In order to ensure the most efficient use of limited Government resources, should the NMB, in agreeing to pay for the appointment of an arbitrator ("referee") require the consolidation of similar cases dealing with similar issues? If, in your view, case consolidation is a viable option for improving the resolution of cases, what should be the standards adopted for consolidation? What should the NMB do if the parties refuse to consolidate cases, when in the NMB's view, it would be appropriate to do otherwise?

Summary of public comments received: Many commenters believed that case consolidation could serve many beneficial purposes. However, nearly all the comments suggested that case consolidation was filled with pitfalls. Who would decide when case consolidation was appropriate? How would "similar" cases be defined and identified? In general, the commenters believed that case consolidation, while conceptually sound, could not be done without the concurrence of all parties.

Board's response: The NMB believes that case consolidation is an initiative that the parties need to consider, and one that should be pursued. The Board believes that many of the cases pending before the NRAB, PLBs and SBAs are similar in nature, or are based on the same underlying facts and/or circumstances. To this end, the NMB proposed that the parties attempt to develop broad criteria or guidelines for case consolidation. While the Board is hopeful that consolidation criteria can eventually be developed by the parties, the Board is also mindful of its existing responsibilities to provide for the efficient and economical expenditure of public funds. Accordingly, proposed § 1210.9 permits the NMB's Director of Arbitration Services to consolidate the arbitration of minor disputes when he/she determines that this will serve the interests of economy and/or efficiency of the NMB's program for the administration of arbitration services. The NMB anticipates that this authority will be used judiciously, and is hopeful that in the near future the parties will come to agreement on criteria that may be used to foster case consolidation, when appropriate.

Question Six: As the goal of this initiative is to improve the processing of disputes before the NRAB, are there any other recommendations or suggestions that you would make to the NMB with regard to its statutory responsibilities for the administration of the NRAB?

Summary of public comments received: Several commenters offered additional suggestions to reduce the current case backlog at the various arbitration fora administered by the NMB. Among the suggestions received were: "parties pay," "loser pays" and the establishment of filing fees for arbitration services.

Board's response: The NMB has considered these suggestions carefully, in the context of incentives to reduce the current case backlog. The Board believes that the backlog is caused, to some extent, by the lack of incentives to process cases expeditiously. The Board believes that the proposed case resolution time frames will contribute significantly to the reduction of this backlog by creating financial incentives to expeditiously resolve cases. In addition, the Board believes that the parties have a responsibility to file and progress those cases having merit, and to consolidate as many grievances as possible that relate to the same underlying sets of facts, circumstances and issues. As such, the NMB is proposing to establish fees for certain arbitration services provided by the NMB. These fees, which represent only a very small portion of the actual costs of providing the respective services, are designed to encourage the parties to make the most efficient use of the NMB's program of arbitration services.

C. Public Hearing

On November 26, 2003, the NMB published a notice in the **Federal Register** (68 FR 66500) inviting interested parties to a public hearing on the ANPRM. The public hearing was held on December 19, 2003 at the National Labor Relations Board hearing room. Two respondents requested to appear and speak before the Board. These commenters presented a summary of the various arguments previously presented to the NMB in their written submissions to the ANPRM. In general, these commenters well represented the divergence of opinion with respect to the NMB's proposal to amend its rules to further the processing of cases under the arbitration programs for which it is

statutorily responsible for administering.

The NMB's responses to the arguments of the parties appearing at the public hearing are discussed above, in the sections entitled "Board's responses."

D. Additional Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this NPRM. All comments must be in writing and must be submitted to the address indicated in the **ADDRESSES** section.

E. Regulatory Flexibility Act

The NMB does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The NMB will consider comments from small entities concerning the effect of this proposal upon their operations in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.*, in correspondence.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 29 CFR Part 1210

Administrative practice and procedure, Labor management relations.

Dated: August 2, 2004.

Roland Watkins,

National Railroad Adjustment Board Administrator.

Therefore, the National Mediation Board proposes to amend 29 CFR Chapter X by adding a new Part 1210 as set forth below:

PART 1210—ADMINISTRATION OF ARBITRATION PROGRAMS—NATIONAL RAILROAD ADJUSTMENT BOARD (NRAB), PUBLIC LAW BOARDS (PLBs) AND SPECIAL BOARDS OF ADJUSTMENT (SBAs)

Sec.

Authority: 44 Stat. 577, as amended; 45 U.S.C. 151–163

§ 1210.1 Scope and authority.

This chapter is issued by the National Mediation Board (NMB) under the authority of section 3 of the Railway Labor Act (RLA), as amended, 45 U.S.C. 153. It applies to all arbitration proceedings conducted by the NRAB, as well as all PLBs and SBAs.

§ 1210.2 Policy.

(a) The NMB administers, through the NRAB, PLBs, and SBAs, a program to resolve "minor disputes" in the railroad industry.

(1) When the NRAB is unable to resolve the dispute, the NMB, may designate a "referee" or "neutral" (herein after referred to as an "arbitrator") to resolve the matter.

(2) A PLB is comprised of a carrier and a union representative, as well as an arbitrator certified by the NMB.

(3) An SBA is comprised of a carrier and a union representative, as well as an arbitrator certified by the NMB.

(b) When the NMB designates an arbitrator to resolve the minor dispute, the RLA states that the NMB may pay the costs associated with the arbitrator's decision.

(c) While the NMB does not directly participate in the substantive decision-making process with respect to the NRAB, PLBs, and SBAs, the NMB has a responsibility to ensure the economy, efficiency and effective administration of the program through the expenditure of public funds.

§ 1210.3 Administrative responsibilities.

(a) *National Mediation Board.* The NMB has responsibility for all aspects of NRAB, PLB, and SBA arbitration activities and is the final authority on all questions concerning the appointment of arbitrators. The NMB also has responsibility for all NMB procedures relating to the administration of arbitration programs requiring the expenditure of public funds.

(b) *Director of Arbitration Services/NRAB Administrator.* The NMB's Director of Arbitration Services (who also serves as the Administrator of the National Railroad Adjustment Board) maintains a Roster of Arbitrators; and assists and promotes the use of arbitrators by the NRAB, PLBs and SBAs. The Director of Arbitration Services cooperates with the respective Boards, and provides names or panels of names of listed arbitrators to parties requesting them.

(c) The NMB has responsibility for all aspects of the administrative processing of all cases at the NRAB and all records associated with PLBs and SBAs since these boards are established by the NMB.

§ 1210.4 Roster and status of arbitrators.

(a) The Director of Arbitration Services shall maintain the NMB Roster of Arbitrators ("Roster") consisting of persons who meet the criteria for listing and who remain in good standing.

(b) *Adherence of standards and requirements.* Persons listed on the Roster shall comply with NMB standards and requirements pertaining to arbitration and with such guidelines and procedures as may be issued by the Director of Arbitration Services. Arbitrators shall conform to the ethical standards and procedures set forth in the Code of Professional Responsibility for Arbitrators of Labor Management Disputes, as approved by the National Academy of Arbitrators and the American Arbitration Association.

(c) *Status of arbitrators.* Persons who are listed on the Roster and are selected or appointed to hear arbitration matters for the NRAB, PLBs, or SBAs do not become employees of the Federal Government by virtue of their selection or appointment. Following selection or appointment, the arbitrator's relationship is with the parties to the dispute, except that payment of arbitrators is the responsibility of the NMB, and certain financial and administrative requirements must be met by arbitrators in order to receive compensation from the NMB, and/or to be assigned cases.

(d) *Role of NMB.* With respect to arbitration services funded by the NMB pursuant to the Section 3 of the RLA, the NMB does not:

(1) Compel parties to appear before an arbitrator;

(2) Compel parties to arbitrate any issue; or

(3) Influence, alter, or set aside decisions of arbitrators on the Roster.

(e) *Nominations and panels.* On request of the NRAB, a PLB, or an SBA, the Director of Arbitration Services may appoint an arbitrator to hear a particular dispute.

(f) *Rights of persons listed on the Roster.* No person shall have any right to be listed or to remain listed on the Roster. The NMB retains its authority and responsibility to assure that the needs of the parties requesting its services are served. To accomplish this purpose, the NMB may establish procedures for the appointment of arbitrators which include consideration of such factors as background and

experience, availability, acceptability, geographical location, and the expressed preferences of the parties. The NMB may also establish procedures for the removal from the Roster of those arbitrators who fail to adhere to provisions contained in this part.

§ 1210.5 Listing on the roster; criteria for listing and retention.

(a) Persons seeking to be listed on the Roster must complete and submit an application form which may be obtained from the Director of Arbitration Services. Upon receipt of an executed application, the Director of Arbitration Services will review the application, assure that it is complete, and make such inquiries as are necessary. The Director of Arbitration Services, subject to the discretion of the NMB, shall make all final decisions as to whether an applicant may be listed on the Roster. Each applicant shall be notified in writing of his/her listing.

(b) *General criteria.* Applicants for the Roster will be listed on the Roster upon a determination that they are experienced, competent, and acceptable in decision-making roles in the resolution of labor disputes in the rail and airline industries.

(c) *Proof of qualification.* Qualifications for listing on the Roster may be demonstrated by submission of five (5) arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor disputes arising under collective bargaining agreements. The Director of Arbitration Services may consider experience in relevant positions in collective bargaining in the airline and/or railroad industries, or a relevant substitute(s) for such awards.

(d) *Advocacy.* Any person who at the time of application is an advocate as defined in paragraph (d)(1) of this section, must agree to cease such activity before being listed on the Roster.

(1) Definition of advocacy. An advocate is a person who represents employers, labor organizations, or individuals as an employee, attorney, or consultant, in matters of labor relations, including but not limited to the subjects of union representation and recognition matters, collective bargaining, arbitration, unfair labor practices, equal employment opportunity, and other areas generally recognized as constituting labor relations. The definition includes representatives of employers or employees in individual cases or controversies involving worker's compensation, occupational health or safety, minimum wage, or other labor standards matters. This definition of advocate also includes a person who is directly associated with an advocate in a business or professional relationship, as for example, partners or employees of a law firm. Consultants engaged only in joint education or training or other non-adversarial activities will not be considered as advocates.

(2) [Reserved]

(e) *Other circumstances precluding placement on the NMB's Roster of Arbitrators.* An individual will not be placed on the NMB's Roster if any one of the following disqualifying conditions is applicable:

(1) The individual is currently employed by the United States Government or is an employee of any State, municipal county or other governmental entity within the United States, its territories, protectorates or possessions. This disqualification applies to governmental employment in a full-time, part-time, *ad hoc,* per diem or other periodic capacity. Approval by the governmental employer for the individual to engage in arbitration will not lift or modify this restriction. The receipt of compensation from a governmental entity for service as an arbitrator, fact finder, or other neutral, or *ad hoc* service as an arbitrator in cases in which a governmental entity is a party, shall not constitute a disqualifying relationship for the purpose of this part.

(2) The individual is an employee, officer, trustee, director or otherwise is in a full-time or periodic employment relationship with any labor organization currently representing or seeking to represent employees under the RLA, any carrier subject to the RLA, or any company in which proceedings are pending alleging coverage under the RLA. Employment with any joint labor/management entity, or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying relationship for the purposes of this part.

(3) The individual is a partner, associate, employee, contractor or otherwise associated in a full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which advocates or seeks to advocate the partisan interests of any labor organization currently representing or seeking to represent employees under the RLA, any carrier subject to the RLA, or any company in which proceedings are pending alleging coverage under the RLA. Employment with any neutral institution such as the National Academy of Arbitrators, the American Arbitration Association, or the Industrial Relations Research Association shall not constitute a disqualifying relationship for the purpose of this part.

(4) The individual is a partner, associate, member, employee, contractor or otherwise associated in a full-time or periodic employment relationship with any law firm, consulting firm, trade association, corporation, or other entity which provides or seeks to provide any partisan-oriented services in connection with labor-management relations in the United States or otherwise including, but not limited to, advocacy, advice, consultation, lobbying or related functions with respect to such services. Activities as an ombudsman, arbitrator, mediator, conciliator or other neutral, or service with any association thereof shall not constitute a disqualifying relationship for purposes of this part. Examples of such neutral associations include the National Academy of Arbitrators, the American Arbitration Association, and the Industrial Relations Research Association.

(5) The individual currently is suspended or disbarred from arbitral service following a determination in an appropriate forum that he or she violated the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

(6) The individual is not "wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties" as provided by 45 U.S.C. 155 Third. The individual is "pecuniarily or otherwise interested in any organization of employees or any carrier" as provided by 45 U.S.C. 160. Employment with any joint labor/management entity, or as an arbitrator, mediator, conciliator, ombudsman, member/trustee on any pension plan board, or similar service shall not constitute a disqualifying interest for the purposes of this part.

(7) The individual has failed to comply with the administrative requirements prescribed by the National Mediation Board in connection with the placement or maintenance on the NMB's Roster of arbitrators or other applicable NMB administrative requirements associated with the arbitration process.

(f) *Duration of listing, retention.* Listing on the Roster shall be by decision of the Director of Arbitration Services. The Director of Arbitration Services may remove any person listed on the Roster, for violation of this part. Notice of cancellation or suspension shall be given to a person listed on the Roster whenever a Roster member:

(1) No longer meets the criteria for admission;

(2) Has become an advocate as defined in paragraph (d) of this section;

(3) Has been repeatedly or flagrantly delinquent in submitting awards;

(4) Has refused to make reasonable and periodic reports in a timely manner to the NMB, as required, concerning activities pertaining to arbitration;

(5) Has been the subject of complaints by parties, and the NMB after appropriate inquiry, concludes that just cause for cancellation has been shown;

(g) The Director of Arbitration Services may suspend any person listed on the Roster who has violated any of the criteria in paragraph (e) of this section. Arbitrators shall be promptly notified of a suspension.

§ 1210.6 Freedom of choice.

Nothing contained in this part should be construed to limit the Members of the NRAB, of the PLBs or the SBAs, whose arbitrators are paid by the NMB, from selecting any arbitrator that is acceptable to them and is in good standing as determined by the Director of Arbitration Services. Once a request is made to the Director of Arbitration Services, all parties are subject to the procedures contained in § 1210.5.

§ 1210.7 Procedures for requesting arbitrators.

(a) The Director of Arbitration Services has been delegated the responsibility for administering all requests for arbitration services. Requests should be addressed to the Director of Arbitration Services, National Mediation Board, 1301 K Street, NW., Suite 250, East, Washington, DC 20572.

(b) In accordance with Section 3 First, paragraph (l) of the RLA, the NMB, acting through the Director of Arbitration Services, will select an arbitrator to sit with the appropriate Division of the NRAB when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(c) In accordance with Section 3 Second, of the RLA, the NMB, acting through the Director of Arbitration Services, will select an arbitrator to sit with the appropriate PLB when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(d) The Director of Arbitration Services will select an arbitrator to sit with the appropriate SBA when the parties are unable or unwilling to agree to the appointment of an arbitrator.

(e) The Director of Arbitration Services reserves the right to decline to make a specific arbitrator appointment, if the request submitted by the parties involves appointment of an arbitrator who is delinquent in the timely rendering of awards or decisions, or who is otherwise in violation of the NMB's administrative procedures for arbitrators.

(f) The appointment of an arbitrator by the NMB in no way signifies a determination on arbitrability or an interpretation of the terms and conditions of any collective bargaining agreement. The resolution of such disputes rests solely with the appropriate boards, the arbitrator, or the parties.

§ 1210.8 Arbitrability.

The Director of Arbitration Services will not decide the merits of a claim by either party that a dispute is not subject to arbitration.

§ 1210.9 Consolidation of cases.

The Director of Arbitration Services may consolidate the arbitration of minor disputes (*i.e.*, grievances) when he/she determines that this will serve the interests of economy and/or efficiency of the NMB's program for the administration of arbitration services under section 3 of the RLA, 45 U.S.C. 153.

§ 1210.10 Decision and award.

(a) The NMB's goal is to economically and efficiently dispose of arbitration cases. Accordingly, the NMB will only pay for arbitration services when the parties act in accordance with paragraphs (b) and (c) of this section.

(b) The NMB will only pay for arbitration of cases at the NRAB which are progressed according to the following schedule:

(1) Notice of Intent by a party is filed.

(2) Submissions by the parties shall be filed within 60 days of the date of the Director of Arbitration Services' letter acknowledging the Notice of Intent. The Director of Arbitration Services may permit a 15 day time extension, at his/her discretion.

(3) NRAB Members shall be given 30 days after receipt of the submissions to review the case with intent to resolve. Failing resolution, the case will be considered deadlocked.

(4) NRAB Members shall then be given 15 days to certify a case or cases to an arbitrator who must hear the case(s) within 60 days of the date of certification.

(5) If NRAB Members fail to certify a case in accordance with paragraph (b)(4) of this section, the Director of Arbitration Services will appoint an arbitrator within 15 days. The arbitrator shall hear the case within 60 days of the date of the Director's certification.

(6) After an arbitrator hears a case, a decision shall be rendered in no more than 60 days.

(c) The NMB will only pay for the arbitration of cases on PLBs and SBAs heard and decided within one year of the addition of the case to the Board.

(d) The following additional requirements are applicable to arbitrators paid by the NMB:

(1) Unless granted an extension by the Director of Arbitration Services, failure of the parties to follow the required schedule may result in the NMB's denial of payment to the arbitrator.

(2) A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the NMB's Roster.

(3) The parties shall inform the Director of Arbitration Services whenever a decision is unduly delayed. The arbitrator shall notify the Director of Arbitration Services if and when the arbitrator:

(i) Cannot schedule, hear, and render decisions promptly, or

(ii) Learns a dispute has been settled by the parties prior to the decision.

§ 1210.11 Reports.

Arbitrators shall execute and return all documents, forms and reports required by the Director of Arbitration Services. They shall also keep the Director of Arbitration Services informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations or which creates or gives the appearance of advocacy as defined in § 1210.5(d)(1).

§ 1210.12 Fees.

(a) The NMB may, from time to time, establish application fees for arbitration services. Notice of the establishment of fees, including the amount of any fee(s), shall be published in the **Federal Register**, as well as made available on the NMB's Web site (*http://www.nmb.gov*).

(b) For the purposes of paragraph (a) of this section, effective XX–XX–2005, the NMB's fee schedule for arbitration services is as follows:

(1) National Railroad Adjustment Board grievance filings—$75.00 per notice of intent.

(2) Establishment of a public law board—$100.00.

(3) Establishment of a special board of adjustment—$100.00.

(4) Establishment of an arbitration board—$100.00.

(5) Certification of an arbitrator to a public law board, special board of adjustment, arbitration board or any

division of the NRAB—$50.00 per arbitrator certification.

(6) Request to add a case to an existing board—$50.00 per case.

(7) Request for a panel of arbitrators—$50.00 per request. The fee also applies to a request for a second panel.

(8) Designation of a partisan member for a public law board—$75.00.

(9) Designation of a neutral member for a public law board—$75.00.

(10) Appointment of an arbitrator for labor protective matters—$75.00.

[FR Doc. 04–18133 Filed 8–6–04; 8:45 am]
BILLING CODE 7550–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 538, 550, and 560

Comment Request Regarding the Effectiveness of Licensing Procedures for Exportation of Agricultural Commodities, Medicine, and Medical Devices to Sudan, Libya, and Iran

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Request for comments.

SUMMARY: The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury is soliciting comments concerning the effectiveness of OFAC's licensing procedures implementing the Trade Sanctions Reform and Export Enhancement Act of 2000 (the "Act"), for the exportation of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Pursuant to section 906(c) of the Act, OFAC is required to submit a biennial report to the Congress on the operation of licensing procedures for such exports.

DATES: Written comments should be received on or before September 8, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about these licensing procedures should be directed to the Licensing Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, telephone: (202) 622–2480. Additional information about these licensing procedures is also available under the heading "Sanctions Program and Country Summaries" at *http://www.treas.gov/ofac.*

SUPPLEMENTARY INFORMATION: The current procedures used by the Office of Foreign Assets Control ("OFAC") for authorizing the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran are set forth in 31 CFR 538.523 through 538.526, 31 CFR 550.569 through 550.573, and 31 CFR 560.530 through 560.533. Under the provisions of section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of Pub. L. 106–387, 22 U.S.C. 7201 *et seq.*) (the "Act"), OFAC must submit a report to the Congress on the operation, during the preceding two year period, of the licensing procedures required by section 906 of the Act for the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. This report is to include:

(1) The number and types of licenses applied for;

(2) The number and types of licenses approved;

(3) The average amount of time elapsed from the date of filing of a license application until the date of its approval;

(4) The extent to which the licensing procedures were effectively implemented; and

(5) A description of comments received from interested parties about the extent to which the licensing procedures were effective, after holding a public 30-day comment period.

This notice serves as public notice soliciting comments from interested parties regarding the effectiveness of OFAC's licensing procedures for the export of agricultural commodities, medicine, and medical devices to Sudan, Libya, and Iran. Interested parties submitting comments are asked to be as specific as possible. All comments received on or before September 8, 2004 will be considered by OFAC in developing the report to the Congress. In the interest of accuracy and completeness, OFAC requires written comments. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. OFAC will not accept comments accompanied by a request that part or all of the comments be treated confidentially because of their business proprietary nature or for any other reason. OFAC will return such comments when submitted by regular mail to the person submitting the comments and will not consider them. All comments made will be a matter of public record. Copies of the public record concerning these regulations may be obtained from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests may be sent to: Office of Foreign Assets Control, U.S. Department of Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220, Attn: Merete Evans.

Note: Effective April 29, 2004, General License of April 23, 2004 and 31 CFR Part 550, Libya Sanctions Regulations ("LSR"), authorize U.S. persons to engage in most transactions previously prohibited by the LSR, including the exportation and reexportation of goods, software or technology by U.S. persons to Libya or the Government of Libya. Accordingly, specific licenses issued by OFAC for the export of agricultural commodities, medicine, and medical devices to Libya are no longer required pursuant to the LSR. This authorization does not, however, eliminate the need to comply with other provisions of law, including the Export Administration Regulations, 15 CFR parts 730 through 799, which are administered by the U.S. Department of Commerce.

Approved: July 27, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

[FR Doc. 04–17954 Filed 8–6–04; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Services

32 CFR Part 322

[NSA Regulation 10–35]

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services.

ACTION: Proposed rule.

SUMMARY: The National Security Agency/Central Security Services (NSA/CSS) is proposing to add an exemption rule for the system of records GNSA20, entitled 'NSA Police Operational Files'. The exemptions increase the value of the system of records for law enforcement purposes.

DATES: Comments must be received on or before October 8, 2004 to be considered by this agency.

ADDRESSES: Send comments to the NSA/CSS Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant

regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve 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 and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 322

Privacy.

1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Amend Section 322.7, by adding a new paragraph (q) as follows:

§ 322.7 Exempt systems of records.

* * * * *

(q) GNSA 20.

(1) *System name:* NSA Police Operational Files.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: August 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–18079 Filed 8–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL66

Patients' Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA's medical regulations to update the patients' rights regulation by bringing its provisions regarding medication, restraints and seclusion into conformity with current law and practice. The changes are primarily intended to clarify that it is permissible for VA patients to receive medication prescribed by any health care professional legally authorized to prescribe medication, and that it is permissible for any authorized licensed

health care professional to order the use of restraints and seclusion when necessary. We are also proposing to make nonsubstantive changes in the patients' rights regulation for purposes of clarification.

DATES: Comments must be received on or before October 8, 2004.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to "RIN 2900-AL66." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Audrey Drake, Program Director (108), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 565–6740.

SUPPLEMENTARY INFORMATION: In 1982, the Department of Veterans Affairs published a final rule articulating patients' rights with respect to a wide array of matters including such things as clothing, worship, money, exercise, visitation and communication, grievances and confidentiality of information. The rule is currently set forth at 38 CFR 17.33.

Paragraph (e) of the current § 17.33 addresses the topic of medications. The first sentence of the paragraph provides that "Patients have a right to be free from unnecessary or excessive medication." The remainder of the paragraph sets forth various procedures to ensure that patients will be free from unnecessary or excessive medication. Thus, the second sentence of paragraph (e) states, "Except in an emergency, medication will be administered only on the written order of a physician in that patient's medical record." The paragraph further provides that a physician must countersign any telephonic prescription within 24 hours, that the attending physician will be responsible for all medication given or administered to a patient, and that the attending physician must review a patient's drug regimen at least every 30 days. Similarly, paragraph (d) of § 17.33 contains provisions stating that patients may be physically restrained or placed in seclusion only upon the written order of a physician.

When VA promulgated the patients' rights rule in 1982, physicians were generally the only health care providers authorized to prescribe medication and order the use of restraints and seclusion. However, that is no longer the case. Under current law, other health care professionals are legally licensed to prescribe medication and typically do so in health care settings across the Nation. For example, licensed registered nurse practitioners are licensed to independently prescribe medication in virtually every state in the United States. Similarly, physicians are not the only licensed health care professionals that are authorized to order the use of restraints and seclusion.

To update the patients' rights regulation, and bring its provisions regarding medication, restraints and seclusion into conformity with current law and practice, VA is proposing to eliminate the specific references to physicians in § 17.33(d) and (e), and to substitute references to appropriate health care professionals. This proposed change would not in any way change the substantive patient protections in the regulation. Thus, the regulation would continue to provide that VA could administer medication and restrain patients and place them in seclusion only on the basis of a written order, that telephonic orders would have to be countersigned, and that VA would have to ensure review of a patient's drug regimen at least every 30 days.

The proposed amendments would also delete references in the regulation to specific time limits on how long restraints or seclusion may be used before the health care professional must examine or reexamine the patient, and how frequently the patient must be monitored. Instead, the regulation would provide that restraints and seclusion could be used for a time period that is in compliance with current community and/or accreditation standards. Timeframes considered appropriate for the use of restraints and seclusion have changed over the years, and may change again in the future. To avoid having to change the regulation each time, VA believes it would be better to have the regulation state that those timeframes must be in compliance with the currently accepted community and/or accreditation standards or as is reasonable under existing circumstances.

We are also proposing to make nonsubstantive changes for purposes of clarification in § 17.33, including, with no intended change in meaning, using the term "health care professional" rather than "health or mental health professional" or "health professional."

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 2, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.33 is amended by:

a. In paragraph (b) introductory text, removing "paragraph (c)" and adding, in its place, "paragraphs (c) and (d)".

b. In paragraphs (c)(1) introductory text, (c)(2) introductory text, and (c)(2)(iv), removing "health or mental health professional" and adding, in its place, "health care professional".

c. In paragraph (c)(1)(ii), removing "detaining" and adding, in its place, "detailing".

d. In paragraph (c)(2) introductory text, removing "this paragraph" and adding, in its place, "paragraph (c) of this section".

e. In paragraph (c)(3), removing "(c)(1)" and adding, in its place, "(b)".

f. In paragraph (c)(4), removing "pursuant to this paragraph", and adding, in its place, "under paragraph (c) of this section".

g. In paragraph (c)(5), removing "orders" and adding, in its place, "orders under paragraph (c) of this section".

h. Revising paragraphs (d)(1), (d)(2), and (e).

The revisions read as follows:

§ 17.33 Patients' rights.

* * * * *

(d) * * * (1) Each patient has the right to be free from physical restraint or seclusion except in situations in which there is a substantial risk of imminent harm by the patient to himself, herself, or others and less restrictive means of preventing such harm have been determined to be inappropriate or insufficient. Patients will be physically restrained or placed in seclusion only on the written order of an appropriate licensed health care professional. The reason for any restraint order will be clearly documented in the progress notes of the patient's medical record. The written order may be entered on the basis of telephonic authority, but in such an event, an appropriate licensed health care professional must examine the patient and sign a written order within an appropriate timeframe that is in compliance with current community and/or accreditation standards. In emergency situations, where inability to contact an appropriate licensed health care professional prior to restraint is likely to result in immediate harm to the patient or others, the patient may be temporarily restrained by a member of the staff until appropriate authorization can be received from a health care professional. Use of restraints or seclusion may continue for a period of time that does not exceed current community and/or accreditation standards, within which time an appropriate licensed health care professional shall again be consulted to determine if continuance of such restraint or seclusion is required. Restraint or seclusion may not be used as a punishment, for the convenience of staff, or as a substitute for treatment programs.

(2) While in restraint or seclusion, the patient must be seen within appropriate timeframes in compliance with current community and/or accreditation standards:

(i) By an appropriate health care professional who will monitor and chart the patient's physical and mental condition; and

(ii) By other ward personnel as frequently as is reasonable under existing circumstances.

* * * * *

(e) *Medication.* Patients have a right to be free from unnecessary or excessive medication. Except in an emergency, medication will be administered only on a written order of an appropriate health care professional in that patient's medical record. The written order may be entered on the basis of telephonic authority received from an appropriate health care professional, but in such event, the written order must be countersigned by an appropriate health care professional within 24 hours of the ordering of the medication. An appropriate health care professional will be responsible for all medication given or administered to a patient. A review by an appropriate health care professional of the drug regimen of each patient shall take place at least every thirty (30) days. It is recognized that administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, for the convenience of the staff, or in quantities which interfere with the patient's treatment program.

* * * * *

[FR Doc. 04–18106 Filed 8–6–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA146–5080b; FRL–7798–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Major Stationary Source Applicability for Reasonably Available Control Technology in the Northern Virginia Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia specifying that the Northern Virginia Ozone Nonattainment Area is now subject to the severe major source permitting requirements and lowering the major stationary source threshold for nitrogen oxide (NO_X) from 50 tons per year to 25 tons per year. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 8, 2004.

ADDRESSES: Submit your comments, identified by VA146–5080 by one of the following methods:

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

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

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

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

Instructions: Direct your comments to Docket ID No. VA146–5080. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

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

Dated: July 29, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–18024 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7798–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Sharon Steel Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a notice of intent to delete the Sharon Steel Superfund Site (Site) located in Midvale, Utah, from the National Priorities List (NPL) and requests public comments on this notice. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Utah, through the Utah Department of Environmental Quality (UDEQ), have determined that all appropriate response actions under CERCLA, other than five-year reviews and operation & maintenance, have been completed at the Site. However, this deletion does not preclude future actions under Superfund if determined necessary by EPA.

In the "Rules and Regulations" section of today's **Federal Register**, EPA is publishing a direct final notice of deletion of the Sharon Steel Superfund Site without prior notice of intent to delete because EPA views this as a non-controversial action. EPA has explained its reasons for this deletion in the preamble to the direct final notice of deletion. If EPA receives no significant adverse comment(s) on the direct final notice of deletion, EPA will not take further action on this notice of intent to delete and deletion of the Site will proceed. If EPA receives significant adverse comment(s), EPA will withdraw the direct final notice of deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. EPA will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so within the time-frame noted below. For additional information, see the direct final notice of deletion, located in the "Rules and Regulations" section of this **Federal Register**.

DATES: Comments concerning this Site must be received on or before September 8, 2004.

ADDRESSES: Written comments should be addressed to: Armando Saenz, Remedial Project Manager (RPM), Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Armando Saenz, Remedial Project Manager (RPM), (303) 312–6559, Mail Code: 8EPR–SR, U.S. EPA Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion published in the "Rules and Regulations" section of this **Federal Register**.

Information Repositories: Repositories at the following addresses have been established to provide detailed information concerning this decision and all documents forming the basis for the response actions taken at this Site as well as documentation of the completion of those actions: (1) U.S. EPA Region 8 Superfund Records Center, 999 18th Street, Fifth Floor, Denver, Colorado 80202–2466, Monday through Friday, 8 a.m.–4:30 p.m.; and, (2) Utah Department of Environmental Quality, Division of Environmental Response & Remediation, 168 North 1950 West, Salt Lake City, Utah 84116, Monday through Friday, 8 a.m.–5 p.m.

List of Subjects in 40 CFR Part 300

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

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

Dated: July 28, 2004.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 04–17874 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, and 64

[IB Docket No. 04–226; FCC 04–133]

Mandatory Electronic Filing for International Telecommunications Services and Other International Filings

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document is a summary of the Notice of Proposed Rulemaking adopted by the Commission in this proceeding. The Commission seeks comment on the proposals to eliminate paper filings and require applicants to file electronically all applications and other filings related to international telecommunications services. The Commission initiated this proceeding to further its goals to increase the efficiency of application processing and to expedite the availability of the application information for public use and inspection.

DATES: Comments are due on or before October 8, 2004, and reply comments are due on or before November 8, 2004. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 8, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov*, or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: JoAnn Ekblad, Peggy Reitzel, or John Copes, Policy Division, International Bureau, and (202) 418–1460. For information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *JudithB.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in IB Docket No.04–226, FCC 04–133, adopted June 10, 2004 and released June 30, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–70.pdf*. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *fcc@bcpiweb.com*. The Notice of Proposed Rulemaking (NPRM) contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–3. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Background

In the NPRM, the Commission proposes to eliminate paper filings and require applicants to file electronically all applications and other filings related to international telecommunications services via the International Bureau Filing System (IBFS). Specifically, the Commission proposes to accept only electronically filed accounting rate changes, requests for assignment of a data network identification code, foreign carrier notifications, applications related to International Section 214 authorizations, applications related to submarine cable landing licenses, requests for recognized operating agency status, requests for assignment of an international signaling point code, and other associated filings.

The NPRM describes the benefits of electronic filing. The Commission concludes that mandatory electronic filing will further the Commission's goals to increase the efficiency of application processing and to expedite the availability of the application information for public use and inspection. Also, the Commission concludes that electronic filing would not impose any undue burdens on parties. The Commission seeks comment on these tentative conclusions and its proposal to mandate electronic filing for all international filings described in the NPRM.

The NPRM describes the variety of applications and reports that applicants and authorized carriers must file with the Commission in connection with international telecommunications services. The NPRM contains a list of those filings for which mandatory electronic submission will be required through IBFS. In addition, the NPRM contains a list of filings that currently are not available for electronic submission. As a practical matter, the Commission cannot require mandatory electronic filing for any type of service until an IBFS electronic filing for is available, however the Commission is developing electronic forms for these submissions. The Commission seeks comments on making mandatory the electronic filing of those submissions currently processed manually.

The NPRM proposes to continue the Commission's policies for the confidential treatment of certain materials. Currently, IBFS does not accommodate confidential filings, but the Commission intends to develop the capability of IBFS to accommodate confidentially filed pleadings and applications. The NPRM seeks comment on this proposal.

The NPRM seeks comment on whether it would be necessary to implement a transition period to allow applicants and carriers to adjust to any changes to the rules. The NPRM proposes a 60-day transition period. The NPRM also proposes that, after the 60-day transition period, any filings received manually will be returned to the applicant or carrier without processing. The NPRM proposes to require mandatory electronic filing for those filings for which an IBFS form exists and will require additional filings to be made electronically as new IBFS forms are introduced. As each new IBFS form becomes available for electronic use, we propose to issue a public notice announcing the new electronic features.

Finally, the NPRM seeks comment on whether we should adopt a waiver process to allow an applicant to request a waiver of the proposed mandatory electronic filing requirements.

Procedural Matters

Initial Paperwork Reduction Act Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information

collection requirements contained in this document, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due on or before October 8, 2004. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0454.

Title: Regulation of International Accounting Rates.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 760.

Estimated Time Per Response: 1 hour.

Frequency of Response: Quarterly, annual, on occasion.

Total Annual Burden: 760 hours.

Total Annual Costs: n/a.

Needs and Uses: The information will be used by the Commission staff to monitor the international accounting rates to insure that the public interest is being served and also to enforce Commission policies. New Internet filing forms will allow all interested persons to file electronically via the International Bureau Filing System (IBFS).

OMB Control Number: 3060–0357.

Title: Request for Designation as a Recognized Private Operating Agency—Section 63.701.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 30.

Estimated Time Per Response: 150 hours.

Frequency of Response: On occasion.

Total Annual Burden: 4,500 hours.

Total Annual Costs: N/A.

Needs and Uses: The information is needed by the Commission in making a determination to submit to the U.S. Department of State whether or not to designate persons requesting recognized private operating agency (RPOA) status. New Internet filing forms will allow all interested persons to file electronically via the International Bureau Filing System (IBFS).

OMB Control Number: 3060–0686.

Title: Streamlining the International Section 214 Authorization Process and Tariff Requirements.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 760.

Estimated Time Per Response: 6,307 hours,

Frequency of Response: Quarterly, annual, on occasion.

Total Annual Burden: 142,169 hours.

Total Annual Costs: N/A.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Communications Act and the Submarine Cable Landing License Act. New Internet filing forms will allow all interested persons to file electronically via the International Bureau Filing System (IBFS).

OMB Control Number: 3060–0944.

Title: Review of Commission Consideration of Applications under the Cable Landing License Act.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 271.

Estimated Time Per Response: 95 hours.

Frequency of Response: On occasion.

Total Annual Burden: 25,745 hours.

Total Annual Costs: N/A.

Needs and Uses: The information will be used by the Commission staff in carrying out its duties under the Communications Act and the Submarine Cable Landing License Act. New Internet filing forms will allow all interested persons to file electronically, via the International Bureau Filing System (IBFS).

OMB Control Number: 3060–1029.

Title: Data Network Identification Code.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5.

Estimated Time Per Response: .25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1 hour.

Total Annual Costs: N/A.

Needs and Uses: A Data Network Identification Code (DNIC) is a unique, four-digit code designed to provide discreet identification of individual public data networks. The DNIC is intended to identify and permit automated switching of data traffic to particular networks. The Commission grants the DNIC's to operators of public data networks on an international protocol. The operators of public data networks file an application for a DNIC on the electronic, Internet-based International Bureau Filing System (IBFS). The DNIC is obtained free of charge on a one-time only basis unless there is a change in ownership or the owner chooses to relinquish the code to the Commission. New Internet filing forms will allow all interested persons to file electronically via the International Bureau Filing System (IBFS).

OMB Control Number: 3060–1028.

Title: International Signaling Point Code.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 40.

Estimated Time Per Response: .166 hours (10 minutes).

Frequency of Response: On occasion reporting requirement; third-party disclosure requirement.

Total Annual Burden: 7 hours.

Total Annual Costs: N/A.

Needs and Uses: The International Signaling Point Code (ISPC) is a signaling point code with a unique format used at the international level for signaling message routing and identification of signaling points involved. The ISPC consists of a unique, seven-digit code, synonymous with a telephone area code that identifies each international carrier. The Commission assigns ISPC's to international carriers in response to their filing of an ISPC application on the electronic, Internet-based International Bureau Filing System. The Commission issues the code to international carriers free of charge on a first-come, first-served basis and informs the International Telecommunications Union (ITU) of its actions. New Internet filing forms will allow all interested persons to file electronically via the International Bureau Filing System (IBFS).

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a Regulatory Flexibility Act analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." *See* 5 U.S.C. 601–602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, Title II, 110 Stat. 857 (1996). 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). *See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

In this International E-Filing NPRM, the Commission seeks comment on possible changes to its rules to require mandatory electronic filing for international telecommunications services. As discussed above, the Commission has continued to make technological advancements in the area of electronic filing. In this proceeding we have sought to further streamline the filing processes.

The rule changes discussed in the International E-Filing NPRM, if adopted, would require the mandatory electronic filing for applications and reports associated with international telecommunications services. The proposal in the International E-Filing NPRM seeks comment on these proposed changes. We believe that the proposals are in the public interest and would not impose undue burdens on all carriers required to file for international telecommunications services pursuant to our rules, including those carriers that are small entities. Further, any burdens caused by implementation of these proposals might be offset by the fact that services to the public would likely be expedited. Therefore, we certify that the proposals in this International E-Filing NPRM, if adopted, would not have a significant economic impact on a substantial number of entities. The Commission will send a copy of the International E-Filing NPRM, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the International E-Filing NPRM (or summary) and initial certification will be published in the **Federal Register**.

Ordering Clauses

Accordingly, pursuant to the authority contained in sections 1, 4(i), 4(j), 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309 and 403, this *notice of proposed rulemaking is hereby adopted* and *comments are requested* as described above.

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

List of Subjects in 47 CFR Parts 1, 63, and 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 63, and 64 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.767 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in accordance with the provisions of that Executive Order. Applications must be filed electronically through the International Bureau Filing System (IBFS). For information on IBFS filing procedures, see generally subpart Y of this part, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs*. These applications should contain the following information:

* * * * *

3. Section 1.10000 is amended by redesignating paragraphs (f) and (g) as (g) and (h) respectively, and by adding a new paragraph (f) to read as follows:

§ 1.10000 What is the purpose of these rules?

* * * * *

(f) These rules require electronic filing for all international section 214 authority, submarine cable landing licenses, other applications for international telecommunications services, and associated filings for which electronic forms are available through IBFS.

* * * * *

4. Section 1.10006 is revised to read as follows:

§ 1.10006 Is electronic filing mandatory?

Electronic filing through the International Bureau Filing System (IBFS) is mandatory for: satellite license applications other than DBS and DARS applications; applications for earth stations to access a non-U.S. satellite not currently authorized to provide the proposed service in the proposed frequencies in the United States; routine earth station applications; international accounting rate change filings; applications related to submarine cable landing license applications; requests for assignment of data network identification codes; foreign carrier affiliation notification filings; applications related to international section 214 applications; international signaling point code filings; and recognized operating agency filings. Except for these applications, electronic filing is voluntary at this time. However, we encourage you to use IBFS to increase time-savings and efficiencies.

PART 63—EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS: AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

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

Authority: Sections 1, 4(i), 4(j), 10, 11, 201, 205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201, 205, 214, 218, 403, and 571, unless otherwise noted.

6. Section 63.11 is amended by revising paragraph (g) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

* * * * *

(g) You must submit your notification electronically through the International Bureau Filing System (IFBS). For additional information on IBFS filing procedures, refer to the rules in part 1, subpart Y, of this chapter and the IBFS homepage at *www.fcc.gov/ibfs.*

* * * * *

7. Section 63.18 is amended by revising the introductory paragraph to read as follows:

§ 63.18 Contents of applications for international common carriers.

Except as otherwise provided in this part, any party seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application. The application shall be filed electronically through the International Bureau Filing System (IBFS). For information on IBFS filing procedures, see generally part 1, subpart Y, of this chapter, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.* The application shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience, and necessity. Such statement shall consist of the following information, as applicable:

* * * * *

8. Section 63.20 is amended by revising the section heading and paragraph (a) to read as follows:

§ 63.20 Fees and filing periods for international service providers.

(a) Each application shall be accompanied by the fee prescribed in subpart G of part 1 of this chapter.

* * * * *

9. Section 63.21 is amended by revising paragraphs (a), (h) and (i) to read as follows:

§ 63.21 Conditions applicable to all international Section 214 authorizations.

* * * * *

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and, in any event, within thirty days, electronically file with the Commission through the International Bureau Filing System (IBFS) a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

* * * * *

(h) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier shall, within 30 days after the subsidiary begins providing service, electronically file a notification with the Commission through IBFS referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(i) An authorized carrier, or a subsidiary operating pursuant to paragraph (h) of this section, that changes its name (including the name under which it is doing business) shall electronically notify the Commission within 30 days of the name change. Such notification shall reference the FCC file numbers under which the carrier's authorizations were granted.

10. Section 63.24 is amended by revising paragraphs (e)(4) and (f)(2) introductory text to read as follows:

§ 63.24 Assignments and transfers of control.

* * * * *

(e) * * *

(4) An assignee or transferee shall electronically notify the Commission through the International Bureau Filing System (IBFS) no later than 30 days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) * * *

(2) A *pro forma* assignee or a carrier that is subject to a *pro forma* transfer of control shall electronically notify the Commission of such *pro forma* transfer through the International Filing System (IBFS) no later than 30 days after the assignment or transfer is completed. The notification must contain the following:

* * * * *

11. Section 63.25 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 63.25 Special provisions relating to temporary or emergency service by international carriers.

* * * * *

(b) Requests for immediate authority for temporary service or for emergency service are required to be filed electronically through the International Bureau Filing System (IBFS) setting forth why such immediate authority is required, the nature of the emergency, the type of facilities proposed to be used, the route kilometers thereof, the terminal communities to be served, and airline kilometers between such communities; how these points are currently being served by the applicant or other carriers, the need for the proposed service, the cost involved including any rentals, the date on which the service is to begin, and where known, the date or approximate date on which the service is to terminate. For information on IBFS filing procedures, see generally part 1, subpart Y, of this chapter, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.*

* * * * *

(d) * * *

(2) Such request is required to be filed electronically through the International Bureau Filing System (IBFS) making reference to this paragraph and setting forth the points between which the applicant desires to operate facilities of other carriers and the nature of the traffic to be handled. For information on IBFS filing procedures, see generally

part 1, subpart Y, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.*

* * * * *

12. Section 63.50 is revised to read as follows:

§ 63.50 Amendment of applications.

Any application may be amended as a matter of right prior to the date of any final action taken by the Commission or designation for hearing. Amendments to applications shall be filed electronically through the International Bureau Filing System (IBFS). For information on IBFS filing procedures, see generally part 1, subpart Y, of this chapter, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.* If a petition to deny or other formal objections have been filed to the application, the amendment shall be served on the parties.

13. Section 63.51 is amended by revising paragraph (c) to read as follows:

§ 63.51 Additional information.

* * * * *

(c) You must submit electronically through the International Bureau Filing System (IBFS) any additional information which the Commission may require.

14. Section 63.53 is revised to read as follows:

§ 63.53 Form.

Applications for international service under Section 214 of the Communications Act must be filed electronically on the Internet through the International Bureau Filing System (IBFS). You are not required to send the original or any copies with your fee payment. For information on filing your application through IBFS, see part 1, subpart Y, of this chapter, and the IBFS homepage at *www.fcc.gov/ibfs.*

15. Section 63.701 is amended by revising the introductory paragraph to read as follows:

§ 63.701 Contents of application.

Except as otherwise provided in this part, any party requesting designation as a recognized operating agency within the meaning of the International Telecommunication Convention shall request such designation. Such designation is required to be filed electronically through the International Bureau Filing System (IBFS). For information on IBFS filing procedures, see generally part 1, subpart Y, of this chapter, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.* A request for designation as a recognized operating agency within the meaning of the International Telecommunication Convention shall include a statement of the nature of the services to be provided and a statement that the applicant is aware that it is obligated under Article 6 of the ITU Constitution to obey the mandatory provisions thereof, and all regulations promulgated thereunder, and a pledge that it will engage in no conduct or operations that contravene such mandatory provisions and that it will otherwise obey the Convention and regulations in all respects. The applicant must also include a statement that it is aware that failure to comply will result in an order from the Federal Communications Commission to cease and desist from future violations of an ITU regulation and may result in revocation of its recognized private operating agency status by the United States Department of State. Such statement must include the following information where applicable:

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

16. The authority citation for part 64 continues to read as follows:

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

17. Section 64.1001 is amended by revising paragraph (a) to read as follows:

§ 64.1001 Requests to modify international settlement arrangements.

(a) The procedures set forth in this rule apply to carriers that are required to file with the International Bureau, pursuant to § 43.51(e) of this chapter, requests to modify international settlement arrangements. Any operating agreement or amendment for which a modification request is required to be filed cannot become effective until the modification request has been granted under paragraph (e) of this section. You are required to file a modification electronically through the International Bureau Filing System (IBFS). For information on filing your modification through IBFS, see part 1, subpart Y, of this chapter, and the IBFS homepage at *www.fcc.gov/ibfs.*

* * * * *

18. Section 64.1002 is amended by revising paragraph (c) to read as follows:

§ 64.1002 International settlements policy.

* * * * *

(c) A carrier that seeks to add a U.S. international route to the list of routes that are exempt from the international settlements policy shall make its request in writing to the International Bureau, accompanied by a showing that a U.S. carrier has entered into a benchmark-compliant settlement rate agreement with a foreign carrier that possesses market power in the country at the foreign end of the U.S. international route that is the subject of the request. The required showing shall consist of an effective accounting rate modification, filed pursuant to § 64.1001 of this part, that includes a settlement rate that is at or below the Commission's benchmark settlement rate adopted for that country in IB Docket No. 96–261, Report and Order, 12 FCC Rcd 19,806, 62 FR 45758, Aug. 29, 1997, available on the International Bureau's World Wide Web site at *http://www.fcc.gov/ib.* The request is required to be filed electronically through the International Bureau Filing System (IBFS). For information on IBFS filing procedures, see generally part 1, subpart Y, of this chapter, particularly § 1.10009, and the IBFS homepage at *www.fcc.gov/ibfs.*

* * * * *

[FR Doc. 04–17075 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 25

[IB Docket No. 02–364; FCC No. 04–134]

Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document solicits comment on redistributing additional spectrum in the 1.6 GHz band (L-band or Big LEO band). Specifically, the Federal Communications Commission (Commission) initiated the *Further Notice of Proposed Rulemaking (FNPRM)* in this proceeding to determine whether mobile-satellite service (MSS) operators using different technologies could share additional spectrum in the L-band.

DATES: Comments are due September 8, 2004, and reply comments are due September 23, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Gorny, Howard Griboff, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *FNPRM* in IB Docket No. 02–364, FCC No. 04–134, adopted June 10, 2004, and released on July 16, 2004. The full text of this document is available for public inspection and copying during normal reference room hours at the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–04–134A1.doc.* The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *Commission@bcpiweb.com.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Summary of Further Notice of Proposed Rulemaking

On July 16, 2004, the Commission released a *Report and Order, Fourth Report and Order and FNPRM* in this proceeding. The *Report and Order and Fourth Report and Order* relating to this proceeding is published elsewhere in this issue of the **Federal Register**. The *FNPRM* seeks comment on proposals for reassigning or reallocating a portion of spectrum in the Big LEO L-band. In the attached *Report and Order,* we adopt provisions that permit time division multiple access (TDMA) and code division multiple access (CDMA) MSS operators to share 3.1 megahertz of spectrum at 1618.25–1621.35 MHz, based on the record before us. In adopting these provisions, we have approved a sharing plan that provides the opportunity for the TDMA MSS operator to have greater capacity to serve its customers' needs, while at the same time not causing significant harm to the CDMA MSS operator's ability to serve its current and future customers. We recognize, however, that the current TDMA MSS system is capable of operating on frequencies as low as 1616 MHz, and thus an opportunity for further sharing between the TDMA and CDMA MSS operators could exist at 1616–1618.25 MHz. We issue this *FNPRM* in IB Docket No. 02–364, to explore whether and how sharing an additional 2.25 MHz in the L-band may be possible.

In particular, parties should discuss how to ensure that shared use of this band does not adversely impact the ability of both CDMA and TDMA MSS operators to provide a wide-range of services, including aviation services. Second, we seek comment on whether and how sharing of this spectrum by TDMA and CDMA MSS operators would impact CDMA MSS operators' ability to provide viable ancillary terrestrial component services. Further, we seek comment on how any additional sharing requirements might impact the ability of Globalstar, as the CDMA MSS operator, to provide global communications. For example, Globalstar's French license starts at 1615 MHz, and Globalstar's Italian and Russian licenses are limited to frequencies above 1616 MHz.

We also seek comment on what benefits might be gained by permitting additional sharing and how any technical limitations should be weighed in comparison against these benefits. We are particularly interested in any alternative sharing approaches that take into account any technical limitations and that would permit us to make the most efficient use of this spectrum.

Procedural Issues

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis 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 "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). The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue.

The Commission established the original Big LEO band plan in 1994 and has modified that plan in the attached *Report and Order.* In that *Report and Order,* the Commission allows the TDMA and CDMA MSS operators to share 3.1 megahertz in the L-band at 1618.25–1621.35 MHz. The spectrum sharing plan in the L-band should promote the efficient use of spectrum by increasing the number of licensees that use the spectrum. We recognize, however, that Iridium, the current TDMA MSS operator, is capable of operating in spectrum as far down as 1616 MHz. Thus, the purpose of the attached *FNPRM* is to initiate and conduct a review of whether it would be feasible for the TDMA and CDMA MSS operators to share an additional 2.25 megahertz of spectrum at 1616–1618.25 MHz. This proposed band plan change is designed to further improve spectral efficiency within the L-band.

The proposal in the *FNPRM* impacts only Big LEO MSS licensees and currently, only two MSS licensees are operating in Big LEO spectrum. We do not consider these entities to be small businesses because small businesses would not likely be able to satisfy the capital requirements for launching and operating these satellite systems. Thus, the change we propose will not have a

substantial economic impact on small entities.

The Commission therefore certifies, pursuant to the RFA, that the proposal in this *FNPRM,* if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the FNPRM require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the *FNPRM,* including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the *FNPRM* and this initial certification will be published in the **Federal Register.**

Ordering Clauses

Pursuant to sections 4(i), 7, 302(a), 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 302(a), 303(c), 303(e), 303(f) and 303(r), the *FNPRM is adopted.*

The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *FNPRM,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–18147 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 152
Monday, August 9, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TB–04–11]

Burley Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. II) announcement is made of a forthcoming meeting of the Burley Tobacco Advisory Committee.

DATES: The meeting will be held on September 16, 2004, at 9 a.m.

ADDRESSES: The meeting will be held at the Ramada Inn, 2143 North Broadway, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to recommend opening dates and selling schedules, and discuss other related issues for the 2004–2005 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by September 10, 2004, and inform us of your needs.

Dated: August 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–18088 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–028–1]

Notice of Request for Extension of a Currently Approved 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 associated with regulations to prevent the interstate spread of exotic Newcastle disease in birds and poultry and chlamydiosis in poultry.

DATES: We will consider all comments that we receive on or before October 8, 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. 04–028–1, 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. 04–028–1.
- *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. 04–028–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding exotic Newcastle disease and chlamydiosis, contact Dr. Joseph Annelli, Director, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073. 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: Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry.

OMB Number: 0579–0116.

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

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of our Nation's livestock and poultry.

In connection with this mission, APHIS regulates the interstate movement of certain poultry, birds, and other items from premises and areas that may be quarantined because of exotic Newcastle disease (END) and chlamydiosis. The regulations contained in 9 CFR part 82 restrict the interstate movement of poultry, birds, and other items (such as eggs, carcasses, vehicles, containers, and coops) to help prevent the spread of END and chlamydiosis and require the use of certain information collection activities, including the completion of permit applications attesting to the health status of the birds or poultry being moved, the number and types of birds

or poultry being moved in a particular shipment, the shipment's point of origin, the shipment's destination, and the reason for the interstate movement.

These documents also provide useful traceback information in the event infected birds or poultry are discovered and an investigation must be launched to determine where the birds or poultry originated. The information provided by these documents is critical to our ability to prevent the interstate of END and chlamydiosis, which are highly contagious and capable of causing significant economic harm to the U.S. poultry industry.

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 this information collection activity. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the 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 collection of information 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 0.574074 hours per response.

Respondents: U.S. producers and shippers, and State animal health protection authorities.

Estimated annual number of respondents: 64.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 54.

Estimated total annual burden on respondents: 31 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 3rd day of August, 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–18126 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Public Meetings of the Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) will hold meetings to become informed about Black Hills National Forest issues and to consider those issues so as to make management recommendations to the forest supervisor. The meetings are open, and the public may attend any part of the meetings.

Dates and Agenda Issues:

- Wednesday, August 18, 2004 from 1 to 5 p.m.—Travel Management.
- Wednesday, September 15, 2004 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, October 13, 2004 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, November 17, 2004 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, December 8, 2004 from 1 to 5 p.m.—To be announced through local news media.
- Wednesday, January 5, 2005 from 1 to 5 p.m.—To be announced through local news media.

ADDRESSES: Meeting locations will be announced through local news media.

FOR FURTHER INFORMATION CONTACT: Frank Carroll, Black Hills National Forest, 25041 North Highway 16, Custer, SD, 57730, (605) 673–9200.

Dated: August 2, 2004.

Brad Exton,

Black Hills National Forest Acting Forest Supervisor.

[FR Doc. 04–18103 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday, September 2, 2004, from 10 a.m. to 4 p.m. in Deer Lodge, Montana, for a business meeting. The meeting is open to the public.

DATES: Thursday, September 2, 2004.

ADDRESSES: The meeting will be held at the USDA Service Center, 1002 Hollenback Road, Deer Lodge, Montana.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include a review of projects proposed for funding as authorized under Title II of Public Law 106–393, and public comment. If the meeting location is changed, notice will be posted in local newspapers, including The Montana Standard.

Dated: August 2, 2004.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 04–18108 Filed 8–6–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the North Dakota State Advisory Committee will convene at 12 p.m. (m.d.t.) and adjourn at 1:30 p.m. (m.d.t.), Tuesday, August 24, 2004. The purpose of the conference call is to identify specific issues to be addressed as part of regional project, "Confronting Discrimination in Reservation Border Town Communities," determine site for regional project community forum, and discuss status of the Commission and regional programs, and current civil rights developments in North Dakota.

This conference call is available to the public through the following call-in number: 1–800–659–1081; access code: #25356959. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls

using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Malee Craft, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Friday, August 20, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC August 3, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–18083 Filed 8–6–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Notice of Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields From the People's Republic of China

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

EFFECTIVE DATE: August 9, 2004.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the antidumping duty review of automotive replacement glass windshields from the People's Republic of China. This review covers the period September 19, 2001 through March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jon Freed, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 and (202) 482–3818, respectively.

Background

On May 7, 2004, the Department published the preliminary results of the administrative review of the antidumping duty order on ARG windshields from the PRC. *See Automotive Replacement Glass Windshields from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 25545 (May 7, 2004). The final results of this administrative review are currently due no later than September 4, 2004.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: This review involves certain complex issues which were raised in the briefs after the preliminary results of review including: (1) Exclusion of export price sales from margin calculation; and (2) use of market prices for float glass instead of surrogate values.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until no later than October 4, 2004.

Dated: August 3, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–18156 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain In-Shell Raw Pistachios From Iran

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

ACTION: Notice of preliminary results of antidumping administrative review.

SUMMARY: In response to a request from Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company, (collectively, Nima), the U.S. Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain in-shell raw pistachios from Iran. The period of review is July 1, 2002, through June 30, 2003. We have preliminarily determined that Nima has made sales at not less than normal value during the period covered by this review. The preliminary results are listed below in the section titled "Preliminary Results of Review." Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019 or Abdelali Elouaradia at (202) 482–1374; AD/CVD Operations, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on certain in-shell raw pistachios (pistachios) from Iran on July 17, 1986. *See* Antidumping Duty Order: Certain In Shell Pistachios from Iran, 51 FR 25922 (July 17, 1986). On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pistachios from Iran, 68 FR 39511. On July 30, 2003, Nima, an exporter of subject merchandise during the period of review, requested that the Department conduct an administrative review of its sales to the United States covered by the antidumping duty order. On August 22, 2003, the Department initiated an administrative review of the antidumping duty order on pistachios from Iran for the period July 1, 2002, through June 30, 2003, in order to determine whether merchandise imported into the United States was sold at less than fair value by Nima. *See* Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part, 68 FR 50750 (Administrative Review Initiation).

On August 29, 2003, the Department issued Nima an antidumping duty questionnaire. On September 19, 2003, Nima filed its response to Section A of the Department's questionnaire. We received Nima's response to Section C of the Department's questionnaire on October 14, 2003.

On October 24, 2003, petitioner, California Pistachio Commission, filed comments on Nima's Section A and C questionnaire responses and filed a request that the Department determine whether antidumping duties had been absorbed during the period of review by Nima. *See* "Duty Absorption" section below. We received comments on Nima's Section A and C questionnaire responses from Cal Pure Pistachios, Inc. (Cal Pure), an interested party in this proceeding, on November 6, 2003.

On November 7, 2003, the Department issued a Section D antidumping duty questionnaire soliciting information from Nima's supplier of pistachios, Razi Domghan Agricultural and Animal Husbandry Company (Razi Farm). On November 20, 2003, we issued Nima a supplemental questionnaire covering its Section A and C responses. On November 25, 2003, petitioner requested that the Department conduct a verification of Nima's questionnaire responses. We received Nima's first supplemental Section A and C questionnaire response on December 4, 2003.

On December 11, 2003, petitioner requested that the Department extend the deadline for new factual information until 30 days before issuance of the preliminary results. In response to petitioner's request, on December 16, 2003, the Department extended the deadline for submitting new factual information in this proceeding until 60 days prior to issuance of the preliminary results.

On December 31, 2003, Razi Farm filed its Section D questionnaire response. Petitioner and Cal Pure filed comments on Nima's first supplemental questionnaire response on January 9, 2004. On January 16, 2004, the Department issued Nima a second supplemental Section A and C questionnaire. We received comments on Razi Farm's Section D questionnaire response from petitioner and Cal Pure on January 20, 2004. On January 27, 2004, Razi Farm filed original copies of certificates of representation and of facts. On January 28, 2004, petitioner submitted factual information regarding current conditions in Iran. On January 30, 2004, petitioner submitted factual information with respect to Nima's pistachio supplier in Iran.

On February 2, 2004, we issued a supplemental Section D questionnaire to Razi Farm. On February 5, 2004, the Department fully extended its deadline for the preliminary results of this review. *See* Certain In-Shell Raw Pistachios from Iran; Extension of Time Limit for Preliminary Results of Administrative Review, 69 FR 5487.

On February 6, 2004, we received Nima's second supplemental Section A and C questionnaire response. We received Razi Farm's first supplemental Section D questionnaire response on March 1, 2004. Petitioner filed comments on Nima's second supplemental Section A and C questionnaire response on March 1, 2004.

On March 19, 2004, petitioner and interested parties (*i.e.*, Cal Pure and Western Pistachios Association) filed comments on Razi Farm's first supplemental Section D questionnaire response. The Department issued a second supplemental Section D questionnaire to Razi Farm on March 23, 2004. On April 2, 2004, petitioner withdrew its January 30, 2004, filing that included factual information with respect to Nima's pistachio supplier in Iran. We received Razi Farm's second supplemental Section D questionnaire response on April 19, 2004. On May 3, 2004, Cal Pure filed comments on Razi Farm's supplemental response. On May 12, 2004, we issued Razi Farm a third supplemental Section D questionnaire response.

On May 18, 2004, petitioner filed factual information regarding Razi Farm's knowledge that the pistachios it sold to Nima were destined for the United States. On May 21, 2004, we solicited information from Razi Farm as to the types of documents that would be available during our cost verification. On May 24, 2004, we received from petitioner a request to rescind the instant review in which petitioner alleged that Razi Farm knew or should have known that the goods it sold to Nima were for export to the United States.

On May 25, 2004, Razi Farm filed its third supplemental Section D questionnaire response. On the same day, Nima also filed a copy of its 2002 tax return. We issued our agendas for verification to Nima and Razi Farm on June 2, 2004. On June 3, 2004, and June 4, 2004, we received pre-verification comments from petitioner and Cal Pure. On June 4, 2004, Cal Pure requested that the Department cancel verification. On July 7, 2004, we received comments from petitioner for consideration in these preliminary results.

Period of Review

The period of review (POR) is July 1, 2002 through June 30, 2003.

Scope of Antidumping Duty Order

The product covered by the antidumping duty order is raw, in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells, and edible meats from Iran. This merchandise is currently provided for in item 0802.50.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act) and section 351.307 of the Department's regulations, we conducted verification of U.S. sales and cost questionnaire responses submitted by Nima and Razi Farm from June 7, 2004, through June 9, 2004 in Yerevan, Armenia. Although the verification was conducted off-site, we used standard verification procedures, including the examination of relevant sales, cost, and financial records, and a selection of original documentation. Our verification results are outlined in the Memorandum to the File through Abdelali Elouaradia, Program Manager, Office 6, Administrative Review of the Antidumping Duty Order on Certain In-Shell Raw Pistachios from Iran: Verification of U.S. Sales Questionnaire Responses Submitted by Tehran Negah Nima Trading Company, Ltd. (Nima), dated June 29, 2004 (Sales Verification Report); and Memorandum to Neal Halper, Director, Office of Accounting, Antidumping Duty Administrative Review of Certain In-Shell Raw Pistachios from Iran: Verification Report on Cost of Production and Constructed Value Data Submitted by Razi Farm, dated June 29, 2004 (Cost Verification Report).[1]

Duty Absorption

As noted in the "Background" section above, on October 24, 2003, petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR by Nima. Section 751(a)(4) of the Act provides that the Department, if requested, determine during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer.

Because the antidumping duty order was published seventeen years prior to the initiation of this review, we determine that petitioner's request is unwarranted by section 751(a)(4) of the Act. Moreover, neither the foreign producer nor the exporter subject to the instant order is affiliated with the U.S. importer. Therefore, we find that section 751(a)(4) of the Act is not applicable to this review, and accordingly, we did not determine whether antidumping duties had been absorbed during the POR by Nima.

Bona Fides of Sale Under Review

Based on questionnaire responses submitted by Nima, and our verification

[1] These are public documents. Copies of these reports are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

thereof, we preliminarily determine that Nima's sale to the United States constitutes a bona fide commercial transaction. We note that in the recent new shipper review of Nima the Department faced similar facts and concluded that the sale of a relatively small quantity of pistachios shipped via air freight was a bona fide arm's-length transaction. *See* Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran, 68 FR 353 (January 3, 2003) and accompanying Issues and Decision Memorandum at Comment 2.

Application of Knowledge Test

Based on our examination of the questionnaire responses and verification findings, we preliminarily determine, in accordance with the Department's established practice, that Razi Farm neither knew nor should have known that the merchandise under review was for export to the United States at the time of the sale.

Under section 772(a) of the Act, the basis for export price is the price at which the first party in the chain of distribution who has knowledge of the U.S. destination of the merchandise sells the subject merchandise, either directly to a U.S. purchaser or to an intermediary such as a trading company. The party making such a sale, with knowledge of the destination, is the appropriate party to be reviewed. *See* Certain Pasta from Italy: Termination of New Shipper Antidumping Duty Administrative Review, 62 FR 66602 (December 19, 1997) (Pasta from Italy). The Department's test for determining knowledge is whether the relevant party knew or should have known that the merchandise was destined for the United States.

In determining whether a party knew or should have known that its merchandise was destined for the United States, the Department's well-established practice is to consider such factors as: (1) Whether that party prepared or signed any certificates, shipping documents, contracts or other papers stating that the destination of the merchandise was the United States; (2) whether that party used any packaging or labeling which stated that the merchandise was destined for the United States; (3) whether any unique features or specifications of the merchandise otherwise indicated that the destination was the United States; and (4) whether that party admitted to the Department that it knew that its sales were destined for the United States. *See, e.g.*, Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part, 64 FR 69694 (December 14, 1999); Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo from the People's Republic of China, 64 FR 69723 (December 14, 1999) (unchanged in final determination); and Pasta from Italy, 62 FR 66602 (December 19, 1997). Because at the time of the sale none of the above factors appears to be present in the instant case, the Department preliminarily determines that Razi Farm neither knew nor should have known that the pistachios it sold to Nima were destined for the United States.

Based upon the Department's analysis of record documentation, we conclude that there is no evidence that Razi Farm prepared or signed any documentation relevant to the shipping, handling, and packing of the merchandise for export during the POR. Instead, the record clearly indicates that Nima, not Razi Farm, prepared and signed all certificates, shipping documents, contracts or other papers identifying the destination of the merchandise as the United States. *See* Nima's September 19, 2003, Section A questionnaire response at Exhibit 6. Moreover, the record is void of evidence that Razi Farm used any packaging or labeling which stated that the merchandise was destined for the United States. Rather, the record indicates that Nima re-packed the merchandise for shipment to the United States. *See* Nima's December 4, 2003, supplemental questionnaire response at 6. Further, there were no unique features or specifications of the merchandise that would otherwise indicate that it was destined for the United States.

In addition, as noted above, the Department analyzed Nima's response recounting conversations that it had with Razi Farm around the time of the sale. In particular, Nima informed Razi Farm that it might receive a questionnaire from some foreign government, including the U.S. government (U.S. Department of Commerce). *See* Nima's December 4, 2003 supplemental questionnaire response at 3 and 10. We find that while Nima's statements indicate that these pistachios would be used for an export sale, Nima did not clearly indicate to which market the pistachios would be shipped. The statements alone are inconclusive in determining whether Razi Farm knew or should have known at the time of sale that the pistachios it sold to Nima were destined for the United States.

Furthermore, during verification, the general manager of Razi Farm stated that he first learned that the pistachios he sold to Nima were exported to the United States in May 2004, approximately a year after the date of the sale. *See* Sales Verification Report at 4. It is clear from the statements made by Razi Farm's general manager during verification that Razi Farm did not admit to the Department that it knew that its sales were destined for the United States at the time of its sale to Nima. Therefore, contrary to petitioner's and Cal Pure's claims, we do not find that Nima's account of conversations it had with Razi Farm during the POR compel the Department to find that Razi Farm had knowledge as defined in section 772(a) of the Act. Moreover, there is no evidence currently on the record that meets the factors, described above, considered by the Department in its knowledge test. We also note that unsubstantiated conversations and hearsay placed on the record by petitioners are not evidence sufficient for this analysis. In summary, in considering the totality of current record information, we preliminarily determine that Razi Farm neither knew nor should have known at the time of sale that the pistachios it sold to Nima were destined for the United States.

In light of the significance of this issue, the Department will allow parties to submit written comments and any additional documentary evidence based on factual information that indicate that Razi Farm did or did not have knowledge that the goods in question were destined for the United States at the time of the sale, in accordance with the types of factors listed above. Comments and factual evidence with respect to this issue are due no later than 14 calendar days after the publication date of these preliminary results.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of Antidumping Duty Order" section above and sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As there were no home market foreign like products to compare to a U.S. sale, we used constructed value (CV).

United States Price

For Nima, we based the United States price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. We deducted inland freight expenses from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value Based on CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication of the subject merchandise, plus amounts for selling, general, and administrative (SG&A) expenses, interest, profit, and U.S. packing costs. In particular, we calculated CV based on the producer's (Razi Farm's) costs of materials and fabrication of the subject merchandise, G&A, and interest, plus the exporter's (Nima's) SG&A expenses and an amount for profit.

The producer's costs were submitted in three supplemental section D responses as well as a copy of a production cost study compiled by the Iranian Ministry of Finance based on production of pistachio farms in Iran. The producer provided copies of company ledgers maintained for the farm and sales invoices. *See* Razi Farm's May 25, 2004, third supplemental questionnaire response. We verified the producer's data and information provided in Razi Farm's responses in June 2004. *See* Cost Verification Report.

Because there were no viable home market sales or third country sales made by Nima during the POR, we cannot calculate CV profit under section 773(e)(2)(A) of the Act. Section 773(e)(2)(B)(iii) of the Act allows the Department to use amounts incurred and realized for profits based on any other reasonable method, as long as that profit does not exceed the amount normally realized by exporters or producers in connection with the sale for consumption in the foreign country of merchandise that is in the same general category of products as the subject merchandise. Using the methodology established in a prior segment of this proceeding, we based profit on a home market sale made by an Iranian pistachio farmer in Nima's new shipper review pursuant to section 773(e)(2)(B)(iii) of the Act. *See* Certain In-Shell Raw Pistachios from Iran: Preliminary Results of Antidumping Duty New Shipper Review, 67 FR 50863 (August 6, 2002) (unchanged in the final results). The profit rate is a profit realized in connection with a sale for consumption in the foreign country of subject merchandise. There is no evidence on the record that indicates this profit rate is aberrational or not representative of home market profit rates of subject merchandise. However, we may revisit this rate calculation in computing CV for our final results. *See* Memorandum from Gina K. Lee through Michael P. Martin to Neal M. Halper, Constructed Value Adjustments for Preliminary Results, dated July 30, 2004 (CV Prelim Memo).

For these preliminary results, we have relied on the submitted CV, except where noted below:

1. We recalculated depreciation expense to correct an error.
2. We revised the reported pesticide expenses for a clerical error.
3. We increased the electricity expenses to reflect the costs for an entire year.
4. We calculated a profit rate based on publicly available information.

See CV Prelim Memo for details.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank or by Dow Jones Reuter Business Interactive, LLC (trading as Factiva).

Preliminary Results of Review

We preliminarily determine that an antidumping duty margin does not exist for the following exporter:

Exporter	POR	Margin (percent)
Tehran Negah Nima Trading Company, Inc.	07/01/02–06/30/03	0.00

In accordance with 19 CFR 351.224(b), the Department will disclose to all interested parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309 of the Department's regulations, interested parties may submit written comments and/or case briefs on these preliminary results. Comments and case briefs must be submitted no later than thirty days after the date of publication of this notice. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and must be submitted no later than five days after the time limit for filing case briefs and comments. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with 19 CFR 351.303(f). Also, within thirty days of the date of publication of this notice, an interested party may request a public hearing on the arguments to be raised in the case and rebuttal briefs and comments. See 19 CFR 351.310(c). Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or

withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Nima will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 184.28 percent established in the LTFV investigation. This rate reflects the amount of export subsidies found in the final countervailing duty determination in the investigation subtracted from the dumping margin found in the LTFV determination. *See* Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; In-Shell Pistachios From Iran, 51 FR 8344 (March 11, 1986). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this administrative review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18151 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–850]

Notice of Postponement of Preliminary Antidumping Duty Determination: Live Swine From Canada

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

SUMMARY: The Department of Commerce is postponing the preliminary determination in the antidumping duty investigation on live swine from Canada from August 25, 2004 until no later than October 14, 2004. This extension is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Cole Kyle at (202) 482–1503 or Andrew Smith at (202) 482–1276, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Postponement of Preliminary Determination

On April 14, 2004, the Department of Commerce ("the Department") published the initiation of the antidumping duty investigation of imports of live swine from Canada. *See Notice of Initiation of Antidumping Investigation: Live Swine from Canada*, 69 FR 19815 (April 14, 2004) ("*Initiation Notice*"). The *Initiation Notice* stated that we would make our preliminary determination for this antidumping duty investigation no later than August 25, 2004, 140 days after the date on which the Department initiated this investigation.

Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), the Department can extend the period for reaching a preliminary determination until no later than the 190th day after the date on which the administrating authority initiates an investigation if:

(B) The administrating authority concludes that the parties concerned are cooperating and determines that

(i) The case is extraordinarily complicated by reason of

(I) The number and complexity of the transactions to be investigated or adjustments to be considered,

(II) The novelty of the issues presented, or

(III) The number of firms whose activities must be investigated, and

(ii) Additional time is necessary to make the preliminary determination.

Regarding the first requirement, we find that all concerned parties are cooperating in this case.

Regarding the second requirement, we find that this case is extraordinarily complicated because of the novelty of the issues presented. First, the product in this investigation, live swine, is inherently unique from the manufactured or processed agricultural products that the Department typically encounters in antidumping duty investigations. Further, the corporate structures and production processes of the respondents involved in this investigation are highly complex in that several of the respondents are affiliated with other live swine producers and are involved in substantial further manufacturing activities in the United States. Accordingly, the Department requires additional time to analyze the questionnaire responses submitted, determine how to proceed with respect to the unique issues presented, and collect additional information concerning these issues before the preliminary determination.

Pursuant to section 733(c)(1)(B) of the Act, we have determined that this case is extraordinarily complicated and that additional time is necessary to make our preliminary determination. Therefore, we are postponing the preliminary determination until no later than October 14, 2004, 190 days after the date on which the Department initiated this investigation, in accordance with section 733(c)(1) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: August 3, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–18155 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China

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

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyethylene retail carrier bags from the People's Republic of China.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Enforcement, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise subject to this antidumping duty order is polyethylene retail carrier bags (PRCBs) which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This subheading also covers products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On August 2, 2004, the International Trade Commission (ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PRCBs is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of subject merchandise from the People's Republic of China (PRC). Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of PRCBs from the PRC. These antidumping duties will be assessed on all unliquidated entries of PRCBs from the PRC entered, or withdrawn from the warehouse, for consumption on or after January 26, 2004, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from the People's Republic of China*, 69 FR 3544 (January 26, 2004).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to not more than six months. At the request of exporters that account for a significant proportion of exports of PRCBs, we extended the four-month period to not more than six months. See 69 FR at 3545–46. In this investigation, the six-month period began on the date of the publication of the preliminary determination and ended on July 24, 2004. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of PRCBs from the PRC entered, or withdrawn from warehouse, for consumption on or after July 24, 2004, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

With the exception of subject merchandise manufactured and exported by Hang Lung Plastic Manufactory, Ltd. (Hang Lung) and Nantong Huasheng Plastic Products Co., Ltd (Nantong), on or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below. Because we found *de minimis* margins for Hang Lung and Nantong, we are excluding merchandise manufactured and exported by Hang Lung and Nantong from this order. The PRC-wide rate applies to all entries of the subject merchandise except for entries from the companies that are identified individually below.

Producer or exporter	Weighted-average percent margin
Dongguan Huang Jiang United Wah Plastic Bag Factory (Also known as Dongwan Nozawa Plastics and United Power Packaging, Ltd.)	23.22
Rally Plastics Company, Ltd.	23.85
Shanghai Glopack Packing Co., Ltd., and Sea Lake PolyethyleneEnterprise, Ltd. (Also known as Sea Lake Plastics Import MaterialProcessing Factory and Sea Lake Plastics Co., Ltd.)	19.79
Xiamen Ming Pak Plastics Co., Ltd.	35.58
Zhongshan Dongfeng Hung Wai Plastic Bag Manufactory	41.28
Beijing Lianbin Plastics and Printing Co., Ltd.	25.69
Dongguan Maruman Plastic Packaging Co., Ltd.(Formerly known as Dongguan Zhongqiao Combine Plastic Bag Factory)	25.69
Good-in Holdings, Ltd.	25.69
Guangdong Esquel Packaging Co., Ltd.	25.69
Nan Sing Plastics, Ltd.	25.69
Ningbo Fanrong Plastics Products Co., Ltd.	25.69
Ningbo Huansen Plasthetics Co., Ltd.	25.69
Rain Continent Shanghai Co., Ltd.	25.69
Shanghai Dazhi Enterprise Development Co., Ltd.	25.69

Producer or exporter	Weighted-average percent margin
Shanghai Fangsheng Coloured Packaging Co., Ltd.	25.69
Shanghai Jingtai Packaging Material Co., Ltd.	25.69
Shanghai Light Industrial Products Imports and Export Corp.	25.69
Shanghai Minmetals Development, Ltd.	25.69
Shanghai New Ai Lian Import and Export Co., Ltd.	25.69
Shanghai Overseas International Trading Co., Ltd.	25.69
Shanghai Yafu Plastics Industries Co., Ltd.	25.69
Weihai Weiquan Plastic and Rubber Products Co., Ltd.	25.69
Xiamen Xingyatai Industry Co., Ltd.	25.69
Xinhui Henglong	25.69
PRC-wide Rate	77.57

This notice constitutes the antidumping duty order with respect to PRCBs from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 4, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18264 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Antidumping Duty Order: Polyethylene Retail Carrier Bags From Malaysia

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

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyethylene retail carrier bags from Malaysia.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: David Dirstine, AD/CVD Enforcement, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise subject to this antidumping duty order is polyethylene retail carrier bags (PRCBs) which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This subheading also covers products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On August 2, 2004, the International Trade Commission (ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PRCBs is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of subject merchandise from Malaysia. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of PRCBs from Malaysia. These antidumping duties will be assessed on all unliquidated entries of PRCBs from Malaysia entered, or withdrawn from the warehouse, for consumption on or after January 26, 2004, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 3557 (January 26, 2004).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to not more than six months. At the request of an exporter that accounts for a significant proportion of exports of PRCBs, we extended the four-month period to not more than six months. See 69 FR at 3558. In this investigation, the six-month period began on the date of the publication of the preliminary determination and ended on July 24, 2004. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of PRCBs from Malaysia entered, or withdrawn from warehouse, for consumption on or after July 24, 2004, and before the date of publication of the

ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below for all companies except Bee Lian Plastic Industries Sdn. Bhd (Bee Lian). Because we found a *de minimis* margin for Bee Lian, we are excluding merchandise manufactured and exported by this company from this order. The all-others rate applies to all entries of the subject merchandise except for entries from the companies that are identified individually below.

Producer or exporter	Weighted-average percent margin
Teong Chuan Plastic and Timber Sdn. Bhd.	101.74
Branpak Industries Sdn. Bhd.	101.74
Gants Pac Industries	101.74
Sido Bangun Sdn. Bhd.	101.74
Zhin Hin/Chin Hin Plastic Manufacturer Sdn. Bhd.	101.74
All Others	84.94

This notice constitutes the antidumping duty order with respect to PRCBs from Malaysia, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 4, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18265 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Antidumping Duty Order: Polyethylene Retail Carrier Bags From Thailand

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

SUMMARY: Pursuant to section 736(a) of the Tariff Act of 1930, as amended, the Department of Commerce is issuing an antidumping duty order on polyethylene retail carrier bags from Thailand.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson, AD/CVD Enforcement, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5287.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise subject to this antidumping duty order is polyethylene retail carrier bags (PRCBs) which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the investigation excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This subheading also covers products that are outside the scope of this investigation. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

On August 2, 2004, the International Trade Commission (ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing PRCBs is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of subject merchandise from Thailand. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the U.S. price of the merchandise for all relevant entries of PRCBs from Thailand. These antidumping duties will be assessed on all unliquidated entries of PRCBs from Thailand entered, or withdrawn from the warehouse, for consumption on or after January 26, 2004, the date on which the Department published its *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 3552 (January 26, 2004).

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to not more than six months. At the request of an exporter that accounts for a significant proportion of exports of PRCBs, we

extended the four-month period to not more than six months. *See* 69 FR at 3553. In this investigation, the six-month period began on the date of the publication of the preliminary determination and ended on July 24, 2004. Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of PRCBs from Thailand entered, or withdrawn from warehouse, for consumption on or after July 24, 2004, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will continue on or after this date.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below. The all-others rate applies to all entries of the subject merchandise except for entries from the companies that are identified individually below.

Producer or exporter	Weighted-average percent margin
Thai Plastic Bags Industries Co., Ltd., Winner's Pack Co., Ltd., andAPEC Film Ltd.	2.26
Advance Polybag Inc., Alpine Plastics Inc., API Enterprises Inc., andUniversal Polybag Co., Ltd.	5.35
Champion Paper Polybags Ltd.	122.88
TRC Polypack	122.88
Zip-Pac Co., Ltd.	122.88
All Others	2.80

This notice constitutes the antidumping duty order with respect to PRCBs from Thailand, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: August 4, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18266 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip In Coils From Italy

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

ACTION: Notice of the preliminary results of the antidumping duty administrative review.

SUMMARY: In response to a request from petitioners and ThyssenKrupp Acciai Speciali Terni S.p.A. (TKAST), a producer and exporter of subject merchandise, and ThyssenKrupp AST USA, Inc. (TKAST USA), an importer of subject merchandise, the U.S. Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSS) from Italy.[1] This review covers imports of subject merchandise from TKAST.

The Department preliminary determines that SSSS from Italy has been sold in the United States at less than normal value during the period of review. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs and Border Protection (CBP) to assess antidumping duties equal to the difference between constructed export price and normal value.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019; AD/CVD Operations, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 39511. On July 31, 2003, TKAST and petitioners requested that the Department conduct an administrative review of the antidumping duty order. On August 22, 2003, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 50750.

On September 8, 2003, the Department issued an antidumping duty questionnaire to TKAST. On October 3, 2003, TKAST requested that the Department waive its filing requirements, and submitted its response to Section A of the questionnaire. In response to TKAST's request, on October 6, 2003, the Department waived its filing requirements (*i.e.*, number of copies to be submitted) for this review.

On October 30, 2003, TKAST filed its response to Sections B, C, and D of the questionnaire. In its Section B response at page B–1, TKAST requested that it not be required to report the downstream sales of certain affiliated parties. On November 18, 2003, the Department sent TKAST a letter in which it allowed TKAST to exclude certain downstream sales.

On December 18, 2003, we received comments from petitioners on TKAST's questionnaire responses. On January 12, 2004, the Department requested that TKAST respond to Section E of the antidumping duty questionnaire dated September 8, 2003. On January 22, 2004, we rescinded our request that TKAST respond to Section E of the Department's questionnaire.

The Department issued TKAST a supplemental Section A, B, C, and D questionnaire on January 30, 2004. On February 9, 2004, the Department extended the deadline for issuing the

[1] Petitioners include: Allegheny Ludlum Corporation, AK Steel Corporation, J&L Speciality Steel, Inc., North American Stainless, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zainesville Armco Independent Organization, Inc.

preliminary results of this review by 60 days. *See Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy,* 69 FR 3590 (March 1, 2004).

On March 1, 2004, TKAST filed its supplemental Section A, B, C, and D questionnaire response. We received comments on TKAST's supplemental questionnaire response from petitioners on April 2, 2004.

On May 3, 2004, the Department extended the time limit for the preliminary results in this administrative review by an additional 60 days. *See Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy,* 69 FR 25564 (May 7, 2004). On May 25, 2004, the Department issued a second supplemental questionnaire to TKAST.

On June 2, 2004, the Department issued a third supplemental questionnaire to TKAST. We issued our verification agenda to TKAST on June 3, 2004. On June 4, 2004, TKAST filed its second supplemental questionnaire response. We received TKAST's third supplemental questionnaire response on June 7, 2004.

Period of Review

The period of review (POR) is July 1, 2002, through June 30, 2003.

Verification

As provided in section 782(i) of the Act, the Department conducted a sales and cost verification of the information provided by TKAST from June 14, 2004, through June 17, 2004, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and a selection of relevant original documentation. Our verification results are outlined in the Memorandum to the File through Abdelali Elouaradia, Program Manager, Office 6, AD/CVD Operations, Verification of Home Market Sales and Cost Questionnaire Responses Submitted by ThyssenKrupp Acciai Speciali Terni S.p.A., dated July 9, 2004 (Sales and Cost Verification Report).

Where necessary, we adjusted TKAST's reported home market, downstream, and U.S. sales databases to account for pre-verification corrections and findings. *See* Sales and Cost Verification Report at 1–3. *See also* Memorandum to the File through Abdelali Elouaradia, Program Manager, Office 6, AD/CVD Operations, Analysis Memorandum for the Preliminary Results, dated July 29, 2004 (Prelim Analysis Memo). Public versions of the verification report and analysis memorandum are on file in the Central Records Unit (CRU), room B–099 of the Herbert C. Hoover Department of Commerce building, 1401 Constitution Avenue, NW., Washington, DC.

Scope of the Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[2] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and CBP purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this review are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

Flapper valve steel is also excluded from the scope of this review. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this review. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[3]

Certain electrical resistance alloy steel is also excluded from the scope of this review. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[4]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this review. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[5]

Finally, also excluded from the scope of this review are three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to American Iron and Steel Institute (AISI) grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo."[7] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5"[8] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[9]

[3] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[4] "Gilphy 36" is a trademark of Imphy, S.A.

[5] "Durphynox 17" is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] "GIN4 Mo" is the proprietary grade of Hitachi Metals America, Ltd.

[8] "GIN5" is the proprietary grade of Hitachi Metals America, Ltd.

[9] "GIN6" is the proprietary grade of Hitachi Metals America, Ltd.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Review" section above, which were produced and sold by TKAST in the home market during the POR, to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of SSSS. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of preference): (1) Grade; (2) hot/cold rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire. *See* Appendix V of the Department's antidumping duty questionnaire to TKAST dated September 8, 2003.

Constructed Export Price

In accordance with section 772(b) of the Act, the constructed export price (CEP) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

As stated at 19 CFR 351.401(i), the Department will use the respondent's invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. TKAST reported the invoice date as the date of sale for both the U.S. market and the home market because the date of invoice reflects the date on which the material terms of sale were finalized. We used invoice date as the date of sale in the investigation and prior reviews. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30750 (June 8, 1999) (LTFV Investigation) and *Final Results of Antidumping Duty Administrative Review ('01–'02): Stainless Steel Sheet and Strip in Coils from Italy*, 68 FR 69382 (December 12, 2003).

For purposes of this review, TKAST classified all of its export sales of SSSS to the United States as CEP sales. During the POR, TKAST made sales to the United States through its U.S. affiliate,

TKAST USA. *See* TKAST's Section A questionnaire response dated October 3, 2003 at A–31. Based on record information, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales. In particular, TKAST reported that it sold the subject merchandise in the United States through two channels (*i.e.*, channel one and channel two).

With respect to channel one sales, TKAST reported that these sales are shipped directly from the factory in Italy to the U.S. customer. However, TKAST's U.S.-based affiliated reseller (TKAST USA) serves as the principal point of contact for the U.S. customer. For channel one sales, customers place their orders with TKAST USA and in turn, TKAST USA places the order with TKAST. Upon confirmation from TKAST, TKAST USA issues a separate invoice to the U.S. customer. TKAST USA is solely responsible for collecting payment from the U.S. customer, and separately responsible for paying TKAST for the merchandise.

Channel two sales are made from the inventory of TKAST USA. Accordingly, the Department preliminarily determines that TKAST's channel one and two sales were made "in the United States" within the meaning of section 772(b) of the Act, and therefore, should be treated as CEP transactions, consistent with *AK Steel Corp.* v. *United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated CEP in accordance with section 772(c) of the Act. We based CEP on the packed prices to the unaffiliated purchasers in the United States. We made adjustments to the starting price (gross unit price) for billing adjustments, early payment discounts, alloy surcharges, skid surcharges, and freight revenue, where applicable. In accordance with section 772(c)(2)(A) of the Act, we deducted the following movement expenses, where appropriate, from the starting price: foreign inland freight from the plant to port of exit, international freight, U.S. inland freight from warehouse to the unaffiliated U.S. customer, other U.S. transportation expenses, and U.S. Customs duties. *See also* 19 CFR 351.401(e). In addition, because TKAST reported CEP sales, pursuant to section 772(d)(1) of the Act, we deducted from the starting price selling expenses associated with economic activities that occurred in the United States during the POR, including direct U.S. selling expenses (*i.e.*, credit and warranty expenses), U.S. inventory carrying costs, and indirect selling expenses incurred in the United States (including technical service expenses).

Normal Value

After testing home market viability, as discussed below, we calculated normal value (NV) as noted in the "Price-to-Price Comparisons" section of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared TKAST's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and section 351.404(b) of the Department's regulations, because TKAST's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determine that sales in the home market provide a viable basis for calculating NV. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, we based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Therefore, we used as NV the prices at which the foreign like product was first sold for consumption in Italy, in the usual commercial quantities, in the ordinary course of trade and, to the extent possible, at the same level of trade (LOT) as the CEP sales, as appropriate.

2. Arm's-Length Test

TKAST reported that during the POR, it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. If any sales to affiliated customers in the home market were not made at arm's-length prices, we excluded them from our analysis as we consider such sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). To test whether sales to affiliates were made at arm's-length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement expenses, direct selling expenses, and home market packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's-length prices. *See* 19 CFR 351.403(c). Conversely, where the affiliated party did not pass the arm's-length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (*Modification to Affiliated Party Sales*).

While TKAST made sales to affiliated parties in the home market during the POR, the Department determined that TKAST only needed to report certain affiliated customers' downstream sales. *See* the "Background" section above. In its March 1, 2004 and June 7, 2004, supplemental questionnaire responses, TKAST explained that it was unable to compel certain affiliates to report their downstream sales to the Department. Pursuant to the Department's current practice, because we find that TKAST has cooperated to the best of its ability and was unable to obtain downstream sales from the affiliated parties as requested by the Department, we will not use adverse facts available for those sales. *See Modification to Affiliated Party Sales* at 69188. For downstream sales by affiliated parties reported by TKAST where the sale between TKAST and the affiliate failed the arm's-length test, we included the downstream sale in our calculation of NV. *See* TKAST's March 1, 2004, supplemental questionnaire response for its reporting of certain downstream sales.

3. Cost of Production

In the most recently completed segment, the Department determined that TKAST made sales in the home market at prices below its cost of production (COP) and, therefore, excluded such sales from its calculation of NV. *See Final Results of Antidumping Duty Administrative Review '01–'02: Stainless Steel Sheet and Strip in Coils from Italy*, 68 FR 69382 (December 12, 2003). Therefore, the Department has reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that TKAST made sales in the home market at prices below the COP for this POR. As a result, in accordance with section 773(b)(1) of the Act, we examined whether TKAST's sales in the home market were made at prices below the COP.

A. Calculation of the COP

We compared sales of the foreign like product in the home market with model-specific COP figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we relied on home market sales and COP information provided by TKAST in its questionnaire responses and verification findings.

At verification, we discovered that TKAST had terminated its old accounting system (*i.e.*, BULL system) at the end of fiscal year 2003. TKAST explained that the information detailing how it derived the total standard costs reported for each phase of production for each grade of SSSS was only recorded in the BULL system. *See* Sales and Cost Verification Report at 27. Therefore, we were unable to substantiate how TKAST allocated its standard material and processing costs by grade produced and sold during the POR.[10] Because the Department was unable to verify this information, we cannot rely on TKAST's reported standard costs and, in effect, its reported total cost of manufacturing for each control number.

Because we were unable to fully verify the standard cost component used by TKAST to calculate total cost of manufacturing by grade, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for TKAST. *See* Sales and Cost Verification Report at 27.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA)* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Nippon Steel Corporation* v. *United States*, 337 F. 3d 1373, 2003 Fed. Cir. (*Nippon Steel*) ("Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries * * *").

In addition, pursuant to section 776(b) of the Act, we find that TKAST failed to cooperate by not acting to the best of its ability to comply with a request for information. In particular, as one of the requesting parties, well-versed in the Department's antidumping duty procedures, TKAST has an obligation to maintain company records that contain the relevant information it relied upon when responding to our questionnaire responses, which is necessary for verification thereof and which may be used in our analysis. In *Nippon Steel*, the Federal Circuit stated that, "{w}hile the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping." *See Nippon Steel* at 1382.

As explained above, TKAST did not cooperate to the best of its ability when it failed to properly maintain records and provide the Department with standard cost records used during the POR, and therefore, we find it appropriate to use an inference that is adverse to the interests of TKAST in selecting from among the facts otherwise available. By doing so, we ensure that TKAST will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. Accordingly, for purposes of these preliminary results, as facts otherwise available, we used TKAST's costs to calculate the average total cost of manufacturing (TCOMH) and variable cost of manufacturing (VCOMH), weighted by production quantity on a grade-specific basis. Where the reported total cost of manufacturing (TOTCOM) for the control number (CONNUM) was higher than the weighted-average TCOMH for that CONNUM's grade, we relied upon the CONNUM-specific data for TOTCOM and VCOMH. Otherwise, we used the weighted-average TCOMH by grade in our calculation of TOTCOM and VCOMH. *See* Prelim Analysis Memo for programming details.

B. Test of Home Market Prices

We compared TKAST's weighted-average COPs to its home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable discounts, movement charges, and direct and indirect selling expenses.

As stated in the "Background" section above, TKAST reported downstream sales data with respect to two affiliated resellers. *See* TKAST's March 1, 2004 and June 4, 2004, supplemental questionnaire responses. In reviewing TKAST's cost database, the Department discovered that TKAST did not provide the costs of manufacturing associated with the downstream sales of subject merchandise. Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the cost information necessary to properly perform our cost test with respect to these sales is not on the record of this review, we must rely on facts otherwise available. Therefore, for the purposes of our cost test, we are preliminarily applying the weighted-average total cost of manufacturing, as neutral facts available, to downstream sales with no reported cost information in accordance with section 776(a)(1). *See* Prelim Analysis Memo for programming details.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of the respondent's sales of a given product were at prices less than COP, we determined that the below-cost sales were made in substantial quantities

[10] We note that during verification TKAST was able to locate supporting records from the BULL system to substantiate its reported standard costs for one grade of merchandise produced and sold during the POR. *See* Sales and Cost Verification Report at 28.

within an extended period of time, in accordance with sections 773(b)(2)(A) and (C) of the Act. Because we compared prices to POR-average costs, we determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales and used the remaining sales, if any, as the basis for NV, in accordance with section 773(b)(1) of the Act. *See* Prelim Analysis Memo for programming details.

Price-to-Price Comparisons

For those sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be arm's-length) or unaffiliated parties, in accordance with section 351.403 of the Department's regulations. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market net of discounts. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. For comparison to CEP, we deducted home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410(c) of the Department's regulations.

Because we were unable to fully verify the packing expenses TKAST reported it incurred on subject merchandise sold in the United States and Italy, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for TKAST. *See* Sales and Cost Verification Report at 34–35.

Moreover, pursuant to section 776(b) of the Act, we find that TKAST failed to cooperate by not acting to the best of its ability to comply with a request for information. Prior to verification, the Department requested to review how TKAST derived its reported packing expenses. *See* the Department's Letter to TKAST dated June 3, 2004 at 9. However, TKAST was unable to meet the Department's request at verification. In particular, as noted above, we were unable to fully verify the packing information presented to Department officials at verification and provided for the record of this review. Moreover, after the errors were pointed out to TKAST at verification, TKAST did not provide the Department with the necessary information to adjust the incorrectly reported packing expenses, and thereby did not put forth its maximum effort to our verification inquiries. Although TKAST is familiar with our antidumping duty procedures, TKAST did not take reasonable steps to clarify this error and offer any explanation for the discrepancies to Department officials at verification. Therefore, TKAST did not act to the best of its ability in providing the Department with accurate and verifiable packing expenses. Because we cannot rely on TKAST's reported packing expenses and do not have information necessary to correct for the discrepancies found at verification, we find it appropriate to use an inference that is adverse to the interests of TKAST in selecting from among the facts otherwise available. By doing so, we ensure that TKAST will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

As stated above, an adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. For purposes of these preliminary results, as facts otherwise available, we applied the lowest reported packing expense in our calculation of NV and the highest reported packing expense in our calculation of CEP. *See* Prelim Analysis Memo for programming details.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. *See also* 19 CFR 351.412. The NV LOT is the level of the starting-price sales in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(1). As noted in the "Constructed Export Price" section above, we preliminarily find that all of TKAST's U.S. sales are appropriately classified as CEP sales.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT than CEP sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes from Canada*, 67 FR 8781 (February 26, 2002); *see also Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

For the CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In the current review, TKAST requested a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the Italian and U.S. markets, including the selling functions, classes of customer, and selling expenses.

TKAST reported one LOT in the home market, with two channels of distribution: (1) Direct factory sales to end-users, manufacturers, service centers and distributors; and (2) warehouse sales to end-users, service centers and distributors. TKAST performed the same selling functions for sales in both home market channels of distribution, including production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities. *See* TKAST's October 3, 2003 Section A questionnaire response.

The only differences are that for warehouse sales, TKAST initiates the sale (whereas direct sales are initiated by either party), and conducts inventory maintenance, and the amount of warranty services on warehouse sales is usually low because these sales are not made to order. *See* Sales and Cost Verification Report at 12. Accordingly, because these selling functions are substantially similar for both channels of distribution, we preliminarily determine that there is one LOT in the home market.

TKAST reported two channels of distribution for the U.S. market: (1) Direct factory sales through TKAST USA to end-users and service centers; and (2) warehouse sales from the inventory of TKAST USA to end-users and service centers. We reviewed the selling functions and services performed by TKAST in the U.S. market, as described by TKAST in its October 3, 2004, section A questionnaire response. We have determined that the selling functions for the two U.S. channels of distribution are similar because TKAST provides almost no selling functions to either U.S. channel of distribution. TKAST reported that the only services it provided for the CEP sales were very limited freight and delivery arrangements and very limited warranty services. *See* TKAST's October 3, 2003 Section A questionnaire response at pages A–27 to A–29 and TKAST's March 1, 2004 first supplemental questionnaire response at Exhibit A–43. Accordingly, because these selling functions are substantially similar for the two channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between TKAST and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. *See* TKAST's October 3, 2003 Section A questionnaire response at pages A–27 to A–29 and TKAST's March 1, 2004 first supplemental questionnaire response at Exhibit A–43. TKAST reported that it provided virtually no selling functions for the CEP level of trade and that, therefore, the home market level of trade is more advanced than the CEP level of trade. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the Italian and U.S. markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home market LOT is at a more advanced stage of distribution when compared to TKAST's CEP sales because TKAST provides many more selling functions in the home market (*i.e.*, production guidance, price negotiations, sales calls and services, arranging for freight and delivery, technical assistance and general selling activities) as compared to selling functions performed for its CEP sales (*i.e.*, very limited freight and delivery arrangements and very limited warranty services). We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that the LOT in the home market did not match the LOT of the CEP transactions and there was only one LOT in the home market and no other basis on which to determine a LOT adjustment. Accordingly, we did not calculate a LOT adjustment. Instead, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted the home market indirect selling expenses from NV for home market sales that were compared to U.S. CEP sales. As such, we limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the POR:

Manufacturer/exporter	POR	Weighted-average margin (percent)
ThyssenKrupp Acciai Speciali Terni S.p.A.	07/01/02–06/30/03	3.99

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties to this proceeding the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.

Pursuant to 19 CFR 351.309, interested parties may submit written comments and/or case briefs on these preliminary results. Comments and case briefs must be submitted no later than thirty days after the date of publication of this notice. Rebuttal comments and briefs must be limited to issues raised in the case briefs and comments, and must be submitted no later than five days after the time limit for filing case briefs and comments. Parties submitting arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs and comments must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within thirty days of the date of publication of this notice, an interested party may request a public hearing on the arguments to be raised in the case and rebuttal briefs and comments. Unless otherwise specified, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any case and rebuttal briefs and comments, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific *ad valorem* rate for

merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates (*ad valorem*) against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, a prior review, or the original LTFV investigation, the cash deposit rate will continue to be the "all others" rate of 11.23 percent, which is the rate established in the LTFV investigation. *See Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 40567 (July 27, 1999). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this administrative review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 29, 2004.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–18152 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and partial rescission of antidumping duty administrative review of stainless steel sheet and strip in coils from Taiwan.

EFFECTIVE DATE: August 9, 2004.

SUMMARY: In response to a request from petitioners [1] and one Taiwanese manufacturer/exporter, Chia Far Industrial Factory Co., Ltd. ("Chia Far"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Taiwan. The period of review ("POR") is July 1, 2002 through June 30, 2003.

This administrative review covers the following thirteen manufacturers/exporters of subject merchandise: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Tung Mung Development Co. Ltd. ("Tung Mung"), China Steel Corporation ("China Steel"), Yieh Mau Corp. ("Yieh Mau"), Chain Chon Industrial Co., Ltd. ("Chain Chon"), Goang Jau Shing Enterprise Co., Ltd. ("Goang Jau Shing"), PFP Taiwan Co., Ltd. ("PFP Taiwan"), Yieh Loong Enterprise Company, Ltd. ("Yieh Loong"), Tang Eng Iron Works Company, Ltd. ("Tang Eng"), Yieh Trading Corporation ("Yieh Trading"), Chien Shing Stainless Steel Company Ltd. ("Chien Shing"), Chia Far, and Yieh United Steel Corporation ("YUSCO"). The Department is preliminarily rescinding this review with respect to Tung Mung, China Steel, Chain Chon and Ta Chen because information from U.S. Customs and Border Protection ("CBP") supports their claims that they did not sell or ship subject merchandise to the United States during the POR. The Department is basing the preliminary results for the following six companies on total adverse facts available ("AFA") because they failed to provide any response to the Department's requests for information: Tang Eng, PFP Taiwan, Yieh Loong, Yieh Trading, Goang Jau Shing, and Chien Shing. Additionally, the Department is basing the preliminary results for Yieh Mau on total AFA because CBP data call into question Yieh Mau's claim that it did not sell subject merchandise to the United States during the POR. The Department has preliminarily determined that Chia Far sold subject merchandise at less than normal value ("NV") during the POR and that no dumping margin exists for YUSCO for this period. If these preliminary results are adopted in our final results of administrative review, we will instruct CBP to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Karine Gziryan: Antidumping and Countervailing Duty Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3518 and (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1999, the Department issued an antidumping duty order on SSSS from Taiwan. *See Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From United Kingdom, Taiwan and South Korea*, 64 FR 40555 (July 27, 1999). On July 2, 2003, the Department published a notice of opportunity to request the fourth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or*

[1] The petitioners in this administrative review are Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United Steelworkers of America, AFL–CIO/CLC, and Zanesville Armco Independent Organization.

Suspended Investigation; Opportunity to Request Administrative Review, 68 FR 39511 (July 2, 2003). On July 24, 2003, respondent Chia Far requested that the Department conduct an administrative review of its sales of subject merchandise. On July 30, 2003, in accordance with 19 CFR 351.213(b), petitioners requested an administrative review of thirteen manufacturers/exporters of SSSS from Taiwan: Chia Far, YUSCO, Tung Mung, Goang Jau Shing, PFP Taiwan, Yieh Loong, Tang Eng, Yieh Trading, Chien Shing, Ta Chen, China Steel, Yieh Mau, and Chain Chon. On August 22, 2003, the Department published a notice of initiation of the instant administrative review, covering twelve of the thirteen respondents cited above for the period July 1, 2002 through June 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 50750 (August 22, 2003). On September 30, 2003, the Department published a notice initiating the instant administrative review of Chia Far for the period July 1, 2002 through June 30, 2003 (Chia Far was inadvertently omitted from the earlier notice of initiation). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003).

On September 11, 2003, the Department issued its antidumping questionnaire to each of the thirteen manufacturers/exporters listed above. In October 2003, Ta Chen, Chain Chon, and China Steel responded to the Department's antidumping questionnaire by noting that they did not sell or ship subject merchandise to the United States during the POR.[2] In October and November 2003, Chia Far and YUSCO responded to the Department's antidumping questionnaire. Subsequently, the Department issued supplemental questionnaires to Chia Far and YUSCO. Chia Far and YUSCO responded to all of the Department's questionnaires in a timely manner. Throughout this administrative review, petitioners have submitted comments regarding the respondents' questionnaire responses.

On February 5, 2004, the Department extended the deadline for issuing the preliminary results in this administrative review until May 31, 2004. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 5497 (February 5, 2004).

On February 24, 2004, the Department notified the following companies that failure to respond to the Department's requests for information by March 9, 2004, would possibly result in the use of AFA in determining their dumping margins: Tang Eng, Goang Jau Shing, Chien Shing, China Steel, PFP Taiwan, Yieh Trading, Yieh Mau, and Yieh Loong. Yieh Mau responded by stating that it did not sell subject merchandise in the United States during the POR. In addition, on March 9, 2004, the Department placed on the record China Steel's October 2, 2003 questionnaire response indicating that it did not sell subject merchandise to the United States during the POR. On June 7, 2004, the Department notified Tung Mung that it must report, by June 15, 2004, whether it sold or shipped subject merchandise to the United States during the POR, otherwise the Department may use AFA in determining the company's dumping margin. Tung Mung responded by letter on June 15, 2004, stating that it had no shipments of subject merchandise during the POR.

On December 18, 2003, petitioners submitted comments alleging that there has been a substantial shift in U.S. imports of merchandise from Taiwan away from the Harmonized Tariff Schedule (HTS) subheadings for stainless steel "coiled sheet" to HTS subheadings for "other" flat-rolled stainless steel products, a subheading that may include both subject coiled and non-subject non-coiled products. Accordingly, petitioners requested that the Department obtain information regarding imports under certain "other" HTS subheadings for flat-rolled stainless steel products. The Department subsequently requested information from CBP regarding selected entries under various "other" HTS subheadings for flat-rolled stainless steel products. *See* Memorandum from Edward Yang to Michael S. Craig, U.S. Customs and Border Protection, Request for U.S. Entry Documents, dated April 9, 2004 (April 9, 2004 Data Request). On April 20, 2004, petitioners asked the Department to obtain and place on the record additional information regarding entries under certain "other" HTS subheadings for flat-rolled stainless steel products. On June 14, 2004, the Department placed certain CBP data on the record of this proceeding. *See* Memorandum From Melissa Blackledge To The File, U.S. Customs and Border Protection Data Query Results, dated June 14, 2004. The documents obtained from CBP for selected entries under various "other" HTS subheadings for flat-rolled stainless steel products do not indicate that the merchandise entering the United States is subject merchandise. *See* Memorandum from Karine Gziryan to the File regarding documentation provided by CBP, dated July 30, 2004.

On March 31, 2004, the Department again extended the deadline for issuing the preliminary results in this administrative review until July 30, 2004. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 18053 (April 6, 2004).

Scope of the Review

The products covered by the order on SSSS from Taiwan are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise de-scaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and

[2] On October 9, 2003, the Department notified China Steel that its questionnaire response was improperly filed.

7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." "Arnokrome III" is a trademark of the Arnold Engineering Company.

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." "Gilphy 36" is a trademark of Imphy, S.A.

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." "Durphynox 17" is a trademark of Imphy, S.A.

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives). This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." This list of uses is

illustrative and provided for descriptive purposes only. "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Partial Preliminary Rescission of Review

Five respondents, Ta Chen, Yieh Mau, Chain Chon, Tung Mung, and China Steel, certified to the Department that they did not ship subject merchandise to the United States during the POR. The Department subsequently obtained CBP information in order to substantiate the respondents' claims. *See* Memorandum From Melissa Blackledge To The File, U.S. Customs and Border Protection Data Query Results, dated June 14, 2004. On June 21, 2004, petitioners submitted comments on the CBP information. During June and July 2004, the Department requested additional information from Ta Chen, Yieh Mau, and CBP regarding certain U.S. entries during the POR (CBP entry documentation relating to Chain Chon had already been requested in the Department's April 9, 2004 Data Request). *See* Memoranda from Tom Futtner to William R. Scopa, U.S. Customs and Border Protection, Request for U.S. Entry Documents, dated June 29, 2004, July 1, 2004, and July 7, 2004 ("CBPRED Memoranda"). On July 19, 2004, Yieh Mau submitted a letter stating it had reviewed its records and found no sales of subject merchandise to the United States during the POR. On July 21, 2004, Ta Chen submitted documentation supporting its claim of no sales of subject merchandise to the United States during the POR.

CBP data call into question the no shipment claim of Yieh Mau and the company failed to demonstrate that it did not sell subject merchandise to the United States during the POR. Therefore, the Department has preliminarily determined not to rescind this administrative review with respect to Yieh Mau. Rather, as explained below, the Department has preliminarily assigned a dumping margin to Yieh Mau that is based on total AFA. The Department is awaiting additional information from CBP regarding certain entries of Yieh Mau's merchandise during the POR. The Department will consider this additional information in reaching its final determination with respect to Yieh Mau.

Thus, the evidence on the record does not indicate that Ta Chen, Chain Chon, Tung Mung, or China Steel exported subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen, Chain Chon, Tung Mung and China Steel. *See, e.g., Certain Welded Carbon Steel Pipe and Tube From Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); *Certain Fresh Cut Flowers From Columbia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act"), provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margin for Tang Eng, PFP Taiwan, Yieh Loong, Yieh Trading, Goang Jau Shing, Chien Shing, and Yieh Mau because these companies failed to provide requested information. Specifically, these companies failed to respond to the Department's antidumping questionnaire. OnFebruary 24, 2004, the Department informed these companies that failure to respond to its requests for information by March 9, 2004, would possibly result in the use of AFA in determining their dumping margins. Six of these manufacturers/exporters did not respond to the Department's February 24, 2004 letter. Although Yieh Mau responded to the Department's February 24, 2004 letter by claiming not to have sold subject merchandise to the United States during the POR, record evidence indicates that such sales may have taken place and yet, Yieh Mau did not provide any of the requested information that would allow the Department to calculate a dumping margin for these sales. *See* Yieh Mau's March 6, 2004 response to the Department's February 24, 2004 letter and July 13, 2004 response to the Department's supplemental questionnaire.

Because these respondents failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(A) of the Act, we have based the dumping margins for these companies on the facts otherwise available.

Use of Adverse Inferences

Section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act (URAA), H. Rep. No. 103–316 at 870 (1994). Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870; *Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221 (CIT 1998); *Mannesmannrohren-Werke AG* v. *United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corporation* v. *United States*, 337 F.3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, *i.e.*, information was not provided "under circumstances in which it is reasonable

to conclude that less than full cooperation has been shown." *Id.*

The record shows that Tang Eng, PFP Taiwan, Yieh Loong, Yieh Trading, Goang Jau Shing, Chien Shing, and Yieh Mau failed to cooperate to the best of their abilities, within the meaning of section 776(b) of the Act. As noted above, Tang Eng, PFP Taiwan, Yieh Loong, Yieh Trading, Goang Jau Shing, and Chien Shing failed to provide any response to the Department's requests for information. Yieh Mau responded to the Department's requests for information but, preliminarily, the Department has determined that it inaccurately reported that it did not sell subject merchandise to the United States during the POR. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary to participate in this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their abilities. As these companies have failed to cooperate to the best of their abilities, we are applying an adverse inference in determining their dumping margin pursuant to section 776(b) of the Act. As AFA, we have assigned these companies a dumping margin of 21.10 percent, which is the highest appropriate dumping margin [3] from this or any prior segment of the instant proceeding. This rate was the highest petition margin and was used as AFA in a number of segments of the instant proceeding. *See e.g. Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) (*1999–2000 AR of SSSS from Taiwan*). *See also Stainless Steel Sheet and Strip in Coils From Taiwan: Notice of Court Decision*, 67 FR 63887 (October 16, 2002).

The Department notes that while the highest dumping margin calculated during this or any prior segment of the instant proceeding is 36.44 percent, as argued by petitioners, this margin represents a combined rate applied to a channel transaction in the investigative phase of this proceeding and it is based on middleman dumping by Ta Chen. *See Final Results of Redetermination Pursuant to Court Remand*, (Nov. 29, 2000) affirmed by 219 F. Supp. 2d 1333, 1345 (CIT 2002), aff'd 354 F. 3d 1371, 1382 (Fed. Cir. 2004). Where circumstances indicate that a particular dumping margin is not appropriate as AFA, the Department will disregard the margin and determine another more appropriate one as facts available. *See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest dumping margin for use as AFA because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high dumping margin). Because a dumping margin based on middleman dumping would be inappropriate, given that the record does not indicate that any of Tang Eng's, PFP Taiwan's, Yieh Loong's, Yieh Trading's, Goang Jau Shing's, Chien Shing's, or Yieh Mau's exports to the United States during the POR involved a middleman, the Department has, consistent with previous reviews, continued to use as AFA the highest dumping margin from any segment of the proceeding for a producer's direct exports to the United States, without middleman dumping, which is 21.10 percent.

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information.

The rate of 21.10 percent constitutes secondary information. The Department corroborated the information used to establish the 21.10 percent rate in the less than fair value (LTFV) investigation in this proceeding, finding the information to be both reliable and relevant. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan*, 64 FR 30592, 30592 (June 8, 1999) (*Final Determination*); *see also 1999–2000 AR of SSSS from Taiwan*, 67 FR 6682, 6684 and accompanying *Issues and Decision Memorandum* at Comment 28. Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevancy aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. As discussed above, in selecting this margin, the Department considered whether a margin derived from middleman dumping was relevant to Tang Eng's, PFP Taiwan's, Yieh Loong's, Yieh Trading's, Goang Jau Shing's, Chien Shing's, or Yieh Mau's commercial experience, and determined the use of this margin was inappropriate. The Department has determined that there is no evidence on the record of this case, however, which would render the 21.10 percent dumping margin irrelevant. Thus, we find that the rate of 21.10 percent is sufficiently corroborated for purposes of the instant administrative review.

Duty Absorption

On September 22, 2003, petitioners requested that the Department determine whether the thirteen respondents absorbed antidumping duties during the POR. Section 751(a)(4) of the Act, provides for the Department, if requested, to determine, during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because Chia Far is the only respondent to report sales of subject merchandise to unaffiliated customers in the United States through an affiliated importer, and because this review was initiated four years after the publication of the order, we will make a duty absorption determination with respect to Chia Far in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On July 12, 2004, the Department requested that Chia Far provide evidence demonstrating that unaffiliated U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. In its response, submitted to the Department on July 19, 2004, Chia Far provided a statement from the unaffiliated customer of its U.S. affiliated importer as evidence that it has not absorbed antidumping duties. In determining whether Chia Far absorbed antidumping

[3] Before adding the impact of middlemen dumping for merchandise manufactured by YUSCO and sold by Ta Chen.

duties during the POR, the Department presumes that duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an enforceable agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.

Although Chia Far claims that the unaffiliated U.S. customer paid antidumping duties, it did not provide sufficient evidence that the unaffiliated U.S. customer always pays antidumping duties nor did Chia Far provide an agreement with its unaffiliated purchaser stating that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. Therefore, we preliminarily find that Chia Far absorbed antidumping duties on all U.S. sales made through its affiliated importer. The Department will notify the International Trade Commission ("ITC") of its finding regarding such duty absorption for the ITC to consider in conducting a five-year review of the order on SSSS from Taiwan under section 751(c) of the Act.

Affiliation

A. China Steel and Yieh Loong Enterprise Co. Ltd.

Petitioners contend that YUSCO is affiliated with two other companies named as respondents in this review, China Steel (and its affiliates), and Yieh Loong, companies that YUSCO did not identify as its affiliates. *See* petitioners' January 6, 2004 submission to the Department. In the previous administrative review of SSSS from Taiwan, covering the period July 1, 2001 through June 30, 2002, petitioners also contended that YUSCO was affiliated with China Steel and Yieh Loong. However, the Department determined in that review that these companies were not affiliated with YUSCO. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 5960 (February 9, 2004) and accompanying *Issues and Decision Memorandum* at Comment 3. Because petitioners have not provided any new evidence indicating a change in the relationship between these companies, we continue to find that YUSCO is not affiliated with China Steel or Yieh Loong.

B. Home Market Customers

Petitioners contend that, in the instant administrative review, YUSCO failed to acknowledge certain affiliations that it identified in the prior two administrative reviews of SSSS from Taiwan. According to petitioners, some of the unnamed, potentially affiliated parties appear on customer lists provided by YUSCO in the instant administrative review. Specifically, petitioners identify three companies that they claim are affiliated with YUSCO and urge the Department to find YUSCO's sales to these companies to be affiliated-party sales (petitioners note that none of these affiliated parties reported downstream sales of SSSS). *See* petitioners' July 15, 2004 submission to the Department at 4 and 5.

For these preliminary results, we have not found the three companies at issue to be affiliated with YUSCO. As an initial matter, there is no evidence on the record that YUSCO sold SSSS to two of the companies identified by petitioners as potential affiliates of YUSCO. Additionally, in their July 15, 2003 submission, petitioners make certain assertions regarding stock ownership by individuals and investment companies without providing support for their assertions.

Identifying Home Market Sales

Section 773 (a)(1)(B) of the Act defines NV as the price at which foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price ("EP") or constructed export price ("CEP"). In implementing this provision, the Court of International Trade ("CIT") has found that sales should be reported as home market sales if the producer "knew or should have known that the merchandise {it sold} was * * * for home consumption based upon the particular facts and circumstances surrounding the sales." *See Tung Mung Development Co., Ltd. & Yieh United Steel Corp.* v. *United States and Allegheny Ludlum Corp. et al.*, Slip Op. 01–83 (CIT 2001); *citing INA Walzlager Schaeffler KG* v. *United States*, 957 F. Supp. 251 (1997). Conversely, if the producer knew or should have known the merchandise that it sold to home market customers was not for home market consumption, it should exclude such sales from its home market sales database. Even though a producer may sell merchandise destined for exportation by a home market customer, if that merchandise is used to produce non-subject merchandise in the home market, it is consumed in the home market and such sales will be considered to be home market sales. *See Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Plate Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37182 (July 9, 1993).

The issue of whether respondents have properly reported home market sales has arisen in each of the prior segments of the instant proceeding. It is also an issue in the instant administrative review.

YUSCO

In its October 31, 2003 response to section B of the Department's antidumping questionnaire, YUSCO stated that it included in its home market sales database "all sales that the Department may find relevant in light of the Department's final determination in the original investigation, and the U.S. Court of International Trade's decision in *Allegheny Ludlum* v. *United States*, Slip Op. 00–170 (Dec. 28, 2000)" (*Allegheny Ludlum*).[4] Specifically, YUSCO included in its home market sales database sales that it classified in its books and records as domestic sales, indirect export sales, and sales to a home market customer's bonded warehouse. YUSCO also reported downstream sales of its Taiwanese affiliate.

Throughout the instant administrative review, petitioners have questioned the accuracy of YUSCO's home market sales database. Specifically, petitioners claim that YUSCO has not properly applied the knowledge test to each sale at the time of sale and has relied on a flawed internal order system in classifying and reporting its sales. As a result, petitioners maintain that the Department cannot rely upon the sales databases submitted by YUSCO and

[4] In the investigative phase of this proceeding, the Department based YUSCO's dumping margin on total adverse facts available because the company failed to report its indirect export sales as home market sales. In *Allegheny Ludlum*, YUSCO challenged, among other things, the Department's final determination in stainless steel plate in coils from Taiwan wherein the Department found that (1) certain sales characterized by YUSCO as indirect export sales were in fact home market sales and (2) YUSCO's failure to report these sales warranted basing YUSCO's dumping margin on total adverse facts available. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From* Taiwan, 64 FR 15493 (March 31, 1999). The CIT ruled that the Department properly considered YUSCO's indirect export sales to be home market sales and properly resorted to the use of total adverse facts available.

must base the company's dumping margin on total AFA. *See* petitioners' July 15, 2004 submission to the Department at 8 and 9.

For these preliminary results, we have not rejected YUSCO's sales databases in favor of total AFA because we have determined that there is information on the record indicating whether YUSCO knew, or should have known, the merchandise that it sold was for consumption in the home market based upon the particular facts and circumstances surrounding the sales. Thus, there is information on the record that allows the Department to identify YUSCO's home market sales. Specifically, YUSCO reported that it sold SSSS to a certain home market customer who was planning to further process the SSSS and then export the merchandise. Further, YUSCO delivered the merchandise to this customer at a location that had facilities to further process the SSSS. *See* YUSCO's June 10, 2004 supplemental questionnaire response at 9. Because the record indicates that YUSCO knew at the time of sale that this merchandise would be consumed in the home market, the Department has preliminarily considered these "indirect export" sales to be home market sales. For all other "indirect export" sales, YUSCO stated "it arranged the vessel and shipped the merchandise to assigned foreign seaports and/or shipped the merchandise directly to the dock, along side ship and/or to {an associated facility}." *See id.* at 11. Sample sales documentation indicates that YUSCO knew it was to make such arrangements at the time of sale. Thus, for the preliminary results, the Department has not considered these "indirect export" sales to be home market sales. YUSCO also reported its Taiwanese affiliate's "indirect export" sales. The record indicates that most of these "indirect sales" were delivered to the port, and thus it appears that the Taiwanese affiliate knew at the time of sale that these sales were not going to be consumed in the home market. Therefore, for the preliminary results, the Department has not considered these "indirect export" sales to be home market sales. Lastly, with respect to YUSCO's sales to a home market customer's bonded warehouse, as was the case in the prior administrative review of this order, YUSCO established that the legal purpose of a bonded warehouse is to further process and then export merchandise and there is no evidence on the record that the SSSS sold to the bonded warehouse was eventually exported as subject merchandise or sold in the home market as subject merchandise. Therefore, consistent with the approach taken in the prior administrative review of this order, we have considered YUSCO's sales to the bonded warehouse of one of its home market customers to be home market sales.

Chia Far

In its April 29, 2004 supplemental questionnaire response, Chia Far stated that it has reason to believe that some of the home market customers to whom it sold SSSS during the POR may have exported the merchandise. Specifically, Chia Far indicated that it normally delivers SSSS by loading it onto a truck; however, for certain customers, it packed the SSSS in ocean containers which it delivered to a container yard or which the customer picked up. *See* Chia Far's April 29, 2004 supplemental response at 1 and its October 31, 2003 response to sections B through D of the antidumping questionnaire at 2. Also, Chia Far noted that many of the customers for whom it packed SSSS in containers are end users with production facilities in mainland China. Although Chia Far stated that it does not definitively know whether the SSSS in question will be exported, the Department has preliminarily determined that, based on the circumstances surrounding the sales, Chia Far should have known that the SSSS in question was not for consumption in the home market. Therefore, the Department has preliminarily excluded these sales from Chia Far's home market sales database.

Normal Value Comparisons

To determine whether YUSCO and Chia Far's sales of subject merchandise to the United States were made at less than NV, we compared the EP and CEP, as appropriate, to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the description in the "Scope of the Review" section of this notice, supra, and sold by YUSCO and Chia Far in the comparison market during the POR to be foreign like product for the purpose of determining appropriate product comparisons to SSSS sold in the United States. In determining which sales of foreign like product to compare to U.S. sales of subject merchandise, we relied on the following nine product characteristics, listed in order of importance: grade, hot or cold-rolled, gauge, surface finish, metallic coating, non-metallic coating, width, temper, and edge. We first attempted to compare contemporaneous U.S. and comparison-market sales of products that are identical with respect to the product characteristics listed above. Where we were unable to compare sales of identical merchandise, we compared U.S. sales of product to the most similar foreign like product based on the above characteristics and the reporting instructions in the September 11, 2003 antidumping questionnaire. Where there were no appropriate sales of foreign like product to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value ("CV").

Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

YUSCO

For purposes of the instant administrative review, YUSCO classified its U.S. sales as EP sales, stating that it sold SSSS to unaffiliated customers in the United States during the POR. We based U.S. price on EP as defined in section 772(a) of the Act because the merchandise was sold, prior to importation, outside the United States by YUSCO to an unaffiliated purchaser in the United States. We calculated EP using packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price for inland freight (from YUSCO's plant to the port of exportation), international freight, brokerage and handling charges, container handling fees, certification fees, fumigation fees, and marine

insurance expenses in accordance with section 772(c) of the Act. We made no changes or corrections to the U.S. sales information reported by YUSCO in calculating YUSCO's dumping margin.

Chia Far

For purposes of the instant administrative review, Chia Far classified its sales as either EP or CEP sales. We based U.S. price on EP, as defined in section 772(a) of the Act, for sales of subject merchandise that were sold, prior to importation, outside the United States by Chia Far to an unaffiliated purchaser in the United States. We calculated EP using packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses including: foreign inland freight expense (from Chia Far's plant to the port of exportation), brokerage and handling expense, international ocean freight expense, marine insurance expense, container handling charges, and harbor construction fees. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

We based U.S. price on CEP, as defined in section 772(a) of the Act, for sales of subject merchandise that were sold, after importation, by Lucky Medsup, Chia Far's affiliated reseller, to unaffiliated purchasers in the United States. We calculated CEP using packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price for movement expenses including: foreign inland freight expense (from Chia Far's plant to the port of exportation), brokerage and handling expense, international ocean freight expense, marine and inland insurance expense, container handling charges, harbor construction fees, other U.S. transportation expenses and U.S. duty. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(1) of the Act, we deducted from the starting price selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses.

We deducted from the starting price the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's-length prices, and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(B) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we separately compared the aggregate volume of YUSCO's and Chia Far's home market sales of the foreign like product to the aggregate volume of their U.S. sales of subject merchandise. Because the aggregate volume of YUSCO's and Chia Far's home market sales of the foreign like product is greater than five percent of the aggregate volume of their U.S. sales of subject merchandise, we determined that the home market is viable for each of these respondents and have used the home market as the comparison-market.

2. Arm's-Length Test

YUSCO reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. The Department may calculate NV based on sales to an affiliated party only if it is satisfied that the prices charged to the affiliated party are comparable to the prices at which sales were made to parties not affiliated with the producer, *i.e.*, sales at arm's-length. *See* section 773(f)(2) of the Act and 19 CFR 351.403(c). Where the home market prices charged to an affiliated customer were, on average, found not to be arm's-length prices, sales to the affiliated customer were excluded from our analysis. To test whether YUSCO's sales to affiliates were made at arm's-length prices, the Department compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to affiliated parties were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party were at arm's-length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186 (November 15, 2002). YUSCO's affiliated home market customer did not pass the arm's-length test. Therefore, we have considered the downstream sales from this affiliate to the first unaffiliated customer.

3. Cost of Production ("COP") Analysis

In the previous administrative review in this proceeding, the Department determined that YUSCO and Chia Far sold foreign like product in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. Based on the results of the previous administrative review, the Department has determined that there are reasonable grounds to believe or suspect that during the instant POR, YUSCO and Chia Far sold foreign like product in the home market at prices below the cost of producing the merchandise. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry for both YUSCO and Chia Far.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each unique foreign like product sold by a respondent during the POR, we calculated a weighted-average COP based on the sum of the respondent's materials and fabrication costs, home market selling general and administrative ("SG&A") expenses, including interest expenses, and packing costs. Except as noted below, we relied on the COP data submitted by YUSCO in its cost and supplemental cost questionnaire responses. For these preliminary results, we revised the COP information submitted by YUSCO as follows: We increased the reported cost of major inputs to reflect the higher of the transfer price or market price as required by section 773(f)(2) of the Act. We adjusted YUSCO's reported interest expense ratio by subtracting net foreign exchange gains from interest expenses. We adjusted YUSCO's reported G&A expense ratio to exclude exchange gains incurred on accounts payable and to include employee bonuses and director's remuneration. *See* Analysis Memorandum for the Preliminary Results of Review for Stainless Steel Sheet and Strip in Coils From Taiwan—Yieh United Steel Corp., Ltd. (July 30,

2004) ("YUSCO Preliminary Analysis Memorandum").

We relied on the COP data submitted by Chia Far in its cost and supplemental cost questionnaire responses, and for purposes of these preliminary results, we have made no changes to Chia Far's COP data in conducting the cost test. *See* Analysis Memorandum for the Preliminary Results of Review for Stainless Steel Sheet and Strip in Coils From Taiwan—Chia Far Industrial Factory Co., Ltd. (July 30, 2004) ("Chia Far Preliminary Analysis Memorandum").

B. Test of Home Market Prices

In order to determine whether sales had been made at prices below the COP, on a product-specific basis we compared each respondent's weighted-average COPs, adjusted as noted above, to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with section 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and discounts.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in "substantial quantities" and within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. In such cases, because we used POR average costs, we also determined, in accordance with section 773(b)(2)(D) of the Act, that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time.

Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Price-to-Price Comparisons

Where it was appropriate to base NV on prices, we used the prices at which the foreign like product was first sold for consumption in Taiwan, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the comparison EP or CEP sale.

We based NV on the prices of home market sales to unaffiliated customers and to affiliated customers to whom sales were made at arm's-length prices. We made price adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with sections 773(a)(6)(A), (B), and (C) of the Act, where appropriate, we deducted from the starting price rebates, warranty expenses, movement expenses, home market packing costs, credit expenses and other direct selling expenses and added U.S. packing costs and, for NVs compared to EPs, credit expenses, and other direct selling expenses. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing the U.S. product, we based NV on CV.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV when we were unable to compare the U.S. sale to a home market sale of an identical or similar product. For each unique SSSS product sold by the respondent in the United States during the POR, we calculated a weighted-average CV based on the sum of the respondent's materials and fabrication costs, SG&A expenses, including interest expenses, packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in Taiwan. We based selling expenses on weighted-average actual home market direct and indirect selling expenses. In calculating CV, we adjusted the reported costs as described in the COP section above.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Department adjusts the CEP, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 CFR 351.412. *See Micron Technology, Inc.* v. *United States,* 243 F.3d, 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information from YUSCO and Chia Far regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed by YUSCO and Chia Far for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In the present review, neither YUSCO nor Chia Far requested a LOT adjustment (in addition, Chia Far did not request a CEP offset). However, in order to determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution

systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

YUSCO

YUSCO reported that it sold foreign like product in the home market through one channel of distribution and at one LOT. *See* YUSCO's October 31, 2003 Questionnaire Response at B–29. In this channel of distribution, YUSCO provided the following selling functions: inland freight, invoicing, packing, warranty services, and technical advice. Because there is only one sales channel in the home market involving similar functions for all sales, we preliminarily determine that there is one LOT in the home market.

In addition, YUSCO reported that it sold subject merchandise to customers in the United States through one channel of distribution and at one LOT. *See* YUSCO's October 21, 2003 Questionnaire Response at A–12. In this channel of distribution, YUSCO provided the following selling functions: arranging freight and delivery, invoicing, and packing. YUSCO did not incur any expenses in the United States for its U.S. sales. Because there is only one sales channel in the United States involving similar functions for all sales, we preliminarily determine that there is one LOT in the United States.

Based upon our analysis of the selling functions performed by YUSCO, we preliminarily determine that YUSCO sold foreign like product and subject merchandise at the same LOT. Despite the fact that YUSCO provided technical advice and warranty services in the home market, but not the U.S. market, these services were rarely provided in the home market and thus, there is no significant difference between the selling functions performed in the home and U.S. markets. Therefore, we preliminarily determine that a LOT adjustment is not warranted.

Chia Far

Chia Far reported in its responses that, during the POR, it sold subject merchandise in the home market directly to two types of customers, distributors and end users, through one channel of distribution. Chia Far provided the same selling functions for home market sales, such as providing technical advice, making freight and delivery arrangements, processing orders, providing after-sale warehousing, providing after-sale packing services, performing warranty services, and post-sale processing. *See* Chia Far's Section A Questionnaire Response (AQR) at Exhibit A–6 (October 1, 2003). Based on the similarity of the selling functions and the fact that one channel of distribution serviced the two types of customers, we determine that the respondent's home market sales constitute one LOT.

For the U.S. market, Chia Far reported that they made sales to unaffiliated distributors directly and through its U.S. affiliate, Lucky Medsup. Since the Department bases the LOT of CEP sales on the price in the United States after making CEP deductions under section 772(d) of the Act, we based the LOT of Chia Far's CEP sales on the price after deducting selling expenses.

Chia Far performed the same selling functions, such as arranging freight and delivery, providing after-sale packing services, processing orders, providing technical advice, and performing warranty services for all U.S. customers, including Lucky Medsup. *See* AQR at Exhibit A–6. Therefore, based on the similarity of selling functions to the same customer type, we preliminarily determine that Chia Far's U.S. sales constitute one LOT.

Because there is only one LOT in the home market, any difference in the NV and U.S. LOTs cannot be quantified. Therefore, a LOT adjustment is not possible.

Because a LOT adjustment is not possible, the Department examined whether to adjust NV pursuant to section 773(a)(7)(B) of the Act (the CEP offset provision). In order to determine whether NV is at a more advanced LOT than the CEP transactions, the Department compared home market selling activities with those for CEP transactions after deducting the expenses identified in section 772(d) of the Act. The expenses identified in section 772(d) of the Act are associated with selling activities occurring in the United States. After making these deductions, the Department determined that the differences between the home and U.S. market selling activities do not support a finding that Chia Far's sales in the home market were made at a more advanced LOT than the CEP sales. Specifically, Chia Far engaged in the following selling activities in both the home and U.S. markets: Providing technical advice, warranty services, freight and delivery arrangements, packing, and order processing. *See* AQR at Exhibit A–6 and A–7. In the U.S. market, Chia Far arranged international freight and delivery and marine insurance, a function it did not perform in the home market. Additionally, because of the additional activity required to ship subject merchandise to U.S. customers and to Lucky Medsup, Chia Far engaged in arranging freight and delivery of subject merchandise to the U.S. market at a greater level of intensity than it did in the home market. On the other hand, Chia Far engaged in post-sale processing and post-sale warehousing in the home market, but not the U.S. market. While Chia Far may have engaged in certain selling activities in the home market that it did not perform in the U.S. market, according to Chia Far the significance of these activities is minimal. Chia Far stated in its questionnaire response that it was not requesting a CEP offset. *See* AQR at A–12. Given the similarities in selling functions between the home and U.S. markets and the minimal difference in the level at which Chia Far performed certain selling functions unique to the home market, the Department preliminarily finds that there is not sufficient evidence on the record indicating that home market sales were made at a more advanced LOT than U.S. sales. Thus, the Department has not granted Chia Far a CEP offset.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period July 1, 2002 through June 30, 2003:

Manufacturer/exporter/reseller	Weighted-average margin (percentage)
Yieh United Steel Corporation (YUSCO)	0.00
Chia Far Industrial Factory Co., Ltd. (Chia Far)	1.03
Yieh Mau Corporation	21.10
Goang Jau Shing Enterprise Co., Ltd.	21.10

Manufacturer/exporter/reseller	Weighted-average margin (percentage)
PFP Taiwan Co., Ltd.	21.10
Yieh Loong Enterprise Company Ltd.	21.10
Tang Eng Iron Works Company, Ltd.	21.10
Yieh Trading Corporation	21.10
Chien Shing Stainless Steel Company Ltd.	21.10

Duty Assessments

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. According to 19 CFR 351.212(b)(1), where possible, the Department calculated an importer-specific assessment rate for merchandise subject to this review. Where the importer-specific assessment rate is above *de minimis,* we will instruct CBP to assess the importer-specific rate uniformly on the entered customs value of all entries of subject merchandise made by the importer during the POR. For the respondents receiving dumping margins based upon AFA, the Department will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. For the respondents for whom the review was rescinded, the Department will instruct CBP to assess antidumping duties at the cash deposit rate in effect on the date of the entry. The Department will issue appropriate appraisement instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Rates

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each of the reviewed companies will be the rate listed in the final results of this review (except if the rate for a particular company is *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent review period; (3) if the exporter is not a firm covered in this review, a prior review, or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the "all others" rate established in the LTFV investigation. *See Final Determination* 64 FR 30592. These required cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

According to 19 CFR 351.224(b), the Department will disclose any calculations performed in connection with the preliminary results of review within 10 days of publicly announcing the preliminary results of review. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties are invited to comment on the preliminary results. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice. Also, interested parties may file rebuttal briefs, limited to issues raised in case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we request that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: July 30, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–18153 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–813]

Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty Administrative Review: Honey From Argentina

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

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on honey from Argentina until no later than December 13, 2004. The period of review (POR) is January 1, 2003, through December 31, 2003. This extension is made pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, 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; telephone: (202) 482–4236 or (202) 482–0648, respectively.

Background

On December 31, 2003, the Department received a timely request from interested parties in accordance with section 751(a) of the Act and section 351.213(b) of the Department's regulations, for an administrative review of the countervailing duty order on honey from Argentina, which has a December anniversary date. On January 6, 2004, the Department initiated this administrative review covering the period January 1, 2003, through December 31, 2003. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part*, 69 FR 3117 (January 22, 2004).

Statutory Time Limits

Section 351.213(h)(1) of the regulations requires the Department to issue the preliminary results of review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 351.213(h)(2) allows the Department to extend the 245-day-period to 365 days and to extend the 120-day period to 180 days. If the Department does not extend the time for issuing preliminary results, the Department may extend the time for issuing final results from 120 to 300 days.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the regulations, the Department has determined that it is not practicable to complete the preliminary results in this administrative review by September 1, 2004. In this review, analyzing a new program may require additional information from the Government of Argentina (GOA). Furthermore, the Department intends to verify the GOA questionnaire responses. Therefore, the Department is extending the deadline for completion of the preliminary results of the administrative review of the countervailing duty order on honey from Argentina by 103 days. The preliminary results of the review will be issued not later than December 13, 2004.

This notice is published pursuant to section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: August 2, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration Group I.

[FR Doc. 04–18154 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting via teleconference.

SUMMARY: The President's Export Council will hold a meeting via teleconference to discuss a report to the President regarding the Council's recent fact-finding trip to China.

Date: August 19, 2004.

Time: 1:00 p.m. (EST).

For Conference Call-In Number and Any Further Information Contact: The President's Export Council Executive Secretariat at (202) 482–1124.

Dated: August 4, 2004.

Sam Giller,

Executive Secretariat, The President's Export Council.

[FR Doc. 04–18248 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080404A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: the Days-at-Sea (DAS) effort-control program; the minimum mesh size for the Georges Bank (GB) regulated mesh area; the Nantucket Lightship Habitat Closure Area; the GB Seasonal Closure Area; and minimum fish size restrictions for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 24, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail to: *DA602@noaa.gov*. Include in the subject line the following document identifier: "Comments on CCCHFA Cod Life History Study." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on CCCHFA Cod Life History Study." Comments may also be faxed to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) submitted an initial application for an EFP on June 7, 2004. The application was complete on July 14, 2004. The experimental fishing application requests authorization for activities to determine the reproductive life history of cod on the western portion of GB by sampling and mapping the distribution and transport of larval and juvenile cod. This project has three

distinct phases, two of which would be covered under this EFP.

In the first phase, fishermen would sample adult cod on the western portion of GB and Great South Channel areas from September to December to assess reproductive status and approximate spawning time for cod. Fin clips of adult cod would be taken for genetic analysis. This phase would involve the use of rod and reel to target up to 750 ripe and running cod on no more than 25 1–day sampling trips. Researchers hope to sample 15 ripe and running cod per site per trip (two sites would be identified for each trip). Any juvenile cod or those that are at or near spawning time (e.g., ripe and/or running) would be returned to the sea immediately. All other cod caught during the sampling trip that meet the minimum size requirements would be allowed to be landed to defray a portion of the costs associated with the research. This phase of the project would only involve fishermen enrolled in the Cape Cod Hook Sector Plan (Sector). As such, cod landed in this phase would be counted against the Sector's total allowable catch (TAC), as specified in the GB Cod Hook Sector Operations Plan and Agreement (Sector Agreement). All vessels permitted under this phase of the EFP would be required to abide by the Sector Agreement, with the exception of the following: vessels permitted under this phase of the EFP would be exempt from using Category A DAS. The reason for this exemption is that only cod would be permitted to be landed on these EFP trips; no other fish would be permitted to be landed. Because the cod landings would be counted against the Sector quota, the DAS effort-control measures are not necessary. If non-quota species were permitted to be landed, which they are not, then there would be a need to have the participating vessels fish under the DAS program. As such, the total fishing mortality associated with this portion of the EFP is fully accounted for under the provisions of the FMP. Additionally, bycatch mortality under this EFP would be minimized as there is no incentive to catch anything other than cod. Participating fishermen would be expected to make every effort to avoid concentrations of non-target species.

The second phase of this project does not require any regulatory exemptions and is not part of this EFP.

Phase three of this project would begin once the larvae have begun to mature into juvenile cod. This phase of the sampling project would utilize an otter trawl rigged with small-mesh intended to catch "fingerling" juvenile cod on up to 16 fishing days. Tows would be short in duration (10–15 minutes) at speeds between 4–10 knots. Fin clips, for genetic analysis, would be taken from the juvenile cod. The researchers plan to obtain 20 samples from two different sites on each fishing day, for a total of 380 samples. No fish would be permitted to be landed for sale under this portion of the EFP. Exemptions from DAS, minimum mesh size, the GB Seasonal Closure Area, and the Nantucket Lightship Habitat Closure Area (not including the Nantucket Lightship Groundfish Closure Area) are requested. Because these are short tows seeking a small sample size of juvenile fish, it is anticipated that these exemptions would have no more than a negligible impact on the cod resource.

The entire research study, all three phases, would occur between September 1, 2004, and June 30, 2005, in 30–minute squares 114, 99, 98, 82, and 81.

This EFP would allow for exemptions from the FMP as follows: the DAS notification requirements specified at § 648.10; the effort-control program (DAS) as specified at § 648.82(a); the minimum mesh size for the GB Regulated Mesh Area at § 648.80(a)(4); the Nantucket Lightship Habitat Closure Area specified at § 648.81(h)(1)(vi); the GB Seasonal Closure Area specified at § 648.81(g); and minimum fish size restrictions specified at § 648.83(a) for the temporary retention of undersized fish for data collection purposes.

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

Dated: August 4, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1737 Filed 8–6–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

August 4, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning four petitions for determinations that certain woven fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On August 3, 2004, the Chairman of CITA received four petitions from Sharretts, Paley, Carter & Blauvelt, P.C., on behalf of Fishman & Tobin, alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitions request that apparel articles of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on these petitions, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 24, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On August 3, 2004, the Chairman of CITA received a petition on behalf of Fishman & Tobin alleging that certain woven fabrics, of the specifications detailed below, classified in the indicated HTSUS subheadings, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric 1	**Twill Fabric**
HTS Subheadings:	5208.33.00.00 & 5209.32.00.20
Fiber Content:	100% Cotton
Width:	57/58 inches
Construction:	Two-ply in the warp and fill, of combed cotton ring spun yarns, 132 x 67, yam sizes 40 x 2/21 x 2
Dyeing:	Continuous Dyeing
Fabric 2	**Fancy polyester/rayon blend suiting fabric**
HTS Subheading:	5515.11.00.05
Fiber Content:	65% polyester/35% rayon
Width:	58/59 inches
Construction:	Two-ply carded and ring spun yarns in the warp and fill
Dyeing:	Yarns are made from dyed fibers
Fabric 3	**Fancy polyester filament fabric**
HTS Subheading:	5407.52.20.20, 5407.52.20.60, 5407.53.20.20 & 5407.53.20.60
Fiber Content:	100% Polyester
Width:	58/60 inches
Construction:	Plain, twill and satin weaves, in combinations of 75 denier, 100 denier, 150 denier, and 300 denier yarn sizes, with mixes of 25% cationic/75% disperse, 50% cationic/50% disperse, and 100% cationic.
Dyeing:	(Piece) dyed or of yarns of different colors
Fabric 4	**190T polyester lining fabric**
HTS Subheading:	5407.61.99.25-35
Fiber Content:	100% Polyester
Construction:	110 x 80, 68 denier x 68 denier
Dyeing:	Jet overflow and jet spinning methods

CITA is soliciting public comments regarding these requests, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than August 24, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–18225 Filed 8–5–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

DATES: September 8, 2004 from 0830 a.m. to 1715 p.m., and September 9, 2004 from 0800 a.m. to 1725 p.m.

ADDRESSES: SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: August 3, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 04–18077 Filed 8–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The National Security Agency/Central Security Service is proposing to add an exempt system of records to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The exemptions increase the value of the system of records for law enforcement purposes.

DATES: This proposed action would be effective without further notice on September 8, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency/Central Security Service, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 30, 2004, to the House Committee on government Reform, the Senate Committee on Governmental Affairs, and the Office of Management

and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 3, 2004.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 20

SYSTEM NAME:

NSA Police Operational Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA Police Officers; civilian DoD employees; military assignees; employees of other Federal agencies or military departments; contractor employees; non-appropriated fund instrumentality employees; family members of the afore mentioned categories; owners or operators of vehicles entering or attempting to enter on or near NSA-occupied areas; individuals arrested on or near NSA occupied areas; individuals suspected of posing a threat to the Safety of NSA persons or property; and individuals cited for violations of NSA security regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information from Police inventory control documents (to include weapon and radio serial numbers, police officer's name, and police officer's assigned shift), Incident Reports, Security Information Reports, reports of security violations, arrest reports, CTC vehicle registration files, accident reports, suspect data file/ reports, missing property reports, traffic/parking tickets, access control information, equipment inspection logs, and similar documents or files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, as amended, 50 U.S.C. 402 note (Pub. L. 86–36), and 50 U.S.C. 403 (Pub. L. 80–253); 40 U.S.C. 318, Special police; DoD Directive 5100.23, Administrative Arrangements for the National Security Agency; DoD Directive 5200.8, Security of DoD Installations and Resources; DoD Regulations 5240.1–R, Procedures governing the activities of DoD intelligence components that affect United States persons; NSA/CSS Regulation 120–19, NSA/CSS Headquarters Identification System; NSA/CSS Policy 120–02, Protective Services; E.O. 9397 (SSN); E.O. 12333, United States Intelligence Activities; E.O. 12958, Classified National Security Information; and E.O. 12968, Access to Classified Information.

PURPOSE(S):

To maintain records relating to the operations of the NSA Police for the purpose of providing reports for and on personnel and badge information of the current tenants of NSA/CSS facilities; to create and track the status of visit requests and the issuance of visitor badges; to identify employees and visitors at the entrances of the gated facility; to track inside the NSA/CSS facility authorized NSA/CSS employee and visitor badges as they are used to pass through automated turnstile system, access office suites and other work areas; to track any unsolicited contacts with the NSA/CSS; to track the investigation and determination of any wrongdoing or criminal activities by NSA/CSS employees or facility visitors; and to compile such statistics and reports on the number of unauthorized attempts to access NSA facilities, the number of security violations and arrests, the number of visitors, and reports of a similar nature.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal agencies to facilitate security, employment, detail, liaison, or contractual determinations as required, and in furtherance of, NSA police operations.

To Federal agencies involved in the protection of intelligence sources and methods, such as in counterintelligence investigations, to facilitate such protection.

The DoD "Blanket Routine Uses" published at the beginning of the NSA/ CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic mediums.

RETRIEVABILITY:

By name, organization (or affiliation), dates of visit, type of badge issued, Social Security Number, vehicle license plate number, home address and phone number, date and place of birth, work center assigned, subject matter, and case number.

SAFEGUARDS:

Secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. With the facilities themselves, access to paper and computer printouts are controlled by limited-access facilities and lockable containers. Access to electronic means is controlled by computer password protection.

RETENTION AND DISPOSAL:

Records are periodically reviewed for retention. Records having no evidential, informational, or historical value or not required to be permanently retained are destroyed. Visitor passes and campus access files are destroyed when 15 years old. Physical security compromise reports are destroyed 10 years from time of incident. Files relating to exercise of police functions are destroyed when three years old. Reports relating to arrests are destroyed when two years old. Routine police investigations and Guard Service Control files are destroyed when one year old. Destruction is by pulping, burning, shredding, or erasure or destruction of magnetic media.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Policy, National Security Agency/Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should include requestor's full name, address, and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Deputy Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should include requestor's full name, address, and Social Security Number.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Chief, Office of Policy, National Security Agency/ Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; victims, witnesses, investigators, Security Protective Force, and other federal or state agencies and organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 322. For additional information contact Ms. Anne Hill, Privacy Act Officer, NSA/CSS Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20766–6248.

[FR Doc. 04–18080 Filed 8–6–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 8, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 3, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: **Federal Register** Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; businesses or other for-profit; Federal government.

Reporting and Recordkeeping Hour Burden:

Responses: 125.

Burden Hours: 125.

Abstract: With this notice, the Secretary invites institutions of higher education to send a letter of application to participate in the Department of Education's Quality Assurance (QA) Program. This Program is intended to allow and encourage participating institutions to develop and implement their own comprehensive programs to verify student financial aid application data.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2603. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–18131 Filed 8–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 8, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,

Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 4, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: American Indian Supplement to the NAEP, Full Scale Study 2005.

Frequency: One time.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,500.

Burden Hours: 1,750.

Abstract: This study includes special background questionnaires for this study of students, teachers, and schools with high Indian enrollments. Results will be analyzed along with results from an assessment including an oversample of Indian students conducted separately.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2602. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–18132 Filed 8–6–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 04–59–NG, et al.]

Office of Fossil Energy, Sacramento Municipal Utility District, Orders Granting, and Amending Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during June 2004, it issued Orders granting and amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 13, 2004.

Sally Kornfeld,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS

DOE/FE authority

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1987	6–1–04	Sacramento Municipal Utility District, 04–59–NG.	50Bcf	.....	Import natural gas from Canada, beginning on July 1, 2002, and extending through June 30, 2004
1988	6–1–04	St. Lawrence Gas Company, Inc., 04–57–NG.	25.8 Bcf	.....	Import natural gas from Canada, beginning on July 26, 2004, and extending through July 25, 2006.
1989	6–1–04	Terasen Gas Inc. (Formerly BC Gas Utility Ltd.), 04–52–NG.	8 Bcf		Import and export natural gas from and to Canada beginning May 1, 2004, and extending through March 31, 2005.
1990	6–7–04	Coral Energy Resources, L.P., 04–56–NG.	730 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, and to import LNG from other international sources, beginning on June 20, 2004, and extending through June 19, 2006.
1991	6–7–04	Tractebel LNG North America Service Corporation, 04–58–NG.	100 Bcf	.....	Import LNG from various international sources beginning on June 18, 2004, and extending through June 17, 2006.
1992	6–7–04	Portland General Electric Company, 04–60–NG.	90Bcf	45 Bcf	Import and export natural gas from and to Canada, beginning on November 3, 2003, and extending through November 2, 2005.
1993	6–8–04	PremStar Energy Canada Ltd., 04–61–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 1, 2004, and extending through May 30, 2006.

APPENDIX—ORDERS GRANTING AND AMENDING IMPORT/EXPORT AUTHORIZATIONS—Continued

DOE/FE authority

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1994	6–8–04	Alea Trading LLC, 04–63–LNG	60 Bcf		Import LNG from various international sources beginning on July 1, 2004, and extending through June 30, 2006.
1995	6–9–04	LNGJ USA Inc., 04–62–LNG	300 Bcf		Import LNG from various international sources beginning on June 9, 2004, and extending through June 8, 2006.
1996	6–9–04	First Indigenous Depository Company, LLC, 04–64–NG.	90 Bcf		Import natural gas from Canada, beginning on May 28, 2004, and extending through May 27, 2006.
1997	6–17–04	North American Energy, Inc., 04–67–NG	20 Bcf		Import natural gas from Canada, beginning on August 3, 2002, and extending through August 2, 2004.
1998	6–17–04	Power City Partners, L.P., 04–65–NG	146 Bcf		Import natural gas from Canada, beginning on July 1, 2004, and extending through June 30, 2006.
1999	6–18–04	Transalta Energy Marketing (U.S.) Inc., 04–66–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on October 1, 2003, and extending through September 30, 2005.
1862–B	6–21–04	NEGT Energy Trading—Gas Corporation (Formerly PG&E Energy Trading—Gas Corporation), 03–14–NG.			Name change.
2000	6–22–04	Amerada Hess Corporation, 04–69–NG	100 Bcf		Import natural gas from Canada, beginning on January 1, 2003, and extending through December 31, 2004.
2001	6–28–04	Avista Corporation, 04–70–NG	150 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on June 25, 2004, and extending through June 24, 2006.

[FR Doc. 04–18137 Filed 8–6–04; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–128–000, *et al.*]

EK Holding I, LLC, *et al.*; Electric Rate and Corporate Filings

July 30, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. EK Holding I, LLC; EK Holding III, LLC

[Docket No. EC04–128–000]

Take notice that on July 21, 2004, EK Holding I, LLC and EK Holding III, LLC submitted a Notice of Withdrawal of their July 6, 2004, application in the above-referenced proceeding.

Comment Date: 5 p.m. eastern time on August 11, 2004.

2. AES Londonderry, LLC; Granite Ridge I SPE LLC

[Docket No. EC04–138–000]

Take notice that on July 28, 2004, AES Londonderry, LLC (AES Londonderry) and Granite Ridge I SPE LLC filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of an indirect disposition of certain jurisdictional facilities held by AES Londonderry to the lenders of AES Londonderry or such lenders' subsidiaries.

AES Londonderry states that a copy of the application was served upon the New Hampshire Public Utilities Commission.

Comment Date: 5 p.m. eastern time on August 18, 2004.

3. New York Independent System Operator, Inc.

[Docket Nos. EL04–115–002; ER04–983–002]

Take notice that on July 26, 2004, The New York Independent System Operator, Inc. (NYISO) hereby files a Notice of Withdrawal of its July 2, 2004, filing in Docket Nos. EL04–115–000 and ER04–983–000.

The NYISO states that it has electronically served a copy of this Notice of Withdrawal to each of its customers, each participant in its stakeholder committees and on the New York State Public Service Commission.

Comment Date: 5 p.m. eastern time on August 16, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1736 Filed 8–6–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7798–4]

Science Advisory Board Staff Office; Notification of Upcoming Science Advisory Board Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconference meetings to discuss the review of two draft SAB reports.

DATES: August 18, 2004, 1–2:30 pm (Eastern Time) and August 23, 2004, 3–4:30 pm (Eastern Time). A public telephone conference meeting of the SAB Quality Review Committee (QRC) to discuss the draft SAB report, Review of EPA's Draft Report on the Environment 2003, will be held on August 18, 2004 from 1 p.m. to 2:30 p.m (Eastern Time). A second public telephone conference meeting will be held on August 23, 2004, from 3 p.m. to 4:30 p.m (Eastern Time) to discuss the draft SAB Report of the U.S. EPA Science Advisory Board's 3MRA Panel on the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System.

ADDRESSES: The meetings for these reviews will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding these teleconference meetings may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202) 343–9982) or e-mail at *miller.tom@epa.gov*.

The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The purpose of the SAB QRC meetings is to conduct a public review and discussion of the two SAB draft reports. The focus of the discussion will be on whether: (i) The original charge questions to the SAB review panel have been adequately addressed, (ii) there are any technical errors or omissions in the report or issues that are inadequately dealt with in the report, (iii) the report is clear and logical, and (iv) any conclusions drawn, or recommendations provided, are supported by the body of information in the review report. The outcome of the QRC review will be one of the following: (i) Recommend SAB approval of the report, (ii) return the report to the review panel for further work, (iii) reject the work of the review panel and request a reconsideration and a revised report in the future, or (iv) recommend that the SAB constitute an entirely new review panel.

Availability of Review Material for the Board Meeting: Documents that are the subject of this meeting are available on the SAB Web site at: *http://www.epa.gov/sab/*.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and accommodates oral public comments whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a teleconference meeting will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO noted above in writing via e-mail at least one week prior to the meeting in order to be pla ed on the public speaker list for the meeting. Speakers should provide an electronic copy of their comments for distribution to interested parties and participants in the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 30, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–18026 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7799–6]

Availability of "Fiscal Year 2004 Wastewater Operator Training Program Security Funds"

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a guidance memorandum entitled "Fiscal Year 2004 Wastewater Operator Training Program Security Funds Allocation." This memorandum provides national guidance for the allocation of funds used under the Clean Water Act (CWA). By providing additional funding to the CWA section 104(g) environmental training centers throughout the United States, the Program will provide on-site security assistance and classroom training security activities to operators at small community wastewater treatment facilities in order to help the facility to become more secure.

DATES: The grant information will be available August 9, 2004.

ADDRESSES: United States Environmental Protection Agency, EPA East, Office of Ground Water and Drinking Water, Municipal Assistance Branch, 1200 Pennsylvania Avenue, NW., (Mail Code 4601-M), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Curt Baranowski at (202) 564–0636, or e-mail: *baranowski.curt@epa.gov*.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's Web site, *http://www.epa.gov/OWM/mab/smcomm/104g/104secur.pdf* under "Wastewater Security Grant Guidance."

Dated: August 3, 2004.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 04–18140 Filed 8–6–04; 8:45 am]

BILLING CODE 6560–50–U

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration; Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

ACTION: Notice.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction ("Commission") will meet in closed session on Tuesday, August 24, 2004, and Wednesday, August 25, 2004, in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the August 24–25 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) and (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Tuesday, August 24, 2004 (9 a.m. to 5 p.m.) and Wednesday, August 25, 2004. (9 a.m. to 2 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC, 20503. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov*.

FOR FURTHER INFORMATION CONTACT: Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Victor E. Bernson, Jr.,

Executive Office of the President, Office of Administration, General Counsel.

[FR Doc. 04–18163 Filed 8–6–04; 8:45 am]

BILLING CODE 3130–W4–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13.

DATES: Written comments should be submitted on or before September 8, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Kristy L. LaLonde, Office of Management and Budget Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, (202) 395–3087, via the Internet to *Kristy_L. LaLonde@omb.eop.gov*, via fax at (202) 395–5167; or Les Smith, Federal Communications Commission, 445 12th Street, Room 1–A804, Washington, DC 20554, (202) 418–0217 or *Leslie.Smith@fcc.gov*.

Paperwork Reduction

OMB Control No: 3060–1033.

Expiration Date: July 31, 2007.

Title: Multi-channel Video Program Distributor EEO Program Annual Report, FCC Form 396–C.

Form No: 396–C.

Respondents: Operators of cable/television units.

Number of Respondents: 2,200.

Total Annual Burden: 3,188 hours.

Total Annual Cost: 0.

Terms of Clearance: None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–18144 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 3, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 8, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith

B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0370.

Title: Part 32, Uniform System of Accounts for Telecommunications Companies.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 239.

Estimated Time per Response: 104–26,195 hours.

Frequency of Response: On occasion reporting requirement; recordkeeping requirement.

Total Annual Burden: 1,516,702 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results within a specified accounting period. Subject respondents are telecommunications companies. In the Report and Order, FCC 04–149, the Commission adopted the Joint Conference's recommendations to reinstate Part 32, Class A accounts which includes: Account 5230, Directory Revenue; Account 6621, Call Completion Services; Account 6622, Number Services; Account 6623, Customer Services; Account 6561, Depreciation Expense-Telecommunications Plant In Service; Account 6562, Depreciation Expense-Property Held for Future Telecommunications Use; Account 6563, Amortization Expense-Tangible; Account 6564, Amortization Expense-Intangible; Account 6565, Amortization Expense-Other. These accounting changes are mandatory only for non-mid-sized Class A Incumbent Local Exchange Carriers (ILECs). The reinstatement of these accounts, however, will not impose any additional burden on non-mid-sized Class A ILECs because the Commission's prior action to aggregate the accounts has been suspended. Similarly, the Commission's reinstatement of the sheath kilometer reporting requirement in the ARMIS 43–07 will not impose any additional burden on non-mid-sized Class A ILECs. Entities having annual revenues from regulatory telecommunications operations of less than $123 million are designated as Class B and are subject to a less detailed accounting system than those designated as Class A companies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–18146 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; FCC 04–125]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission asks the Federal-State Joint Board on Universal Service to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order.*

DATES: Effective September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 96–45 released on June 28, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we ask the Federal-State Joint Board on Universal Service (Joint Board) to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the *Rural Task Force Order*, (*RTF Order*). In particular, we ask the Joint Board to make recommendations to the Commission on a long-term universal service plan that ensures that support is specific, predictable, and sufficient to preserve and advance universal service. We ask the Joint Board to ensure that its recommendations are consistent with the goal of ensuring that consumers in rural, insular, and high-cost areas have access to telecommunications and information services at rates that are affordable and reasonably comparable to rates charged for similar services in urban areas. We also ask the Joint Board to consider how support can be effectively targeted to rural telephone companies serving the highest cost areas, while protecting against excessive fund growth. In conducting its review, the Joint Board should take into account the significant distinctions among rural carriers, and between rural and non-rural carriers. We expect that the Joint Board will consider all options for determining appropriate support levels for rural carriers. We anticipate that the Joint Board will seek public comment on the issues described below.

II. Discussion

2. On June 30, 2006, the *RTF Order* will have been in place for five years. It therefore is time to undertake a review of what measures should succeed the RTF plan and, more generally, how the rural and non-rural high-cost support mechanisms function together. Fundamental changes are occurring in the industry, necessitating a thorough review of how to preserve and advance universal service. We are committed to maintaining predictable and sufficient universal service support in this dynamic marketplace.

3. We ask the Joint Board to consider what form of universal service support for rural telephone companies serves the goals of the Act most efficiently and effectively. Specifically, we ask the Joint Board to consider whether a universal service mechanism for rural carriers based on forward-looking economic cost estimates or embedded costs would most efficiently and effectively achieve the Act's goals. In making its recommendations, the Joint Board should consider which mechanism would best ensure that services in rural areas, including both the quality and the rates for those services, are reasonably comparable to services available in urban areas. Moreover, the Joint Board should consider both the benefits of maintaining distinct support mechanisms for rural and non-rural carriers and the extent to which this creates administrative burdens, incentives for arbitrage, or other inefficiencies. In the event that the Joint Board recommends retaining a separate support mechanism for rural carriers, we ask the Joint Board to consider how to ensure that the distinct mechanisms for rural and non-rural carriers operate efficiently and in a coordinated fashion.

4. If the Joint Board recommends that rural carriers should move to a support mechanism based on forward-looking costs, we ask the Joint Board to provide recommendations on how that goal should be achieved. The Joint Board

should consider whether the current forward-looking economic cost model, used in calculating high-cost support for non-rural telephone companies, is appropriate for some or all rural telephone companies, or if some other method for estimating forward-looking economic costs would be better suited for some or all rural telephone companies. The Joint Board should also consider whether the current model could be made more effective for rural telephone companies by using different inputs than are currently used for non-rural telephone companies. The Joint Board should consider implementation issues related to any modified mechanism that it recommends, including whether it would be appropriate for rural telephone companies to begin receiving high-cost support based on forward-looking economic costs immediately upon expiration of the plan adopted in the *RTF Order* or if some further transitional stages would be beneficial.

5. If the Joint Board recommends maintaining an embedded cost mechanism for rural carriers, the Joint Board should consider whether modifications to the current high-cost loop support mechanism and LSS would better serve the Act's goals. For example, the Joint Board should consider whether using average annual line counts rather than year-end line counts would provide rural carriers with a more appropriate level of high-cost loop support. We request that the Joint Board consider whether high-cost loop support can be more effectively targeted to the highest-cost rural carriers. We also note that LSS currently targets support to study areas with fewer than 50,000 access lines without regard to whether those study areas experience high switching costs. The Joint Board should consider if another methodology would better target support to areas with high switching costs. The Joint Board should also consider whether there is a continued need to maintain separate loop and switching support mechanisms, and whether support calculations for rural carriers can be simplified in any fashion.

6. In conjunction with considering whether maintaining a different support mechanism for rural carriers best serves the goals of the Act, we ask the Joint Board to consider whether to modify the definition of "rural telephone company." As noted above, we recognize the great diversity among rural telephone companies. This diversity may suggest that not all rural telephone companies have similar support requirements. Recognizing the great diversity among rural telephone companies, we ask the Joint Board to consider whether support based on some form of forward-looking economic costs would be appropriate for some subset of rural telephone companies. For example, the Joint Board should consider whether it would be appropriate to use forward-looking economic cost estimates to determine high-cost support for rural telephone companies with more than 50,000 lines in a state, while smaller rural telephone companies would continue to use embedded costs on an interim or permanent basis. The Joint Board should consider whether a modified definitional framework that permits finer distinctions among carriers of different sizes or characteristics would be useful. We also ask the Joint Board to consider the relevance of the fact that many rural telephone companies are, in fact, the operating subsidiaries of larger holding companies, which may provide them economies of scale that are not realized by other non-affiliated rural telephone companies.

7. Because eligibility for certain types of high-cost universal service support is determined at the study area level, we ask the Joint Board to consider whether multiple study areas within a state should be consolidated for universal service support calculation purposes, when those study areas have common ownership. A study area is a geographic segment of an incumbent local exchange carrier's telephone operations and generally corresponds to an incumbent local exchange carrier's entire service territory within a state. For various reasons, however, an incumbent local exchange carrier may have more than one study area within a state. The Joint Board should consider whether we should modify the definition of "study area" to limit a holding company to one study area per state. By operating in multiple study areas in a given state, certain carriers may receive more high-cost universal service support than they would if their study areas within the state were combined. The Joint Board should consider whether requiring consolidation of study areas would better reflect the appropriate economies of scale of the service provider.

8. Finally, we ask that the Joint Board consider whether, in the event we retain two distinct mechanisms for rural and non-rural carriers, we should retain or further modify § 54.305 of the Commission's rules, which provides that carriers that acquire exchanges receive support for those exchanges based on the exchanges' pre-transfer level of support. In adopting § 54.305, the Commission intended to discourage carriers from transferring exchanges merely to increase their share of high-cost support. The Joint Board should consider the costs and benefits of retaining § 54.305 in its present form, and evaluate whether alternatives exist that would more effectively prevent carriers from acquiring exchanges in order to maximize the amount of universal service support that they receive. The Joint Board should also consider whether the safety valve mechanism contained in § 54.305 provides sufficient incentives for investment in acquired exchanges.

III. Ordering Clauses

9. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214(e), 254, and 410, that this Order is adopted.

10. Pursuant to sections 1, 4(i) and (j), 214(e), 254, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(j), 214(e), 254, and 410, that the Federal-State Joint Board on Universal Service is requested to review the Commission's rules relating to high-cost universal service support for rural telephone companies and other related issues described herein and provide recommendations to the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–17900 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60; DA 04–2347]

Deadline for Completing Funding Year 2003 Application Process for Rural Health Care

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the deadline for completing Rural Health Care program applications by filing the FCC Form 466, for those rural health care providers seeking discounts for Funding Year 2003 under the rural health care universal service support mechanism.

DATES: Filing deadline is September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Gina Spade, Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: September 20, 2004, is the final deadline for filing FCC Form 466 for rural health care providers seeking discounts for Funding Year 2003 under the rural health care universal service support mechanism. Form 466 informs the Rural Health Care Division (RHCD) of the Universal Service Administrative Company that the health care provider has entered into an agreement with a telecommunications carrier for a service eligible for universal service support. Those entities that have applied for support for Funding Year 2003 (July 1, 2003–June 30, 2004) must have their completed FCC Form 466 packet postmarked by September 20, 2004.

The completed FCC Form 466 must include the following:

(1) FCC Form 466 (Services Ordered and Certification Form), completed by the health care provider;

(2) contract document or tariff designation, provided by either the health care provider or telecommunications carrier; and

(3) if the health care provider is seeking support based on an urban/rural rate comparison, documentation must be included to show the rate for the selected service(s) in the nearest city of 50,000 or more within the state.

The forms and accompanying instructions may be obtained at the RHCD Web site *http://www.rhc.universalservice.org/forms/default.asp#2003*. Parties with questions or in need of assistance with the filing of their applications should contact RHCD's Customer Service Support Center at 1–800–229–5476.

Federal Communications Commission.

Gina Spade,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 04–18143 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2667]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 3, 2004.

Petition for Reconsideration and Clarification has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by August 24, 2004. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z–Tel Communications, Inc., for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas (CC Docket No. 96–262).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–18145 Filed 8–6–04; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Closed Meeting of the Board of Directors

Time and Date: The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, August 11, 2004.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be closed to the public.

Matter to be Considered at the Meeting:

Periodic Update of Examination Program Development and Supervisory Findings.

Contact Person for More Information: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov*.

Dated: August 4, 2004.

By the Federal Housing Finance Board.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 04–18190 Filed 8–4–04; 5:05 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Ralph D. Jones, Midland, South Dakota; to acquire voting shares of Philip Bancorporation, Inc., Philip, South Dakota, and thereby indirectly acquire voting shares of First National Bank in Philip, Philip, South Dakota.

Board of Governors of the Federal Reserve System, August 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–18090 Filed 8–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 2004.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Sterling Bancshares, Inc., Poplar Bluff, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Sterling Bank, Poplar Bluff, Missouri (in formation).

2. S.Y. Bancorp, Inc., Louisville, Kentucky; to acquire 9.9 percent of the voting shares of Indiana Business Bank, Indianapolis, Indiana (in formation).

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Centralia Bancshares, Inc., Centralia, Kansas; to acquire up to 8.3 percent of the voting shares of Morrill Bancshares, Inc., Merriam, Kansas, and thereby indirectly acquire The Morrill and Janes Bank & Trust Company, Merriam, Kansas; City National Bank, Kilgore, Texas; and 1st Bank Oklahoma, Claremore, Oklahoma.

Board of Governors of the Federal Reserve System, August 3, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–18089 Filed 8–6–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through August 31, 2007, the current PRA clearance for information collection requirements contained in its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" or the "Act"). That clearance expires on August 31, 2004.

DATES: Comments must be submitted on or before September 8, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Smokeless Tobacco Regulations: Paperwork Comment, [R01009]" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be sent to the following e-mail box: *smokelesstobacco@ftc.gov*.

If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Rosemary Rosso, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2174.

SUPPLEMENTARY INFORMATION: On May 17, 2004, the FTC sought comment on the information collection requirements associated with the Smokeless Tobacco Rule, 16 CFR Part 307 (Control Number: 3084–0082). *See* 69 FR 27926 (May 17, 2004); 69 FR 31823 (June 7, 2004) (corrected notice). No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

Description of the collection of information and proposed use: The Smokeless Tobacco Act requires that manufacturers, packagers, and importers of smokeless tobacco products include one of three specified health warnings on packages and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying the method to rotate, display, and distribute the warning statement required to appear in advertising and labeling. The Commission is required by the Act to determine that these plans provide for rotation, display, and distribution of warnings in compliance with the Act and implementing regulations. To the best of the Commission's knowledge, all of the affected companies have previously filed plans. However, the plan submission requirement continues to apply to a company that amends its plan, or to a new company that enters the market.

Burden Statement

Estimated annual hours burden: 1,000 hours (rounded). The FTC is retaining its existing burden estimate of 1,000 hours. This amount is based on the burden previously estimated for 14 smokeless tobacco companies to prepare and submit amended compliance plans, and to permit at least three new companies to submit initial compliance

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

plans. Though staff's calculations underlying the estimate totaled 790 hours, staff then conservatively rounded up its estimate to 1,000 hours. Staff firmly believes that this prior rounded estimate will fully incorporate any incremental effects of an additional three companies submitting plans.

Virtually all affected companies long ago filed their plans with the Commission. Additional annual reporting burdens would occur only if those companies opt to change the way they display the warnings required by the Smokeless Tobacco Act. Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each of the 14 smokeless tobacco companies will file one amendment per year. This estimate is conservative because, over the past three years, the Commission has reviewed amended plans from only two companies,[2] and the Commission has not changed the relevant regulations.[3] The estimated time to prepare the amended plans submitted by these companies is less than 40 hours each. The only major amendment of an approved plan, occurring more than three years ago, required only 40 hours to prepare, which is considerably less time than individual companies spent preparing their initial plans. Commission staff believes it reasonable to assume that each of the 14 smokeless tobacco companies would spend no more than 40 hours to prepare an amended plan.

Commission staff also estimates that one smokeless tobacco manufacturer may file an initial plan, for an additional burden of approximately 150 hours. When the regulations were first proposed in 1986, representatives of the Smokeless Tobacco Council, Inc. indicated that the six companies it represented would require approximately 700 to 800 hours in total (133 hours each) to complete the initial required plans, involving multiple brands and multiple brand varieties. Staff assumed that other companies would require a little more time, on average, to complete their plans. Staff estimated that one smokeless tobacco company may file an initial plan, and it would require approximately 150 hours to complete the plan, and it believes this estimate remains reasonable.

In addition to the estimates above, the staff anticipates that in the next three years, up to two small importers or small single brand companies may submit initial plans, for an additional burden of approximately 80 hours. The Commission has received such plans in the past. Because these plans involved only a limited number of brands and no advertising, the estimated time to prepare the plans was very modest. Staff estimates that the two importers or small single brand companies who may submit initial plans will spend no more than 40 hours each to prepare the plans.

Based on these assumptions, the total annual hours burden should not exceed 1,000 hours. [(14 companies × 40 hrs. each) + (one company × 150 hrs.) + (2 companies × 40 hrs.) = 790 total hours, rounded to one thousand hours.]

Estimated annual labor cost burden: $103,000.

The total annualized labor cost to these companies should not exceed $103,000. This is based on the assumption that management or attorneys will account for 80% of the estimated 1,000 hours required to rewrite or amend the plans, at an hourly rate of $125, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. [Management and attorneys' time (1,000 hrs. × 0.80 × $125 = $100,000) + clerical time (1,000 hrs. × 0.2 × $15 = $3,000).]

Estimated annual non-labor cost burden: $0 or minimal.

The applicable requirements impose minimal start-up costs. The companies may keep copies of their plans to ensure that labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, *e.g.*, file folders and paper, all of which the companies should have on hand in the ordinary course of their business.

While companies submitting initial plans may incur one-time capital expenditures for equipment used to print package labels in order to include the statutory health warnings or to prepare acetates for advertising, the warnings themselves disclose information completely supplied by the federal government. As such, the disclosure does not constitute a "collection of information" as it is defined in the regulations implementing the PRA, nor by extension, do the financial resources expended in relation to it constitute paperwork "burden." *See* 5 CFR 1320.3(c)(2). Moreover, any expenditures relating to the statutory health warning requirements would likely be minimal in any event. As noted above, virtually all affected firms have already submitted approved plans. For these companies, there are no capital expenditures. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies are required to make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials.

Finally, capital expenditures for small importers are likely to be de minimis. Both firms that submitted plans over the past three years used stickers to place the warnings on their packages. The stickered warnings could be generated with office equipments and supplies such as computers and labels, all of which the companies should have on hand in the ordinary course of their business. Because neither firm engaged in any advertising, no costs associated with advertising were incurred.

John D. Graubert,

Acting General Counsel.

[FR Doc. 04–18129 Filed 8–6–04; 8:45 am]

BILLING CODE 6750–01–P

[2] One of these companies also submitted its initial plans for two brands during this period. The burden estimate for the initial plans is calculated separately.

[3] Should the Commission amend the regulations in a manner that materially affects the burden under the PRA, it will notify OMB and seek amended clearance.

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1975, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect

to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—07/07/2004			
20041015	Nucor Corporation	Corus Group plc	Tuscaloosa Steel Corporation
20041052	General Electric Company	BHA Group Holdings, Inc	BHA Group Holdings, Inc.
20041094	RC2 Corporation	The First Years Inc	The First Years Inc.
Transactions Granted Early Termination—07/09/2004			
20040904	Intermagnetics General Corporation	MRI Devices Corporation	MRI Devices Corporation.
20041007	Partners Limited	Reliant Energy, Inc	Carr Street Generating Station, L.P., Erie Boulevard Hydropower LP., Orion Power New York GP II, Inc., Orion Power Operating Services Carr Street, Inc., Orion Power Operating Services Coldwater, Inc.
20041041	Deutsche Telekom AG	SBC Communications Inc	Cingular Wireless LLC, Newco, Pacific Telesis Mobile Services, LLC.
20041064	Broadcom Corporation	Mission Ventures, II, L.P	Zyray Wireless Inc.
20041079	UTStarcom, Inc.	Audiovox Corporation	Audiovox Communications Canada, Co., Audiovox Communications Corp., Quintex Mobile Communications Corp.
20041093	Wells Fargo & Company	J. Randall Baird	JRB Company, Inc.
Transactions Granted Early Termination—07/12/2004			
20041047	Southwire Company	Commonwealth Industries, Inc	Alflex Corporation.
20041065	General Atlantic Partners (Bermuda), L.P.	Intec Telecom Systems PLC	Intec Telecom Systems PLC.
20041092	Time Warner Inc.	Advertising.com, Inc	Advertising.com, Inc.
20041095	Hartmarx Corporation	Harry Doolittle and Misook Doolittle	Exclusively Misook, Inc.
20041100	Phillip R. Bennett	Phillip R. Bennett	Forstmann-Leff International Associates, LLC.
20041101	Green Equity Investors IV, L.P	Nathan Kirsh	Jetro JMDH Holdings, Inc.
20041107	Bradco Supply Corporation	Wickes Inc	Wickes Inc.
Transactions Granted Early Termination—07/13/2004			
20041039	American Medical Systems Holdings, Inc.	Oracle Strategic Partners, L.P	TherMatrx, Inc.
20041074	QLT Inc	Atrix Laboratories, Inc	Atrib Laboratories, Inc.
20041085	TETRA Technologies, Inc	Compressco, Inc	Compressco, Inc.
20041104	S. Craig Lindner	National City Corporation	National City Corporation.
20041108	M/C Acquisition Corp	John M. Connors, Jr	M/C Communications, LLC.
20041117	Mellon Financial Corporation	EACM Partners, L.P	Evaluation Associates Capital Markets, Inc., Evaluation Associates Capital Markets, LLC.
20041121	KRG Capital Fund II, L.P	Blue Cross and Blue Shield of Michigan.	PPOM, L.L.C.
Transactions Granted Early Termination—07/14/2004			
20041078	Adaptec, Inc	Snap Appliance, Inc	Snap Appliance, Inc.
20041109	Thomas H. Lee (Alternative) Fund V, L.P.	Oak Hill Capital Partners (Bermuda), L.P.	3045036 Nova Scotia Limited, Progressive Moulded Products Limited.
20041115	Newcoal, LLC	Horizon Natural Resources Company	Horizon Natural Resources Company.
20041118	aQuantive, Inc	SBI Holdings Inc	SBI Holdings Inc.
20041119	Harbert Distressed Investment Offshore Fund, Ltd.	Warren Steel, Inc	Warren Steel, Inc.
20041124	Aalberts Industries N.V	Amcast Industrial Corporation	Amcast Industrial Corporation.
20041125	HSBC Holdings, plc	Code Hennessy & Simmons IV, L.P	Kranson Holding Company.
Transactions Granted Early Termination—07/15/2004			
20041091	IMC Global Inc	IMC Global Inc	Phosphate Resource Partners Limited Partnership.
20041096	General Atlantic Partners 54, L.P	Hewitt Associates, Inc	Hewitt Associates, Inc.
20041097	General Atlantic Partners 60, L.P	Hewitt Associates, Inc	Hewitt Associates, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—07/17/2004			
20041141	Societe Generale S.A	CGW Southeast Partners I, L.P	Sovitec Cataphote, Inc.
Transactions Granted Early Termination—07/19/2004			
20041048	National Association of Securities Dealers, Inc.	SunGard Data Systems, Inc	Toll Associates LLC.
20041120	JDA Software Group, Inc	QRS Corporation	QRS Corporation.
20041128	KRG Capital Fund II, LP	AMGI Holdings, Inc	AMGI Holdings, Inc.
20041131	Roger S. Penske	Theodore J. Stevens	La Rincondada Securities, Inc., Marin Securities, Inc., SDB, Inc., Ted Stevens Car Co., Inc.
20041133	Financiere F.L	Derek SA	Financiere Alexandre III.
20041134	HSBC Holdings plc	KII Holdings Corporation	KII Holdings Corporation.
20041136	KSTA Holdings, Inc	American Industrial Partners Capital Fund II, L.P.	Stanadyne Automotive Holding Corp.
20041144	Citigroup Inc	Intcomex Holdings, LLC	Intcomex Holdings, LLC.
20041150	Journal Register Company	21st Century Newspapers, Inc	21st Century Newspapers, Inc.
Transactions Granted Early Termination—07/20/2004			
20041142	Charles River Laboratories International, Inc.	Inveresk Research Group, Inc	Inveresk Research Group, Inc.
20041149	Aurora Equity partners II L.P	American Securities Partners II, L.P	Anthony Holdings, Inc.
Transactions Granted Early Termination—07/21/2004			
20041080	Nucor Corporation	Worthington Industries, Inc	Worthington Steel Company of Decatur, L.L.C.
20041087	Motorola, Inc	Solectron Corporation	Force Computers GmbH, Force Computers, Inc.
20041110	Hewitt Associates, Inc	Exult, Inc	Exult, Inc.
20041138	Automatic Data Processing, Inc	Bank of America Corporation	Fleet Securities, Inc.
Transactions Granted Early Termination—07/22/2004			
20041098	Engelhard Corporation	The Collaborative Group, Ltd	The Collaborative Group, Ltd.
Transactions Granted Early Termination—07/23/2004			
20041058	Manulife Financial Corporation	El Paso Corporation	Juniper Generation, LLC.
20041063	Cisco Systems, Inc	Procket Networks, Inc	Procket Networks, Inc.
20041114	BAE Systems plc	The Boeing Company	Boeing-Irving Co., Boeing Operations International, Incorporated.
20041122	Bain Captial Fund VII, L.P	Gerald W. Schwartz	Loews Cineplex Entertainment Corporation.
20041129	Comcast Corporation	Liberty Media Corporation	Encore ICCP, Inc.
20041130	Citigroup Inc	Lava Trading Inc	Lava Trading Inc.
20041151	Sammy Corporation	Sega Corporation	Sega Corporation.
20041153	TA IX L.P	Stephen M. Lamando	Clayton Services, Inc., and its subsidiaries, First Madison Services, Inc.

Trans #	Acquiring	Acquired	Entities
20041168	Cypress Merchant Banking Partners II, L.P.	Dana Corporation	AAG Brasil Ind. E Com. De Autopecas, Ltda., Fanacif S.A., Auto Parts Acquisition LLC, Iroquois Tool Systems, Inc., Beck/Arnley Worldparts Corp., Dana Japan, Ltd., Brake Parts Canada Inc., Farloc Argentina, SAIC, Brake Systems Inc., Injection Research Specialists, Inc., BWD International Inc., Durakool Inc., C.A. Danaven, Dana Automotive Limited, Canadados Universales de Mexico S.A. de C.V., Coupled Products, Inc., Echlin, Inc., Gard Corp., Dana Argentina S.A., Friction Materials, Inc., Dana Canada Corporation, Dana Industries Ltda., Dana Canada Inc., Dana Spicer Europe Limited, Dana Corporation, Echlin Agrentina S.A., Dana Global Holdings Inc., Echlin de Venezuela C.A., Friction, Inc., Grupo-Echlin Automrotiz S.A. de C.V., Wix Filtron Sp. Zo.o, Inversora Sabana S.A., Echlin de Venezuela C.A., Krizman International, Automotive Brake Company Inc., Pellegrino Distribuidora Autopecas Ltda., Arvis S.R.L., Quinton Hazell Automotive Limited, Quinton Hazell Deutschland GmbH, M., Friesen GmbH, Quinton Hazell France S.A.S., Quinton Hazell Italia Spa, Tianjin Wix Filter Corp. Ltd., Wix Dana Corp., Wix Filtration Media Specialists, Inc., BWDAC, Inc.
20041169	Cypress Merchant Banking Partners II, L.P.	Automotive Aftermarket Holdings Corp.	Automotive Aftermarket Holdings Corp.
Transactions Granted Early Termination—07/26/2004			
20041123	Arch Coal, Inc	Arch Coal, Inc	Canyon Fuel Company, LLC, Hassel Auto Group, Inc., Hassel Auto West, Inc., Hassel Motors, Inc.
20041158	Willis Stein & Partners, III, L.P	McAdams, Inc	McAdams, Inc.
20041163	Harold E. Riley	Alderwoods Group, Inc	Security Plan Life Insurance Company.
20041165	Kotobuki Fudosan Ltd	The Pepsi-Cola Bottling Company of Salisbury, Maryland.	The Pepsi-Cola Bottling Company of Salisbury, Maryland.
Transactions Granted Early Termination—07/27/2004			
20041174	SunTrust Banks, Inc	National Commerce Financial Corporation.	NBC Capital Markets Group, Inc., NBC Insurance Services, Inc., NCF Financial Services, Inc.
Transactions Granted Early Termination—07/28/2004			
20040716	Sanofi-Synthelabo	Aventis	Aventis.
20041126	Allied Capital Corporation	Windward Capital Associated, L.P	Financial Pacific Company.
20041161	MarkWest Energy Partners, L.P	Stephen J. Heyman	ACGC Gathering Company, L.L.C., American Central Eastern Texas Gas Company, L.P.
20041162	MarkWest Energy Partners, L.P	Stephen E. Jackson	ACGC Gathering Company, L.L.C., American Central Eastern Texas Gas Company, L.P.
20041167	Worthington Industries, Inc	B-G Western Holdings, LLC	B-G Western Holdings, LLC, Western Industries, Inc.
Transactions Granted Early Termination—07/29/2004			
20041143	Harvest Partners IV, L.P	KKR 1996 Fund L.P	Evenflo Company, Inc.

Trans #	Acquiring	Acquired	Entities
20041160	Emerson Electric Co	Marconi Corporation plc	Administrativa Marconi Communications S.A. de C.V., Marconi Columbia, S.A., Marconi Communications Canada, Inc., Marconi Communications de Mexico S.A., de C.V., Marconi Communications Exportal, S.A. de C.V., Marconi Communications, Inc., Marconi Intellectual Property (Ringfence) Inc., Marconi Polska Sp zoo.
20041166	WebMD Corporation	Cornerstone Equity Investors IV, L.P	VIPS, Inc.
20041176	Johnson Controls, Inc	Grupo IMSA, S.A. De. C.V	Enertec Colombia, Ltda., Enertec do Brasil, Ltda., Enertec Exports S. de R.L. de. C.V., Enertec Mexico, S. de R.L. de C.V., Enertec Venezuela, SRL, Enertek Argentina, SRL, GES Battery Systems, LLC, GES Technologies, S. De R.L., de C.V.

Transactions Granted Early Termination—07/30/2004

20041127	HIP Foundation, Inc	Carlyle Partners III, L.P	ConnectiCare Holding Company, Inc.
20041170	Stab Development S.a.r.l	KKR European Fund Limited Partnership, Alberta, Canada, L.P.	Stabilus HoldCo3 (drei) GmbH.
20041173	Wallace D. Malone, Jr	Wachovia Corporation	Wachovia Corporation
20041175	Modern Times Group MTG AB	StoryFirst Communications, Inc	StoryFirst Communications, Inc.
20041177	Time Warner Inc	Inner City Broadcasting Corp	Urban Cable Works of Philadelphia, L.P.
20041178	Yamanouchi Pharmaceutical Co. Ltd	Fujisawa Pharmaceutical Co. Ltd	Fujisawa Pharmaceutical Co. Ltd.
20041180	Wind Point Partners V, L.P	Industrial Growth Partners, L.P	Breeze Industrial Products Corporation.
20041185	Flextronics International Ltd	Peripheral Imaging Corporation	Peripheral Imaging Corporation.
20041189	Thomas H. Lee Equity Fund V, L.P	Nortek Holdings, Inc	Nortek Holdings, Inc.
20041198	Digitas Inc	Modem Media, Inc	Modem Media, Inc.
20041202	DrugMax, Inc	Familymeds Group, Inc	Familymeds Group, Inc.
20041205	Apax Excelsior VI, L.P	Spyder Active Sports, Inc	Spyder Active Sports, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 04–18127 Filed 8–6–04; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 041–0031]

Sanofi-Synthelabo, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 26, 2004.

ADDRESSES: Comments should refer to "Sanofi-Synthelabo, *et al.*, File No. 041 0031," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Frontczak, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3002.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 28, 2004), on the World Wide Web, at "*http://www.ftc.gov/os/2004/07/index.htm.*" A paper copy can be obtained from the FTC Public Reference

Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before August 26, 2004. Comments should refer to "Sanofi-Synthelabo, *et al.*, File No. 041 0031," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential." [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Sanofi-Synthélabo ("Sanofi") and Aventis. The Consent Agreement contains an Order to Maintain Assets to preserve, among other things, the viability, marketability, and competitiveness of the assets to be divested pending their divestiture. The Consent Agreement also contains a Decision and Order that is designed to remedy the anticompetitive effects of Sanofi's proposed acquisition of Aventis. Under the terms of the Consent Agreement, the companies will be required to: (1) Divest all Arixtra® assets; (2) divest to Pfizer all United States intellectual property and key clinical trials, currently conducted by Aventis, related to Camptosar®; and (3) divest Aventis' royalty rights to Sepracor's Estorra®.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

Pursuant to a tender offer launched January 26, 2004, Sanofi proposes to acquire Aventis. The offer accepted by Aventis' Board values Aventis at approximately $64 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for: (1) Factor Xa inhibitors; (2) cytotoxic drugs that treat colorectal cancer; and (3) prescription drugs that treat insomnia. The proposed Consent Agreement would remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

Factor Xa Inhibitors

Factor Xa inhibitors are anticoagulant products that are used in acute settings to treat and prevent venous thromboembolism ("VTE") and other conditions relating to excessive blood clot formation. Although unfractionated heparin was once the standard of care for the acute prevention and treatment of VTE and related complications, factor Xa inhibitors have become the treatment of choice due in large part to a better side effect profile and ease of use. Annual U.S. sales of factor Xa inhibitors totaled $1.35 billion in 2003.

The U.S. market for factor Xa inhibitors is highly concentrated. Aventis' market leading Lovenox® currently accounts for over 90 percent of factor Xa inhibitor sales in the United States. Sanofi markets Arixtra®, a more recent market entrant whose competitive significance is likely to expand as it receives Food and Drug Administration ("FDA") approval for new indications. Although other factor Xa inhibitors are available in the United States—including Pfizer's Fragmin® and Pharmion's Innohep®—they have not been successful competitors in the market.

As with most pharmaceutical products, entry into the manufacture and sale of factor Xa inhibitors is difficult, expensive and time consuming. In order to enter the market, a firm must incur substantial sunk costs to research, develop, manufacture and sell factor Xa inhibitors. In addition, the approval for multiple indications is critical to the success of a new factor Xa inhibitor. Gaining FDA approval for each indication takes a significant amount of time because of the need to conduct clinical trials in support of each indication. New or expanded entry sufficient to deter or counteract the anticompetitive effects of the acquisition likely would not occur in a timely manner. New entry is unlikely to occur in the face of a 5 to 10 percent increase in the price of these drugs, and current factor Xa inhibitors also would be unlikely to counteract such a price increase. The only firm that is likely to launch a product in the United States in the foreseeable future is AstraZeneca, which recently filed a New Drug Application with the FDA for its own factor Xa inhibitor, Exanta®. However, Exanta® is a direct thrombin inhibitor rather than a factor Xa inhibitor. Further, AstraZeneca is seeking approval for only one of the indications that factor Xa inhibitors are approved for. Therefore, it is unlikely that entry by Exanta® would have a sufficient, timely effect on competition to resolve the competitive effects of the proposed acquisition.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for factor Xa inhibitors by eliminating the actual, direct, and substantial competition between Sanofi and Aventis. This loss of competition likely would result in higher prices.

The proposed Consent Order maintains competition in the factor Xa inhibitor market by requiring that: (1) Sanofi divest Arixtra® to GlaxoSmithKline; (2) Sanofi transfer to GlaxoSmithKline the manufacturing

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

facilities used by Sanofi to produce Arixtra® in final finished form; (3) Sanofi contract manufacture the active pharmaceutical ingredient ("API") and certain intermediate step ingredients until such time as GlaxoSmithKline obtains the necessary regulatory approvals and supply sources that will allow it to manufacture the API independently; (4) Sanofi assist GlaxoSmithKline in completing three key clinical trials; (5) Sanofi provide incentives to certain employees to continue in their positions until the divestiture is accomplished; (6) for a period of time after the assets are divested, Sanofi provide GlaxoSmithKline an opportunity to enter into employment contracts with individuals who have experience relating to Arixtra®; and (7) Sanofi take steps to maintain the confidentiality of confidential information related to Arixtra®.

Cytotoxic Drugs for the Treatment of Colorectal Cancer

Colorectal cancer is the second leading cause of cancer-related deaths in the United States for both men and women. Approximately 146,940 new cases of colorectal cancer will be diagnosed in 2004 and 56,730 people will die from the disease. Cytotoxic colorectal cancer drugs have been shown to be more effective than older, generic drug treatments. The U.S. market for cytotoxic colorectal cancer therapies currently generates approximately $1 billion in annual sales.

The U.S. market for cytotoxic colorectal cancer drugs is highly concentrated. Two major cytotoxic products approved by the FDA for the treatment of colorectal cancer are Sanofi's product, Eloxatin®, and Camptosar®, a product developed by Yakult Honsha ("Yakult") and marketed in the U.S. by Pfizer. Combined, the two products have over 80 percent of the U.S. cytotoxic colorectal cancer drug market. Roche is the only other provider in the market with more than a 1 percent market share.

Entry into the market for cytotoxic colorectal cancer drugs is difficult, time consuming, and costly because of the lengthy development periods, the need for FDA approval, and the substantial sunk costs required to research, develop, manufacture and sell these drugs.

Although Aventis does not directly market a cytotoxic colorectal cancer drug in the United States, there are significant contractual entanglements between Aventis and Pfizer that affect the U.S. market. Pfizer licenses irinotecan (under the brand name Camptosar®) from Yakult for sales in the United States. Aventis licenses irinotecan (under the brand name Campto®;) from Yakult for sales in other territories. Under a data transfer agreement, Pfizer and Aventis share the results of key clinical trials. Aventis also possesses a number of U.S. patents relating to Camptosar®. These entanglements allow Aventis to impact the Camptosar® business. The proposed acquisition thus creates an overlap in the U.S. market between Sanofi's Eloxatin® and Aventis' contractual ties to Camptosar®. This overlap affords the combined firm (1) access to competitively sensitive information from its main competitor, Pfizer, and (2) control over key clinical trials that Pfizer relies on for FDA applications that would expand Camptosar® indications in the United States. Therefore, the proposed acquisition would cause significant anticompetitive harm in the U.S. market for cytotoxic colorectal cancer drugs by reducing the actual, substantial competition between Sanofi and Pfizer.

The proposed Consent Agreement eliminates the potential anticompetitive effects of the acquisition in the U.S. cytotoxic colorectal cancer drug market by requiring the parties to: (1) Divest to Pfizer key clinical studies for Campto® that are currently conducted by Aventis, together with certain U.S. patents and other assets pertaining to territories where Pfizer currently markets Camptosar®; (2) provide Pfizer with the opportunity to enter into employment contracts with certain employees involved in the key clinical trials; (3) deliver to Pfizer all confidential business information regarding Camptosar® that Aventis has in its possession; and (4) commit to maintain the assets to be divested in a manner that preserves the integrity, viability, and value of the assets, until the divestitures are accomplished.

Prescription Drugs for the Treatment of Insomnia

More than 50 million people in the United States suffer from insomnia, the perception or complaint of inadequate sleep. The U.S. insomnia treatment market is estimated to have generated approximately $1.65 billion in 2003 sales and is projected to increase to $3.36 billion by 2010.

Sanofi dominates the market for prescription drugs that treat insomnia with its well known product, Ambien®. Sanofi's market share in the United States exceeded 85 percent in 2003. Sepracor is developing a product called Estorra®, which is expected to be launched in the beginning of 2005 and is likely to become a significant competitor to Ambien®. Although Aventis does not market a prescription sleep drug in the United States, there are financial and informational entanglements between Aventis and Sepracor relating to the Estorra® product. Therefore, the acquisition creates an overlap between Ambien® and Aventis' royalty rights to Estorra®.

The proposed acquisition would create anticompetitive effects in the market for prescription drugs that treat insomnia by diluting competition between Sanofi and Sepracor. Although several new products are expected to enter the market in the next five years, it is unlikely that the entry of these products, alone or in combination, could counteract the anticompetitive effects of the acquisition. Accordingly, allowing Sanofi to acquire Aventis' rights to Estorra would reduce Sanofi's incentives to compete against Sepracor in the prescription sleep drug market and would be likely to lead to higher prices.

The proposed Consent Agreement remedies the acquisition's anticompetitive effects by requiring the parties to divest their contractual rights to Estorra®. No later than 90 days after the Order becomes final, the parties are required to divest their rights to Estorra® royalties in a manner that receives Commission approval, either to Sepracor or to a third party approved by the Commission.

Interim Monitor

The Commission has appointed Francis J. Civille as Interim Monitor to oversee the asset transfers and to ensure Sanofi's and Aventis' compliance with all of the provisions of the proposed Consent Order. Mr. Civille has over 35 years of experience in the pharmaceutical industry and is well-respected in the industry. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Order requires Sanofi and Aventis to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission, Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. 04–18128 Filed 8–6–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter AT, Office for Civil Rights (OCR), as last amended at 65 FR 193279–81, dated April 11, 2000, is being amended to primarily realign the OCR Headquarters functions. The Changes are as follows:

I. Under Chapter AT, Office for Civil Rights (OCR), delete in its entirety and replace with the following:

AT.00 Mission
AT.10 Organization
AT.20 Functions

Section AT. Mission: OCR conducts public education, outreach, complaint investigation and resolution, and other compliance activities to prevent and eliminate discriminatory barriers, to ensure the privacy of protected health information, and to enhance access to HHS-funded programs. OCR's activities concentrate on ensuring integrity in the expenditure of Federal funds by making certain that such funds support programs that ensure access by intended recipients of services free from discrimination on the basis of race, national origin, disability, age, and gender; and by maintaining public trust and confidence that the health care system will maintain the privacy of protected health information while ensuring access to care. These OCR activities enhance the quality of services funded by the Department and the benefit of those services by working with covered entities to identify barriers and implement practices that can avoid potentially discriminatory impediments to quality services and protect the privacy of health information. The Department's goal of providing quality health and human services cannot be met when individuals do not receive these services as a result of practices that violate their fundamental rights of nondiscrimination or privacy.

Section AT.10 Organization: The Director of the Office for Civil Rights reports to the Secretary and is responsible for overall coordination of the Department's civil rights and Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule compliance and enforcement activities. The Director also serves as the Secretary's Special Assistant for Civil Rights. The Office is comprised of the following components:

- Office of the Director (ATA)
- Office of the Deputy Director for Civil Rights (ATB1)
- Office of the Deputy Director for Health Information Privacy (ATB2)
- Office of the Deputy Director for Management Operations (ATB3)
- Regional Offices for Civil Rights (ATD1 through ATDX)

Section AT.20 Functions: A. Office of the Director (ATA). As the Department's chief officer for the enforcement of civil rights and the HIPAA Privacy Rule, and as adviser to the Secretary on civil rights and the HIPAA Privacy Rule, the Director: Is responsible for the overall leadership and operations of the Office for Civil Rights; establishes policy and serves as adviser to the Secretary on civil rights issues and the HIPAA Privacy Rule, including intra-departmental activities aimed at incorporating civil rights and HIPAA Privacy Rule compliance into programs the Department administers and/or operates directly; represents the Secretary before Congress and the Executive Office of the President on matters relating to civil rights and the HIPAA Privacy Rule; sets overall direction and priorities of the Office through budget requests, strategic planning, and results-oriented operating and performance plans; maintains liaison with other Federal departments and agencies charged with civil rights enforcement responsibilities and compliance with the HIPAA Privacy Rule; coordinates with the White House on civil rights, the HIPAA Privacy Rule and related policies; maintains liaison with the Congress in coordination and consultation with the Assistant Secretary for Legislation; and determines policies and standards for civil rights and HIPAA Privacy Rule investigations, enforcement and voluntary compliance and outreach programs in coordination with the Secretary and other Federal agencies.

A Principal Deputy Director performs duties with the authority of the Director as delegated by the Director, assists in coordination and integration of the functions of all Deputy Directors, including cross-cutting activities such as media, public, and inter-governmental relations, and acts for the Director in his/her absence.

B. Office of the Deputy Director for Civil Rights (ATB1). This office is headed by a Deputy Director who reports to the Director, OCR. The Deputy Director for Civil Rights oversees civil rights program operations, policy development, and public education and outreach activities nationwide.

The Office of the Deputy Director for Civil Rights includes operations, policy and public education and outreach functions that are managed through cross-functional teams that focus on: (1) Title VI of the Civil Rights Act of 1964, the Multi-Ethnic Placement Act (MEPA), Title VI and XVI of the Public Health Service Act (Hill-Burton Community Services Assurance provisions), Section 1808 of the Small Business and Job Protection Act, and Title IX; (2) Disability, Age and other nondiscrimination statutes and regulations; and (3) Medicare pre-grant certification reviews, program reporting, surveys and civil rights training.

These teams develop policy and assist in implementation of OCR's civil rights compliance and enforcement program; plan and coordinate OCR's high priority civil rights program initiatives; advise OCR staff nationwide on case development and quality; assist in developing negotiation, enforcement, and litigation strategies; identify training needs and design civil rights-specific training programs for OCR staff; review challenges to OCR civil rights findings; conduct policy and HHS program-related research; coordinate OCR's government-wide responsibilities for implementation of Age Discrimination Act requirements; develop civil rights surveys, and provide civil rights and program advice to OCR staff nationwide, other HHS components and external stakeholders.

Through the team structure, the Office of the Deputy Director for Civil Rights also provides technical assistance to and conducts pre-grant reviews of health care providers seeking Medicare certification and other program participation funded by the Department to determine their ability to comply with civil rights requirements; provides guidance and assistance to OCR Regional Offices to ensure uniform and efficient implementation of pre-grant processing policies and procedures; maintains civil rights assurance of compliance forms for permanent reference; and maintains liaison with and provides civil rights technical assistance and advisory services to HHS Operating Divisions (OPDIVS), as well as national advocacy, beneficiary, and

provider groups, and to other Federal departments and agencies with respect to civil rights outreach programs, initiatives, and mandates.

C. Office of the Deputy Director for Health Information Privacy (ATB2). This office is headed by a Deputy Director who reports to the Director, OCR. The Deputy Director for Health Information Privacy oversees HIPAA Privacy Rule program operations, policy development and administrative rule-making, public education and outreach activities nationwide and coordination of OCR nationwide Privacy Rule compliance activities and the application of policies to ensure consistency in interpretation and compliance enforcement.

The Office of the Deputy Director for Health Information Privacy includes operations, policy and public education and outreach functions that are managed through cross-functional teams.

These teams develop policy and assist in implementation of OCR's HIPAA Privacy Rule compliance and enforcement program; plan and coordinate OCR's high priority HIPAA Privacy Rule program initiatives; staff HIPAA and Privacy Rule intra- and inter-agency work groups; review challenges to OCR HIPAA Privacy Rule findings; conduct policy and HHS program-related research; advise OCR staff nationwide on case development and quality; assist in developing negotiation, enforcement, and litigation strategies; identify training needs and design HIPAA Privacy Rule-specific training programs for OCR staff; develop HIPAA Privacy Rule surveys; identify key issues and develop guidance to support public speaking requirements related to the HIPAA Privacy Rule; develop educational materials as well as other documentation to address public information requirements; and provide HIPAA Privacy Rule and program advice to OCR staff nationwide, other HHS components and external stakeholders.

D. Office of the Deputy Director for Management Operations (ATB3). This office is headed by a Deputy Director who reports directly to the Director, OCR. The Deputy Director coordinates the day-to-day operations of headquarters and the regions, overseeing management operations, management policy, administrative contacts, budget, information technology, program management data analysis and human resources activities, including OCR's internal coordination responsibilities.

The Deputy Director for Management Operations oversees performance accountability and results management, resource planning, budget and performance integration, information technology, management policy and operations; and acts as senior advisor on matters that cross functional areas such as EEO, labor relations, etc.

The Deputy Director for Management Operations leads the Office for Civil Rights headquarters resource management functions as well as regional management operations. The Deputy is responsible for the development and implementation of OCR management strategies, business processes and standard operating procedures that fully support the attainment of OCR program goals and mission critical initiatives.

In coordination with the Deputy Director for Civil Rights and the Deputy Director for Health Information Privacy, the Office of the Deputy Director for Management Operations works to ensure fair, responsible and effective allocation of resources in order to achieve maximum benefit for the organization as a whole.

The Deputy Director, working through cross-functional teams, is responsible for performance accountability, results management, and quality assurance initiatives to maximize effectiveness and efficiency of OCR programs. The Deputy Director oversees the development of outcome-oriented management strategies and associated support systems such as performance program measurement and assessment systems, information resources systems and other program support systems.

The Deputy Director oversees the formulation and execution of OCR's annual budgets and financial operating plans and is responsible for ensuring that OCR effectively integrates its performance metrics and budget processes to support decision-making related to funding constraints and program results.

As part of the budget and performance integration and performance accountability functions, the deputy Director leads the development of data collection processes to ensure that OCR is able to measure its performance consistent with its commitments made as part of the Government Performance and Results Act; and directs the development and utilization of systems for the establishment and tracking of more effective benchmarks for performance and the cost effectiveness of OCR's results.

The Deputy Director for Management and Operations provides leadership to the OCR executive team for the development of the key management objectives that drive the continuous improvement and updating of the OCR strategic vision and attendant organizational change requirements. This Deputy develops and implements action plans to ensure that OCR's management functions fully support its mission needs.

The Office of the Deputy Director for Management Operations includes responsibility for the following functions: (1) Budget and Performance Integration; (2) Performance Accountability and Results Measurement; (3) Management Policy; (4) Information Systems and Data Analysis; (5) Executive Secretariat and Program Support; and (6) Regional Operations. OCR Regional Managers report to the Deputy Director for Management Operations.

1. Budget and Performance Integration. Staff working on this function develop OCR's annual integrated budget and performance plan, incorporating a results, program quality and cost effectiveness focus into development and execution of integrated performance-based budgets and into the ongoing assessment and management of OCR's resource requirements.

2. Performance Accountability and Results Management. Staff working on this function oversee OCR's implementation of the performance objectives set in its annual integrated budget and performance plan. This includes establishing measures for organizational performance and setting regional and HQ component targets as a share of nationwide results-centered objectives. Staff working on this function monitor and report to the Director on accomplishments in meeting program results and program efficiency objectives.

The staff work on a day-to-day basis with regional offices in managing resources to achieve performance measures and provide assistance to the regions in accessing OCR Civil Rights and Privacy Rule policy and program operations technical assistance provided by staff of the Deputy Directors for Civil Rights and Health Information Privacy. Staff working on this function also ensure that all OCR staff performance plans incorporate the results and metrics set in the OCR integrated performance budget and in OCR leadership's performance contract and Senior Executive Service (SES) plans.

3. Management Policy. Staff working on this function serve collectively as OCR's internal consultant and source of expert technical assistance on: organizational development; strategic planning; standards of conduct and ethics (Deputy Ethics Officer);

management training; program and program support-related contracting; competitive sourcing (A–76); human capital management [e.g., staffing and workforce analysis, transition and succession planning, awards and special honors programs, support and advisory assistance to managers throughout OCR with liaison to the Rockville HR Center and other experts on sensitive personnel issues (EEO, labor and management relations, performance and conduct-based actions)]; delegations of authority; and internal controls. The Deputy Director for Management Operations leads, coordinates and administers OCR's ongoing implementation of the President's Management Agenda (PMA) objectives in: Strategic Management of Human Capital; Competitive Sourcing; Improved Financial Performance; Expanded E-Government; and Budget and Performance Integration. Staff working on this function work in coordination with others within the Office of the Deputy Director for Management Operations to monitor and manage the PMA objectives.

4. Information Resources and Data Analysis. Staff working on this function are led by OCR's Chief Information Officer (CIO) and are responsible for: information resources management policy; program systems development, maintenance and modification; operation of the Program Information Management System, OCR's workflow and document management system; the systems security of OCR's program systems; reporting on workload and related resource use; design and application of management data reports supportive of program operations and management; analysis of data in PIMS; statistical analysis in support of program management and compliance processing; maintenance and updating of OCR's website; coordination of OCR Paperwork Reduction Act and Government Paperwork Elimination Act clearance responsibilities working with program staff as appropriate; development of short- and long-term information resource management policy and plans; and liaison with HHS IRM resources, including the Information Technology Service Center (ITSC) and the OS and HHS Chief Information Officers.

5. Executive Secretariat and Program Support. Staff working on this function provide consolidated document, e-mail, telephonic, and TDD intake for OCR HQ and related scanning and entry and assignments to OCR managers for further staff assignments in PIMS (*e.g.*, correspondence, complaints, and HQ outreach and public education projects). The staff respond to general and routine correspondence using templates developed for this purpose and make referrals of correspondence that is not within OCR's nondiscrimination or Privacy Rule jurisdiction.

Staff working on this function also provide consolidated program support services (travel management, supply management, timekeeping, PowerPoint design, logistics liaison with OSEO, reports on phone center and toll-free line use and reference of calls to regional offices, and logistics support for OCR special projects and activities.

E. Regional Offices for Civil Rights (ATD1 through ATDX). The Regional Managers, Office for Civil Rights, report directly to the Deputy Director for Management Operations.

Within goals set by the Director, OCR and management policy and operational goals set by the Director for Management Operations, the Regional Manager in each of OCR's ten regions: develops and delivers a comprehensive regional enforcement and voluntary compliance program to carry out the office mission; manages staff and other resources allocated to the region; directs a program to meet OCR objectives in such areas as quantity, quality and timeliness of work products in investigations and voluntary compliance activities; serves as a resource to the HHS Regional Directors on civil rights and Privacy Rule matters; disseminates and implements OCR policies and procedures; establishes priorities for work assigned to the civil rights attorney in the regional attorney's office; determines compliance of recipients of Federal financial assistance with nondiscrimination regulations and of covered entities under the health Information Privacy Rule; initiates voluntary compliance; approves, disapproves, and monitors implementation of voluntary compliance and corrective plans; approves, disapproves, and monitors State agency Methods of Administration; determines the most effective enforcement method, including conciliation of differences between complainants and recipients; recommends to the Director administrative and/or judicial enforcement actions when voluntary compliance cannot be obtained; participates in headquarters policy and program development; prepares regional budget proposal and supporting resource and work measurement justification; implements final budget allotment for region; implements the part of annual integrated budget and performance plans and financial operating plans pertaining to the conduct of complaint investigations, compliance, reviews, voluntary compliance activities, staff training and other regional office activities; coordinates with the Freedom of Information Officer and OCR headquarters on information requests and news media inquiries; establishes and maintains effective relations with offices of Governors, mayors, county officials, and other key State and local officials, and furnishes advice and assistance to them in civil rights and Privacy Rule matters; strives to develop mutually beneficial Federal-State-local partnerships; responds to Congressional inquiries as appropriate and in accordance with Office for Civil Rights protocol; implements court decisions as they pertain to OCR's program; and provides input into and implements OCR's affirmative action plan.

OCR's regional Program Information Management staff provide the Regional Manager with evaluative reports and advice concerning the Regional Office's achievement of its overall goals and objectives, specifically with regard to: The quantity of compliance activities completed; the completion of compliance actions within established time frames; and the achievement of change for beneficiaries. These staff also monitor regional attainment of integrated budget and performance objectives and targets set for the region; oversee regional resource planning; conduct regional data collections; provide for support services and computer input; assess and assist in meeting regional training needs; serve as liaison to OSEO and HR Center for services such as personnel, space and supply acquisition and utilization and maintenance; and directly provide support for OCR-managed systems and operations such as PIMS (workflow, document and correspondence control), office safety, and travel.

A. Investigative Functions—Under its enforcement authorities the Regional Office serves as a complaint intake unit. When complaints are received, the Office conducts complaint investigations of health and human services institutions to eliminate unlawful discrimination and ensure equal opportunity for the beneficiaries of Federal financial assistance provided by the Department of Health and Human Services; and the Office further seeks to ensure that covered entities are in compliance with the Privacy Rule implementing the health information privacy protections of the Health Insurance Accountability and Portability Act (HIPAA). In addition, the Office determines civil rights compliance by entities that receive federal financial assistance; advises the

Regional Manager on critical enforcement actions; provides assistance to recipients for corrective action; and monitors implementation of corrective plans; coordinates enforcement activities with OPDIV's regional officials, other Federal agencies and states and, as appropriate, with headquarters offices and divisions; solicits regional/area civil rights attorney's legal opinion on investigations as the Regional Manager deems appropriate; and processes all complaints received, including determination of jurisdiction and completeness.

B. Voluntary Compliance and Outreach Functions—OCR's Regional Office staff also: Conduct reviews to assist in identifying potential compliance problems; negotiate voluntary compliance with recipients of federal financial assistance, or with respect to the Privacy Rule, with entities that are covered by the Rule; advise the Regional Manager on critical compliance matters; coordinate voluntary compliance activities with OPDIVs and STAFFDIVs, regional officials, State, local and other Federal agencies and, as appropriate, headquarters offices and divisions; provide assistance and outreach services to recipients, covered entities, beneficiaries and organizations as requested or referred; establish and maintain effective relationships with the Offices of Governors, State and local officials in order to provide advice and assistance to them on civil rights matters; establish and maintain liaison with the HHS Regional Director in carrying out speaking engagements, media appearances and interviews.

Regions III and IX carry out OCR's functional responsibilities under an organization structure that includes field offices in Washington, DC and Los Angeles, CA respectively. In all regions, the management and supervisory structure consists of a Regional Manager and a Deputy Regional Manager.

II. Continuation of Policy: Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office for Civil Rights heretofore issued and in effect prior to this reorganization are continued in full force and effect.

III. Delegation of Authority: All delegations and redelegations of authority made to officials and employees of the Office for Civil Rights will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IV. Funds, Personnel and Equipment: Transfer of organizations and functions affected by this reorganization shall be accompanied by direct and support funds, positions, personnel, records, equipment, supplies and other sources.

Dated: July 12, 2004.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 04–18098 Filed 8–6–04; 8:45 am]

BILLING CODE 4110–60–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:

Nancy J. Strout, Ph.D., University of Southern Maine: Based on the report of an inquiry conducted by the University of Southern Maine (USM) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Nancy J. Strout, Ph.D., former interviewer, USM, engaged in scientific misconduct in research supported by Substance Abuse and Mental Health Services Administration (SAMSHA) cooperative agreement UD1 SM52362, "Maine evaluation of consumer-operated services."

Specifically, PHS found that the Respondent engaged in scientific misconduct by fabricating interview data for at least 50 interviews of human subjects enrolled in the Maine Evaluation of Consumer-Operated Services Project for mental health services, and possibly up to 150 interviews or more (based on calculations performed by USM), causing the project to nullify all 346 interviews due to her involvement at one or more stages with the subjects.

PHS also found that the Respondent is not presently responsible to be a steward of Federal funds because she falsified invoices for interviews and receipts for interview incentive payments in pursuit of a fraudulent scheme to obtain payment for services she did not render.

Dr. Strout has entered into a Voluntary Exclusion Agreement in which she has voluntarily agreed for a period of three (3) years, beginning on July 23, 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. 04–18076 Filed 8–6–04; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04287]

Purchase, Distribution and Tracking of Supplies to Support HIV/AIDS-Related Laboratory Services in the Republic of Uganda; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to The overall aim of this program is ensure a full-supply of laboratory reagents and materials for HIV-related laboratory services at all health center III (HC III) facilities and above, but excluding reference laboratories, to enable President's Emergency Plan for AIDS Relief (PEPFAR) goals of expanded HIV testing, care and treatment to be met. This program announcement (PA) is intended to complement PA # 04223, "Laboratory Service Strengthening at Health Centre IV and Above in the Republic of Uganda". The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the National Medical Stores (NMS) of the Republic of Uganda.

NMS is the mandated institution in Uganda for the purchase and distribution of health-related commodities to government health facilities in Uganda. NMS has

demonstrated their capacity for procurement, distribution and tracking of health-related commodities to government health facilities over the past 12 months through the essential drugs pull system. Because program implementation is to begin in September 2004 it is necessary to work with an organization already providing supplies to the government health sector. NMS will in addition work with the Joint Medical Stores (JMS) to ensure that NGO and faith-based health facilities have access to laboratory supplies through an integrated logistics system. The logistics system will have the capacity to absorb donations from donors other than CDC, either as cash or product, and to distribute and track these supplies; examples are the HIV test kits procured by MAP funding and the laboratory supplies purchased and distributed by the TB and malaria control programs.

NMS is based in Entebbe and has good warehousing facilities and well-developed systems for procurement, storage, stock control and distribution. It is expected that the existing facilities and systems will absorb the increased level of activities resulting from implementation of the laboratory logistics system though inevitably some increase in capacity will be needed. Vehicles, which currently deliver essential drug kits around the country, will, in addition, carry the laboratory supplies pre-packaged for each health unit.

C. Funding

Approximately $1,000,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Jonathan Mermin, MD, MPH, Global Aids Program [GAP], Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], PO Box 49, Entebbe, Uganda. Telephone: +256–41320776. E-mail: *jhm@cdc.gov*.

William P. Nichols,

MPA, Acting Director, Procurement and Grants Office,Centers for Disease Control and Prevention.

[FR Doc. 04–18101 Filed 8–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 05004]

Comprehensive STD Prevention Systems, Prevention of STD-Related Infertility, and Syphilis Elimination—Amendment

A notice announcing the availability of fiscal year (FY) 2005 funds for Comprehensive STD Prevention Systems, Prevention of STD-Related Infertility, and Syphilis Elimination was published in the **Federal Register** on July 21, 2004, Volume 69, Number 139, pages 43595–43607. The notice is amended as follows:

- Page 43604, second column, CSPS number 2—Sentence should read, "When federal funds are used to develop or purchase STD health education materials, they shall contain medically accurate information regarding the effectiveness or lack of effectiveness of condoms in preventing the STD the materials are designed to address.
- Page 43605, first and second columns, V. Application Review Criteria—Please delete and disregard the review criteria listed for QEI and GISP; these scoring systems do not apply, as all applications will undergo technical acceptability reviews (TAR).
- Page 43605, second column, V.2. Review and Selection Process, second paragraph—Please replace "objective review panel" with "technical acceptability review group".
- Page 43607, first column, VI.3. Reporting Requirements, numbers 2 and 3 will become numbers 3 and 4. Please insert the following language as reporting requirement number 2, "Annual progress report, due March 31 following the end of each budget period. Include the following items: reporting budget period activities and objectives; Tables 1 through 3, previously listed for the interim progress report; and measures of effectiveness, also previously listed for the interim progress report.

Dated: August 3, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–18109 Filed 8–6–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 17166–17167, dated April 1, 2004) is amended to reorganize the Division of Parasitic Diseases, National Center for Infectious Diseases.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Division of Parasitic Diseases (CRS)* and insert the following:

Division of Parasitic Diseases (CRS). (1) Conducts surveillance, investigations, and studies of parasitic diseases to define disease etiology, mode of transmission, and populations at risk and to develop effective methods for diagnosis, prevention, control, and elimination; (2) conducts or participates in clinical, field, and laboratory research to develop, evaluate, and improve laboratory methodologies and materials and therapeutic practices used for rapid and accurate diagnosis and treatment of parasitic diseases; (3) provides epidemic aid and epidemiologic consultation, upon request, to State and local health departments, other Federal agencies, and national and international health organizations; (4) provides reference/diagnostic services for parasitic diseases to State and local health departments, other Federal agencies, and national and international health organizations; (5) conducts a program of research and development in the biology, ecology, host-parasitic relationships, and control of parasitic diseases; (6) conducts laboratory studies of selected parasitic infections, emphasizing animal models and in vitro systems for parasitic relationships, chemotherapy, and immunology, to develop effective methods for diagnosis, prevention, and

control; (7) provides scientific and technical assistance to other components within NCID or CDC when the work requires unique expertise or specialized equipment not available in other NCID or CDC components; (8) provides intramural and extramural technical expertise and assistance in professional training; (9) serves as World Health Organization (WHO) Collaborating Centers for Cysticercosis, Research Training and Control of Dracunculiasis, Control and Elimination of Lymphatic Filariasis, Evaluating and Testing New Insecticides, Insecticide Resistance, Insect Vectors; Malaria Control in Africa, Human African Trypanosomiasis, Production and Distribution of Malaria Sporozoite ELISAs, Collaborating Centers for Eradication of Guinea Worm; (10) maintains field-based research stations in Guatemala in collaboration with Universidad del Valle de Guatemala, and in Kenya in collaboration with KEMRI; (11) carries out this mission in a workplace that promotes professional development and recognizes the importance of the individual and the team; (12) provides communication support to enhance overall methods of dissemination of credible information to the public, local and state health officials, international partners and private funders in order to inform health decisions to prevent and control parasitic diseases in the United States and abroad. The services are provided through the partnerships with health care professionals, state, local and federal agencies with the United States, foreign governments, national and international organizations, and the public.

Delete in its entirety the functional statement for the *Data Management Activity (CRS–2)* and insert the following:

Data Management Activity (CRS12). (1) Provides statistical and information systems consultation for study design and protocol development; (2) designs and implements database management systems (including geographic information systems) in support of the Division of Parasitic Diseases (DPD) projects; (3) provides data analysis and statistical consultations in support of DPD projects; develops new methodologies as needed; (4) assists in production of and provides graphics support for presentations and manuscripts related to DPD objectives; (5) evaluates new software for statistical analysis, database management, graphics production, map creation, geographical information systems, and other functions related to DPD objectives and provides support for division activities in these areas.

Delete the title and functional statement for the *Parasitic Diseases Epidemiology Branch (CRS2)* and insert the following:

Parasitic Diseases Branch (CRS2). (1) Investigates outbreaks and unusual occurrences of parasitic diseases when requested by State departments, ministries of health, the World Health Organization (WHO), and other agencies and organizations; (2) conducts surveillance of waterborne disease outbreaks and other parasitic diseases in the United States; (3) provides reference and laboratory diagnostic services to physicians and laboratories; (4) transfers technologies and expertise in laboratory diagnosis of parasitic infections to public health laboratories; (5) provides consultation on the treatment and management of parasitic diseases to clinicians, laboratorians, departments of health, and other agencies; (6) provides otherwise unavailable anti-parasitic drugs to healthcare providers and ensures compliance with the Food and Drug Administration's regulations; (7) provides leadership and technical expertise in support of the agency's bioterrorism preparedness response initiatives as they relate to waterborne venues; (8) supports the agency's overall emergency response mandate; (9) conducts research on methods to detect parasites and agents of bioterrorism in water, and developing emergency public health response plans; (10) conducts field and laboratory investigations and research on the etiology, biology, epidemiology, ecology, pathogenesis, immunology, genetics, host-parasitic relationships, chemotherapy and other aspects of parasitic diseases to develop new tools for identifying and controlling parasitic diseases; (11) develops and tests new laboratory methods and tools for improved diagnosis, control, and prevention of parasitic diseases; (12) evaluates current strategies and develops new strategies for the control and elimination of parasitic diseases; (13) carries out and evaluates operational research to support programmatic activities; (14) provides technical assistance to ministries of health, the World Health Organization, and other agencies and organizations for these programs; (15) plans, implements and evaluates such programs; (16) provides training to EIS officers, Emerging Infectious Disease Fellow, AMS/NCID Postdoctoral Fellows, Preventive Medicine Residents, Public Health Prevention Specialists, and other fellows and students; (17) prepares educational materials on the prevention and treatment of parasitic diseases; (18) conducts laboratory training courses for public health laboratories; (19) prepares and disseminates health communication materials.

Delete in its entirety the functional statement for the *Entomology Branch (CRS3)* and insert the following:

Entomology Branch (CRS3). (1) Conducts laboratory and field research to develop, evaluate, and implement effective surveillance and vector arthropod control strategies; (2) develops and utilizes analytical methods for the use of pesticides for the control of vector-borne diseases, identification and quantification of anti-parasitic drugs, pharmaceutical products, and their metabolites in body fluids and tissues of humans and other animals; (3) serves as a WHO Collaborating Center or as an international standardized reference reagent and vector repository for methods development, training, surveillance, and research for insecticide resistance, vector identification, antimalarial drug evaluation, host-vector relationships, vector control; (4) provides entomological consultation and training to local, State, foreign and international health organizations on surveillance and control of vectors and vector-borne diseases; (5) conducts studies or collaborates on other disease surveillance and control initiatives as needed.

Delete in their entirety the title and functional statement for the *Biology and Diagnostics Branch (CRS4).*

Delete in their entirety the title and functional statement for the *Immunology Branch (CRS5).*

Delete in its entirety the title and functional statement for the *Malaria Epidemiology Branch (CRS6)* and insert the following:

Malaria Branch (CRS6). (1) Conducts malaria surveillance, prevention, and control in U.S. residents and visitors, including monitoring the frequency and distribution of malaria cases that occur in U.S. residents and visitors; monitoring the efficacy and safety of antimalarial drugs for chemoprophylaxis and chemotherapy; offering clinical advice and epidemiologic assistance on the treatment, control, and prevention of malaria in the United States and in malaria endemic countries; and providing information to the U.S. public and to agencies or groups serving this population on appropriate measures to prevent and control malaria; (2) provides consultation, technical assistance, and training to malaria-endemic countries and to international and United States agencies and

organizations on issues of malaria prevention and control; (3) conducts epidemiologic, laboratory, and field-based research projects, in support of Malaria Branch mandates (#1 and #2 above), including laboratory and field studies on parasitic diseases to define biology, ecology, transmission dynamics, parasite species differences, host-parasite relationships, diagnostics, host immune responses, populations at risk, and determinants of morbidity and mortality; (4) conducts laboratory studies of malaria parasites, emphasizing animal models and in vitro systems for parasitic relationships, chemotherapy, and vaccine evaluation studies; (5) conducts field studies of malaria prevention and control tools and strategies; (6) conducts assessments of malaria monitoring and evaluation methods and program use of these methods.

Dated: July 27, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–18072 Filed 8–6–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State- and Local-Level Questionnaire for Project on Collection of Marriage and Divorce Statistics at the National, State and Local Levels.

OMB No.: New Collection.

Description: The Administration for Children and Families and the Office of the Assistant Secretary for Planning and Evaluation propose a study to explore options for the collection of marriage and divorce statistics at the national, state and local levels. The project will include the administering of a questionnaire to state- and local-level officials involved in the reporting and compilation of marriage and divorce vital records.

Respondents: State and local governments, including court officials.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Marriage/Divorce Vital Statistics Data Systems	204	1	1	204
Estimated Total Annual Burden Hours				204

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 3, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–18082 Filed 8–6–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee for People With Intellectual Disabilities (PCPID): Notice of Meeting

AGENCY: President's Committee for People with Intellectual Disabilities (PCPID), HHS.

ACTION: Notice of meeting.

DATES: Monday, September 13, 2004, from 8:30 a.m. to 5 p.m. and Tuesday, September 14, 2004, from 8 a.m. to 2 p.m. The full Committee meeting of the President's Committee for People with Intellectual Disabilities will be open to the public.

ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals with disabilities who need special accommodations in order to attend and participate in the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Executive Director, Sally Atwater, at 202–619–0634 no later than August 26, 2004. Efforts will be made to meet special requests received after that date, but availability of special needs accommodations to respond to these requests cannot be guaranteed. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues relating to individuals with intellectual disabilities concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee for People with Intellectual Disabilities, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCPID acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human

Services on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with intellectual disabilities, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with intellectual disabilities and their families.

Dated: August 2, 2004.

Sally Atwater,

Executive Director, President's Committee for People with Intellectual Disabilities

[FR Doc. 04–18115 Filed 8–6–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Development of Plasma Standards; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Development of Plasma Standards." A major objective of the workshop is to assist FDA in the development of plasma standards that will address concerns encountered over the years with the preparation, storage, shipment, and use of plasma for both transfusion and the manufacture of blood products such as Factor VIII and Immune Globulin Intravenous.

Date and Time: The 2-day public workshop will be held on August 31, 2004, from 8:40 a.m. to 4:45 p.m., and on September 1, 2004, from 9 a.m. to 12:15 p.m.

Location: The public workshop will be held at the National Institutes of Health (NIH), Lister Hill Center, Bldg. 38A, 8800 Rockville Pike, Bethesda, MD 20894.

The NIH campus is accessible via the Washington, DC Metro Transit System, Red Line, at the Medical Center Station. The Lister Hill Center is a short walk from the metro station, or you may take a shuttle bus that runs from the metro station to the various buildings on the campus. Because of security measures, visitors' parking is extremely limited and use of private vehicles may cause significant delays in entering the campus. Additionally, you will be required to show a photo ID upon entry to the campus and the Lister Hill Center.

Contact Person: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6129, FAX: 301–827–2843, e-mail: *wilczek@cber.fda.gov*.

Registration: Mail, fax, or e-mail the registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (see *Contact Person*) by August 17, 2004. Registration at the site will be done on a space available basis on the days of the workshop, beginning at 7:30 a.m. Because seating is limited, we recommend early registration. There is no registration fee for the workshop. If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is sponsoring a 2-day public workshop on plasma standards. A major objective of the workshop is to gather information on current industry practices that are in place for the manufacture of plasma, including information on the following issues and topics:

- What are appropriate freezing and storage temperatures for the components?
- What is the appropriate time to freezing?
- Should freezing and storage conditions be dependent on the final product?
- What should the recovered plasma component be called?
- What should be the expiration dating period for recovered plasma?
- Should recovered plasma be distinguished from Source Plasma? If so, how?

Following the workshop, FDA intends to develop standards for the preparation, labeling, storage, and shipping of non-cellular blood components for transfusion and for further manufacture to ensure the safety, purity, and potency of the products.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. In addition, the transcript will be placed on FDA's Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: August 2, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–18075 Filed 8–6–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before September 8, 2004.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–088556

Applicant: Deborah Leonard, Santee, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–089571

Applicant: Damon B. Corley, Encinitas, California.

The applicant requests a permit to take (capture and collect and sacrifice)

the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout Southern California for the purpose of enhancing their survival.

Permit No. TE–090849

Applicant: David Kern Wolff.

The applicant requests a permit to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–089980

Applicant: Hagar Environmental Science, Richmond, California.

The applicant requests a permit to take (capture and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys in Santa Cruz County, California, for the purpose of enhancing its survival.

Permit No. TE–809232

Applicant: BIO–WEST, Logan, Utah.

The permittee requests an amendment to take (capture and release) the Pahrump poolfish (*Empetrichthys latos*), the Moapa dace (*Moapa coriacea*), the White River springfish (*Crenichthys baileyi baileyi*), the Hiko White River springfish (*Crenichthys baileyi grandis*) the Pahranagat roundtail chub (*Gila robusta jordani*), and the White River spinedace (*Lepidomeda albivallis*) in conjunction with surveys in Clark, White Pine, Lincoln, and Nye Counties, Nevada, for the purpose of enhancing their survival.

Permit No. TE–091012

Applicant: Molly Goble, San Ramon, California.

The applicant requests a permit to take (harass by survey, capture, handle, larval sample, and release) the California tiger salamander (*Eucyclogobius newberryi*) in conjunction with surveys in Sonoma and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No. TE–815214

Applicant: Oceano Dunes State Vehicular Recreation Area, Arroyo Grande, California.

The permittee requests an amendment to take (band) the California least tern (*Sterna antillarum browni*) and the western snowy plover (*Charadrius alexandrinus nivosus*) in conjunction with monitoring in San Luis Obispo and Santa Barbara Counties, California, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: July 23, 2004.

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service.

[FR Doc. 04–18104 Filed 8–6–04; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Request To Amend the Woodlands' 10(a)(1)(B) Permit for Incidental Take of the Bald Eagle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Woodlands Operating Company, L.P., has requested an amendment to the incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) issued by the U.S. Fish and Wildlife Service (Service) on August 23, 2002 under permit number TE–048649. The permit authorizes incidental take of the threatened bald eagle (*Haliaeetus leucocephalus*) as a result of the otherwise lawful development of the East Lake Area of The Woodlands, Montgomery County, Texas. The requested amendment would authorize incidental take at all nests built by the pair of bald eagles whose territory is on the East Lake Area of the Woodlands and that a 330 foot management zone be established around each active nest site.

DATES: To ensure consideration, written comments must be received on or before September 8, 2004.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. In addition, the amendment application will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the Service's Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058 (281/286–8282). Written comments concerning the application should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Houston, Texas, at the above address. Please refer to the amendment to TE–048649 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Edith Erfling at the U.S. Fish and Wildlife Service, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058 (281/286–8282).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the bald eagle. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Background

A pair of bald eagles were discovered in December of 1999 nesting on the east shore of Lake Woodlands, an amenity lake created for The Woodlands development. A Habitat Conservation Plan was developed and approved that addressed the measures the Applicant proposed to minimize and mitigate for the anticipated take and an incidental take permit was issued on August 23, 2002.

In early 2004, the Permittee discovered that the nesting pair of bald eagles that was the subject of the original permit action had constructed a second nest site approximately ¼ mile south of the previous nest in an area of existing and ongoing development activity. Water lines, sanitary sewer lines, and storm sewer lines were installed within 200–300 feet of the new nest site presumably while the eagles were building the nest. The new nest is also located approximately 700 feet from Woodlands Parkway, which is used by 48,000 cars per day. As of May 2004, two eaglets had fledged from the new nest and have been seen perching in trees overlooking the on-going construction activity.

There was no construction activity or other known disturbance within 1500 feet of the old nest tree, which may have caused the pair of eagles to move to a new site. A hole was observed in the existing nest at the end of the 2003 nesting season.

Applicant: The Woodlands is a 28,000-acre master-planned new

community development, located approximately 30 miles north of Houston, Montgomery County, Texas. The current population of The Woodlands is approximately 63,000 residents. At build-out, the total population is expected to reach 110,000 residents. This action may result in the abandonment of the nest site. The Permittee proposes to compensate for this incidental take by agreeing to provide buffers between forested areas and development as well as funding a bald eagle research project.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton*, Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing "No Surprises" assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with "No Surprises" assurances has been reinstated, the Service will not approve any incidental take permits or related documents containing "No Surprises" assurances.

Stuart C. Leon,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 04–18102 Filed 8–6–04; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; AA–58198]

Public Land Order No. 7607; Revocation of Secretarial Order Dated January 24, 1941, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Secretarial Order as it affects 14.12 acres of public land withdrawn for Air Navigation Site No. 151 at Cache Creek, Alaska. The land is no longer needed for the purpose for which it was withdrawn.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: The location of Air Navigation Site No. 151 is within a Mineral Survey that has been conveyed out of Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000) it is ordered as follows:

The Secretarial Order dated January 24, 1941, as modified, which withdrew public land for air navigation purposes, is hereby revoked in its entirety as it affects the following described land:

Seward Meridian

U.S. Survey No. 9708, located within T. 28 N., R. 9 W.

The area described contains 14.12 acres.

Dated: July 7, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–18134 Filed 8–6–04; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–HY; A–031764]

Public Land Order No. 7609; Partial Revocation of Public Land Order No. 1949; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order insofar as it affects approximately 74,248 acres of public lands withdrawn for military purposes for the Department of the Navy at Adak, Alaska. The lands are no longer needed for military purposes have been identified as excess to the needs of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: All of the lands being retained by the Department of the Navy, and approximately 26,977 acres included in this revocation are within the Alaska Maritime National Wildlife Refuge. The remaining 47,271 acres have been conveyed out of Federal ownership pursuant to Public Law 107–239. This revocation is for record-clearing purposes.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 1949, which withdrew public lands for use by the Department of Navy for military purposes, is hereby revoked insofar as it affects the following described lands:

Seward Meridian

That part of Adak Island east of the Bay of Island and north of Latitude 51°47′15″ except for the following described lands (approximately 5,624 acres) retained by the Department of the Navy:

T. 95 S., R. 195 W., (unsurveyed),
- Sec. 9, S½S½S½;
- Secs. 10 and 11;
- Sec. 12, W½E½E½, W½E½, and W½;
- Secs. 14, 15, and 16;
- Sec. 17, E½E½;
- Sec. 20, E½E½, SE¼SW¼, and SW¼SE¼;
- Secs. 21 and 22;
- Sec. 23, W½;
- Sec. 26, NW¼, that portion of W½E½ west of Andrew Lake, SE¼SE¼, and S½NE¼SE¼;
- Sec. 27, N½;
- Sec. 28, N½, SW¼, and W½SE¼;
- Sec. 29, E½, E½NW¼, SW¼NW¼, N½SW¼, and N½S½SW¼;
- Sec. 30, SE¼NE¼, NE¼SE¼, and N½SE¼SE¼;
- Sec. 32, N½N½NE¼;
- Sec. 33, N½NW¼NE¼ and N½N½NW¼.

The area described contains approximately 74,248 acres.

Dated: July 7, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–18135 Filed 8–6–04; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG–04–0047; WAOR–56583]

Public Land Order No. 7608; Transfer of Jurisdiction, Chief Joseph Dam Additional Units Project; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction over 400.27 acres of land to the United States Department of Army, Corp of Engineers, and withdraws the

lands from surface entry and mining for a period of 20 years for the Chief Joseph Dam Additional Units Project.

EFFECTIVE DATE: August 9, 2004.

FOR FURTHER INFORMATION CONTACT: Claire K. Wilson, Seattle District, COE, 206–764–6088, or Charles R. Roy, BLM Oregon/Washington State Office, 503–808–6189.

SUPPLEMENTARY INFORMATION: Management of grazing, wildlife habitat and mitigation areas, recreation, fire protection, public access, cultural resources, and realty actions on the withdrawn lands will be under terms and conditions that have been agreed upon between the Corps of Engineers and the Bureau of Land Management and which may be revised by consent of both parties.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), and jurisdiction is transferred to the United States Department of Army, Corps of Engineers, and reserved for uses in support of the Chief Joseph Dam Additional Units Project:

Willamette Meridian

T. 29 N., R. 26 E.,
Sec. 9, SW¼SW¼;
Sec. 30, lot 2.
T. 30 N., R. 26 E.,
Sec. 25, NW¼NE¼;
Sec. 35, SW¼SE¼.
T. 30 N., R. 27 E.,
Sec. 28, SE¼SE¼;
Sec. 29, NE¼NW¼;
Sec. 34, SW¼NW¼ and NE¼SW¼.
T. 30 N., R. 28 E.,
Sec. 9, SE¼SE¼;
Sec. 14, NE¼SW¼.

The areas described aggregate 400.27 acres in Douglas County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: July 7, 2004.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 04–18136 Filed 8–6–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Oregon State Plan: Request for Public Comment on Oregon State Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment on Oregon State standards for Fall Protection, Forest Activities and Steel Erection.

SUMMARY: The Occupational Safety and Health Administration (OSHA) invites public comment on three standards promulgated by the Oregon Occupational Safety and Health Division (OR–OSHA) of the Department of Consumer and Business Services pursuant to its OSHA-approved State plan: Fall Protection, Forest Activities, and Steel Erection. Oregon's Fall Protection standard for construction is comparable to the Federal OSHA Fall Protection standard, as published in the **Federal Register** on August 9, 1994, and amended through January 18, 2001. The State's Forest Activities standard is comparable to the Federal Logging Operations standard as published in the **Federal Register** on October 12, 1994, and amended through March 7, 1996. Oregon's Steel Erection standard for construction is comparable to the Federal Steel Erection standard as published in the **Federal Register** on January 18, 2001, and amended through July 17, 2001.

Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard that contains significant differences, the Occupational Safety and Health Act of 1970 (the Act) requires that the State standard be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether these Oregon State standards meet the above requirements.

DATES: Written comments should be submitted by September 8, 2004.

ADDRESSES: Written comments should be submitted to the Regional Administrator, Region X, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, by mail, telefax (206–553–6499), or e-mail (*terrill.richard@dol.gov.*)

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Mike Shimizu, Director, Office of Public Affairs, U.S. Department of Labor, 1111 Third Avenue, Suite 930, Seattle, Washington 98101–3212, Telephone: (206) 553–7620. For technical inquiries, contact the Region X Office of Technical Support, OSHA, U.S. Department of Labor, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212, Telephone: (206) 553–5930. Oregon's referenced standards and program directives may be accessed on the State's Web page at *http://www.cbs.state.or.us/external/osha/rules.* Electronic copies of this **Federal Register** notice, as well as referenced Federal OSHA standards and directives, are available on OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act (29 U.S.C. 667) are set forth in section 18(c)(2) of the Act and in 29 CFR 1902, 1952.7, 1953.4, 1953.5 and 1953.6. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.5(a)). Independent State standards must be submitted for OSHA review and approval. Newly adopted State standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR Part 1953, but, as they are adopted under authority of State law, they are enforceable by the State upon adoption and prior to Federal review and approval.

Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause").

On December 28, 1972, notice was published in the **Federal Register** (37 FR 286228) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision and a description of the State's plan. The Oregon plan provides for the adoption of State standards that are "at least as effective" as comparable Federal standards promulgated under section 6 of the Act. The Administrator of the Oregon Occupational Safety and Health Division (OR–OSHA), Department of Consumer and Business Services is empowered to create, adopt, modify, and repeal rules and regulations governing occupational safety and health standards following public notice and a hearing in conformance with the State's Administrative Procedures Act. Public notice describing the subject matter of the proposed rule, and where and when the hearing will occur must be published in the State newspapers at least 30 days in advance of the hearing. The Administrator considers all recommendations by any member of the public in the promulgation process. Whenever the Administrator adopts a standard, the effective date is usually 30 days after signing.

1. Fall Protection

In response to the promulgation of the Federal Fall Protection standard for construction at 29 CFR 1926.500–503 and appendices (1926 Subpart M) as published in the **Federal Register** (59 FR 40732) on August 9, 1994, with amendments on January 26, 1995 (60 FR 5131), August 2, 1995 (60 FR 39255) and January 18, 2001 (66 FR 5265), Oregon adopted a comparable standard at OAR–003–1926.400 (Division 3/M) under Administrative Order 6–1995, on April 18, 1995, with amendments made on September 15, 1997; February 8, 2000; February 5, 2001; April 15, 2002; and July 19, 2002, under Administrative Orders 7–1997, 3–2000, 3–2001, 3–2002 and 6–2002. Oregon's current standard contains these differences from the Federal standard:

a. The Oregon standard does not contain all of the Federal provisions at 1926.501(b)(1) through (b)(15) that require employees to be protected from falling more than six feet to a lower level for 15 construction surfaces/activities. The Oregon standard requires employees to be protected from falling more than 10 feet to a lower level, but retains the six-foot requirement for holes, wall openings, established floors, mezzanines, balconies, walkways and excavations. Oregon has also retained the Federal standard for protecting employees from falling into or onto dangerous equipment from heights below six feet. The surfaces/activities where the fall protection has been raised to 10 feet are leading edges, overhand bricklaying and related work, roofing work, precast concrete erection, residential construction, and formwork and reinforcing steel. In effect, the State has raised the height at which fall protection is required from six to ten feet for those working surfaces and activities where guardrail systems are normally impractical and personal fall arrest systems are most often the only reasonable alternative. The higher 10 foot trigger height is deemed by the State to be necessary for these six surfaces/activities because personal fall arrest systems require at least 10 feet of height to be effective in preventing an employee from striking a lower level in a fall situation. To increase overall safety, the State has removed several compliance alternatives allowed by the Federal standards where fall arrest systems can be used effectively. OSHA has experienced similar difficulty in requiring conventional fall protection for these six surfaces/activities and as a result, its standard and policy allow alternatives to be used in lieu of conventional fall protection. These alternatives may be used at all heights, not just between six and ten feet.

The Federal standard addressing leading edges, precast concrete erection, overhand bricklaying and related work, and residential construction, allows employees to work in controlled access zones without fall protection regardless of height. The other areas that are affected by this difference are roofing work, and formwork and reinforced steel work. On rebar walls, OSHA policy allows employees to move from point to point without fall protection up to 20 feet in height. The Federal standard addressing roofs allows a safety monitor system to be used on roofs with slopes up to and including 4 in 12. The Oregon standard limits the use of the safety monitor system to slopes of 2 in 12 and less. Oregon is consistent with other OSHA policy in these areas with one exception. OSHA Directive STD 3–00–001 (STD 3–0.1A), Plain Language Revision of OSHA Instruction 3.2, Interim Fall Protection Compliance Guidelines for Residential Construction, June 18, 1999, exempts employees working on the top of residential concrete and block foundation walls and related formwork from using fall protection. Oregon did not adopt this policy and requires fall protection for employees working above 10 feet.

OSHA standards and policy allow employers to utilize alternatives to conventional fall protection that the Oregon standards and policy do not. This difference results in the State standard providing protection for more workers at heights above 10 feet than the Federal standard. The Oregon 10-foot rule for residential construction has been in effect since June 1, 1995, and the 10-foot rule for general construction has been in effect since July 19, 2002. During that time, OSHA has received no indication of significant objection to the State's different standard as to its effectiveness in comparison to the Federal standard.

b. The Oregon standard contains criteria for personal fall restraint systems. OSHA allows fall restraint systems, but the Federal standard does not address them. The Oregon standard is consistent with Federal policy on restraint systems.

c. Oregon does not allow the use of controlled access zones and, therefore, has removed 29 CFR 1926.502(g), criteria for controlled access zones.

d. The Oregon standard allows the use of slide guards consistent with OSHA Directive STD 3–00–001 (STD 3–0.1A). The Federal standard does not address slide guards.

e. The Oregon standard adds definitions for Fall Protection Systems, Personal Fall Restraint Systems, Rake Edge and Slide Guard System and removes the definitions for Controlled Access Zones, Low-slope Roof and Steep Roof.

2. Forest Activities

In response to the promulgation of the Federal Logging Operations standard, 29 CFR 1910.266, as published in the **Federal Register** (59 FR 51672) on October 12, 1994, with amendments on September 8, 1995 (60 FR 47022) and March 7, 1996 (61 FR 9241), Oregon determined that its existing Logging standard in OAR, Chapter 437, Division 6, was as effective and asked that the standard be approved. This standard was adopted on September 27, 1991, under OR–OSHA Administrative Order 12–1991. After discussion with OSHA, however, the standard was repealed on June 2, 2003, and a new OAR Chapter 437, Division 7 Forest Activities standard (OAR 437–007–0001 through 1405) was adopted under OR–OSHA Administrative Order 5–2003, and amended on June 7, 2004, under OR–OSHA Administrative Order 3–2004.

Oregon's current standard contains many requirements that are different from or supplemental to the Federal standard. The significant differences are as follows:

a. The scope of the Oregon standard is broader and covers many more activities. The OSHA standard defines logging operations associated with

felling and moving trees and logs from the stump to the point of delivery, such as, but not limited to, marking danger trees and trees/logs to be cut to length, felling, limbing, bucking, debarking, chipping, yarding, loading, unloading, storing, and transporting machines, equipment and personnel to, from and between logging sites. The Oregon standard applies to all forest activity operations including but not limited to: chemical application; chipping; clearing and slash disposal; fire fighting; forest road construction, maintenance and decommissioning; log dumps, ponds, plantsite log yards and independent sort yards; log hauling; marking; pulpwood and non-pulpwood logging; reforestation/vegetation management; stream restoration; timber cutting and thinning operations; timber cruising.

b. Both standards require the use of head protection when there is a potential for head injury, but the Oregon standard lists specific work areas where head protection is not necessary.

c. The OSHA standard requires employees to work within visual or audible contact with another employee. The Oregon standard requires teams with a minimum of two employees for some jobs and lists other jobs where employees can work alone as long as certain conditions are met.

d. The OSHA and Oregon requirements for falling objects protective structures (FOPS) and roll-over protective structures (ROPS) do not apply to machines that are capable of 360 degree rotation. After July 1, 2009, the Oregon standard will require machines that are capable of 360 degree rotation to have ROPS unless they are used on surfaces of less than 20 percent slope, or on slopes of less than 40 percent when used as anchors for cable yarding systems.

e. The OSHA and Oregon standards require protective structures for machines to be of a size that does not impede the operator's normal movements. The Oregon standard also requires the cab of machines manufactured after July 1, 2004, to comply with the International Organization for Standards (ISO) 3411:1995.

f. The OSHA and Oregon standards for machine cabs have construction requirements to prevent materials from entering the cab and to allow for maximum visibility. The Oregon standard also requires cabs to meet the requirements of the Society of Automotive Engineers (SAE) J1084 April 80 or ISO 8084:1993.

g. The OSHA and Oregon standards for egress and access to machines require compliance with SAE J185–1988. The Oregon standard also allows compliance with ISO 2867:1994.

h. The OSHA and Oregon standards for ROPS require that they comply with the Society of Automotive Engineering (SAE) requirements. The Oregon standard also allows ROPS to meet the ISO 8082:1994 requirements.

i. The Federal standard for First Aid and CPR training requires all employees to be trained prior to initial assignment to work. The Oregon standard requires all supervisors and cutters to be first aid and CPR trained prior to their initial assignment; all other new employees must be briefed on first aid and CPR before their initial assignment, if they are not first aid or CPR trained, and must receive first aid and CPR training within 6 months of being hired. OR–OSHA's enforcement policy for forest activities first aid training, Program Directive A–254 issued on May 24, 2004, provides guidelines for determining if the number and location of first aid and CPR trained individuals are adequate at forest activity operations to provide emergency medical care in a timely manner.

j. The Oregon forest activities standard contains the following additional requirements not present in the OSHA logging standard: requires employers to develop and implement a written safety and health program; requires that accident scenes not be disturbed until allowed by the Oregon Program Administrator or designee or by a recognized law enforcement agency; requires the employer to conduct accident investigations with employee involvement and a written report, and monthly safety meetings with written notes; has requirements for nighttime logging; requires employers to conduct and document a pre-work safety survey; specifically addresses the design and construction of haul roads and has warning sign requirements; has cable logging requirements; addresses the use of wedges and felling methods such as tree pulling and tree jacking; has requirements for the design of log landings and work practices that must be followed; addresses the loading, transportation, unloading and decking of logs and wood fiber; contains requirements for prescribed burns and fire suppression; and has signaling system requirements.

3. Steel Erection

In response to the promulgation of the Federal Steel Erection standard, 29 CFR 1926.750–761 and appendices (Subpart R), as published in the **Federal Register** (66 FR 5196) on January 18, 2001, with a delay in the effective date published on July 17, 2001 (66 FR 37137), Oregon adopted its standard at OAR 437–003–1926.750 through 761 and appendices (OAR 437 Division 3/R) on April 5, 2002, effective April 18, 2002, under Administrative Order 3–2002. Changes to the State's standards at Subdivisions R (steel erection) and M (fall protection) were adopted and effective on July 19, 2002, under Administrative Order 6–2002. These amendments required a 10 foot fall protection trigger height for all construction trades in Oregon (including steel erection) except for 6 feet for holes, wall openings, established floors, mezzanines, balconies, walkways, excavations, and working over dangerous equipment. The 2003 Oregon State Legislature's House Bill 3010 directed OR–OSHA to revise the Steel Erection standard to parallel the Federal requirements and not require the use of fall protection by workers engaged in steel erection at heights lower than the heights at which fall protection relating to steel erection is required by Federal regulations. The Federal steel erection standard requires fall protection at 15 feet in general, and at 30 feet for connectors and employees working in controlled decking zones. Accordingly, the State adopted amendments to its Steel Erection standard on December 30, 2003, effective January 1, 2004, under Administrative Order 8–2003. The State standard is now almost identical to the comparable Federal standard with the following additions:

a. The Oregon rule defines an "opening" as a gap or void 12 inches or more in any direction. The Federal rule defines "opening" as a gap or void 12 inches or more in its least dimension.

b. The Oregon rule requires that a copy of the written notifications to the controlling contractor (as required by 1926.752(a) & (b)) be maintained at the jobsite. The Federal rule does not require such written notifications to be maintained at the jobsite.

c. The Oregon rule requires that the steel erection contractor develop a written site-specific erection plan. The Federal rule allows employers the option of developing alternate employee protection means and methods in a site-specific erection plan for any of the three activities relating to hoisting and rigging and open web steel joists that are specified in the standard at 1926.752(e).

d. The Oregon rule requires that tag lines be used to control loads except when it is determined, by a qualified rigger, that they create a hazard. The Federal rule does not require tag lines.

e. The Oregon rule requires that large roof and floor openings that cannot be decked over, be protected by covers or guardrails as soon as the openings are

created. The Federal rule requires these openings to be protected in accordance with 1926.760(a)(1).

f. The Oregon rule requires a written certification of training record. The Federal rule does not.

g. The Oregon rule requires employees to be retrained in certain conditions. The Federal rule does not address retraining.

B. Issues for Determination

The Oregon standards in question are now under review by the Regional Administrator to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR Parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

"At Least as Effective" Requirement

Oregon's Fall Protection standard for construction in OAR Chapter 437, Division 3, Subpart M is comparable to OSHA's standard 29 CFR 1926, Subpart M; Oregon's Forest Activities (Logging) standard at OAR Chapter 437, Division 7 is comparable to OSHA's standard, 29 CFR 1910.266; and the State's Steel Erection standard in OAR Chapter 437, Subpart R is comparable to OSHA's 29 CFR 1926, Subpart R. OSHA has evaluated the State's standards in comparison to the respective OSHA standards requirements and enforcement policies and has preliminarily determined that the State's standards in question meet the "at least as effective" criterion on section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on the equivalent effectiveness of these standards is solicited for OSHA's consideration in its final decision on whether or not to approve these Oregon State standards.

Product Clause Requirement

OSHA is also seeking through this notice public comment as to whether the Oregon standards:

(a) Are applicable to products which are distributed or used in interstate commerce;

(b) If so, whether they are required by compelling local conditions; and

(c) Unduly burden interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, views and arguments with respect to the State standards and the issues described above. These comments must be postmarked on or before September 8, 2004 and submitted to the Regional Administrator, Region X, U.S. Department of Labor-OSHA, 1111 Third Avenue, Suite 715, Seattle, WA 98101–3212, fax: (206) 553–6499, e-mail: *terrill.richard@dol.gov*. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments and requests submitted concerning these standards and will publish notice of the decision approving or disapproving the standards.

D. Location of Supplement for Inspection and Copying

Copies of basic State plan documentation are maintained at the following locations; specific documents are available upon request, including a copy of these State standards and the submitted comparisons to the equivalent Federal standards. Oregon's standards, program directives and other documents may be accessed on the State's Web page at *http://www.cbs.state.or.us/external/osha/rules*. Contact the Office of the Regional Administrator, U.S. Department of Labor-OSHA, 1111 Third Avenue, Suite 715. Seattle, Washington 98101–3212, (206) 553–5930, fax (206) 553–6499; Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter Street NE., Room 430, Salem OR, 97310, (503) 378–3272, fax (503) 947–7461; and the Office of State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 693–2244, fax (202) 693–1671. Electronic copies of this **Federal Register** notice, as well as referenced Federal OSHA standards and directives, are available on OSHA's Web page at *http://www.osha.gov*.

This notice is issued pursuant to section 19 of the Occupational Safety and Health Act of 1970, Pub.L. 91–596, 84 STAT 6108 (29 U.S.C. 667).

Signed at Seattle, Washington, this 13th day of July, 2004.

Richard S. Terrill,

Regional Administrator.

[FR Doc. 04–18081 Filed 8–6–04; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Waste Permit Application Received

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act and request for comments.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the United States Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before September 8, 2004. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230.

FOR FURTHER INFORMATION CONTACT: Susanne M. LaFratta at the above address or at (703) 292–7445.

SUPPLEMENTARY INFORMATION: Antarctic Waste Regulations in 45 CFR Part 671 require U.S. citizens, corporations, or other entities to obtain a permit for the use or release of designated pollutants in Antarctica and for the release of any waste in the Antarctic. NSF has received a permit application under this regulation for USAP activities in Antarctica. The permit applicant is: Raytheon Polar Services Company, 7400 South Tucson Way, Centennial, CO 80112.

The permit application applies to USAP activities conducted by all supporting organizations at all USAP facilities and operations in Antarctica. The proposed duration of the permit is from October 1, 2004 through September 30, 2009.

Raytheon Polar Services Company (RPSC) and other supporting organizations provide broad-based logistical support, technical support, and transportation services to the USAP. This includes the transport of both hazardous and non-hazardous waste from Antarctica to the United States.

RPSC operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, and for NSF and NSF grantees. RPSC is also responsible for fuel operations including fuel storage, distribution, and resupply; and record-keeping of fuel use. RPSC collects, stores, and ships both hazardous and non-hazardous waste materials and is responsible for the final disposition of these materials once they are returned to the United States. RPSC also provides

training and technical guidance to enhance the safety and effectiveness of U.S. waste management practices in Antarctica.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 04–18116 Filed 8–6–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 8, 2004. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations established such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2005–011.

1. Applicant: Scott Borg, Section Head, Antarctic Science Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant proposes to enter Arrival Heights (ASPA #122 to continue scientific projects already in place, and to conduct projects added during the term of this permit following separate initial environmental review. Principal investigators and their teams will work on projects that include, but not limited to operation of an ELF/VLF receiver, riometer and magnetometer for studies of the earth's magnetic field and ionosphere, high latitude neutral mesospheric and thermospheric dynamics, UV monitoring, aerosols investigations, and pollution surveys. Crary Lab science technicians will access the site daily for equipment monitoring, data acquisition, calibrations, and repairs. In addition, personnel will enter the site to monitor and maintain or repair weather equipment, and personnel from Facilities Engineering and Maintenance may be called upon to perform maintenance or repair functions at the facilities within the ASPA.

Location: Arrival Heights, Ross Island, Antarctica (ASPA #122).

Dates: October 1, 2004 to September 31, 2009.

Permit Application No. 2005–012.

2. Applicant: Yu-Ping Chin, Department of Geological Sciences, The Ohio State University, 275 Mendenhall Laboratory, 125 South Oval Mall, Columbus, OH 43210–1308.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant plan to Cape Royds (ASPA #121) and Backdoor Bay, Cape Royds (ASPA #157) to access Pony Lake and collect water samples and install monitoring equipment. The samples will be used to study the biogeochemistry of dissolved organic material. The applicant will work closely with an ornithologist working at the site to ensure non-interference with rookery activities.

Location: Cape Royds, Ross Island (ASPA #121) and Backdoor Bay, Cape Royds Ross Island (ASPA #157).

Dates: November 01, 2004 to January 31, 2006.

Permit Application No. 2005–013.

3. *Applicant:* Rennie S. Holt, Director, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038.

Activity for Which Permit is Requested: Take, Enter Antarctic Specially Protected Area, and Import into the U.S. The applicant proposes to enter Cape Sheriff (ASPA #149) to capture up to 30 adult and 50 juvenile Southern Elephant Seals (*Mirounga leonina*) in order to tag, dye mark, collect blood samples, weigh, conduct morphometric measurements, collect muscle biopsies and instrument with TDR's, and/or ARGOS linked PTT's and VHF's. Data collected will be taken back to the United States. The data and samples will be used to determine the relationship of specific foraging behaviors and habitat utilization.

Location: Antarctic Peninsula region, South Shetland Islands vicinity: Cape Sheriff, Livingston Island (ASPA #149), and including San Telmo Islands.

Dates: November 15, 2004—April 30, 2007.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–18117 Filed 8–06–04; 8:45 am]

BILLING CODE 7555–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting.

September 2, 2004.

TIME AND DATE: 2 p.m., Thursday, September 2, 2004.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the Public at 2 p.m.

PURPOSE: Annual Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Friday, August 27, 2004. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Friday, August 27, 2004. Such

statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT FOR FURTHER INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: August 6, 2004.

Connie M. Downs,

OPIC Corporate Secretary

[FR Doc. 04–18246 Filed 8–5–04; 12:51 pm]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Clearance and Review; Comment Request for a Revision of a Currently Approved Collection: OPM Form 1300, Presidential Management Fellows Program Online Application and Resume Builder, OMB No. 3206–0082

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for clearance and review of a revision of a currently approved collection for the OPM Form 1300, Presidential Management Fellows Program Online Application and Resume Builder. Approval of this form is necessary to facilitate the timely nomination, selection and placement of Presidential Management Fellows finalists in Federal agencies.

On November 21, 2003, the President signed Executive Order 13318, "modernizing" the Presidential Management Intern (PMI) Program, in keeping with his emphasis on the strategic management of the Federal Government's human capital. The Executive order renamed the PMI Program to the Presidential Management Fellows (PMF) Program to better reflect its high standards, rigor, and prestige. It is designed to attract to the Federal service outstanding graduate students from a wide variety of academic disciplines who demonstrate an exceptional ability for, as well as a clear interest in and commitment to, leadership in the analysis and management of public policies and programs. The Executive order charges the Director of OPM with developing, managing, and evaluating the PMF Program and with providing for an orderly transition from the PMI Program to the PMF Program.

The present OPM Form 1300, PMF Online Application and Resume Builder, is an online electronic form. Graduate students must fill out the form, including resume information, and submit it along with the school nomination official's information. With prior OMB approval, the online application and resume builder replaced the previous scan-form used prior to 2004, and OPM transferred the form identifier of OPM Form 1300 to the online version. An alternative paper-based application will be made available for those applicants with disabilities and/or inability to access the Internet. As a result of automating the OPM Form 1300 for the 2003/2004 open season last year, OPM met Government Paperwork Elimination Act (GPEA) requirements to automate this form by October 2003.

The 60-day Federal Register Notice was published on March 26, 2004 [FR Doc. 04–6791] to request comments. No comments were received. The following changes have been made to the application: (1) Revised all content to reflect new name of PMF Program, (2) increased functionality as a result of feedback from stakeholders, and (3) revised formatting for user-friendliness and efficiency.

We estimate 5,000 applications will be received and processed in the 2004/2005 open season for PMF applications. We estimate students will need two hours to complete the online application and resume builder and electronically submit it to their nominating school official. In addition, we estimate school nominating officials will need one-half hour to receive, review and render a decision on the student's application for nomination into the PMF program. The annual estimated burden for nominees is 10,000 hours and 2,500 hours for school nominating officials, for a total of 12,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your complete mailing address with your request.

DATES: Comments on this proposal should be received within thirty (30) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

U.S. Office of Personnel Management, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, Email: *rob.timmins@opm.gov*

and

Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Joseph F. Lackey, OPM Desk Officer, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–18110 Filed 8–6–04; 8:45 am]

BILLING CODE 6325–38–U

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–4, SEC File No. 270–232, OMB Control No. 3235–0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 17(f) of the Investment Company Act of 1940 (the "Act")[1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission. Rule 17f–4 under the Act specifies the conditions for the use of securities depositories by funds[2] and custodians.

[1] 15 U.S.C. 80a.

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit

The Commission adopted rule 17f–4 in 1978 to reflect the custody practice and commercial law of that time. In particular, the rule was designed to be compatible with the 1978 revisions to Article 8 of the Uniform Commercial Code ("UCC") ("Prior Article 8").[3] Custody practices have changed substantially since 1978, and the drafters of the UCC approved major amendments to Article 8 in 1994 to reflect these changes ("Revised Article 8").[4] While Prior Article 8 reflected expectations that depository practice would involve registering investors' interests in securities on the issuer's own books, Revised Article 8 recognizes that under current practice, an investor usually maintains its securities through an account with a broker-dealer, bank or other financial institution ("securities intermediary").[5] Revised Article 8 has significantly clarified the legal rights and duties that apply in indirect holding arrangements, and every State has enacted Revised Article 8 into law.

On February 13, 2003, the Commission adopted amendments to reflect the recent changes in custody practices and commercial law.[6] The amendments updated and simplified the rule, and substantially eased rule 17f–4's reporting, recordkeeping, and other compliance requirements. Most prominently, the amended rule eliminated the confirmation, segregation, and earmarking requirements.[7] In place of these detailed requirements, amended rule 17f–4 required funds to modify their contracts with their custodians or securities depositories to add two provisions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a "securities intermediary" to obtain and thereafter maintain financial assets.[8] Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[9]

The Commission staff estimates that 4,866 respondents (including 4,711 active registered investment companies, 130 custodians, and 25 possible securities depositories) are subject to the requirements in rule 17f–4. The rule is elective, but most if not all funds use depository custody arrangements.[10]

The Commission staff estimates that, on an annual basis, about 471 funds[11] spend an average of 2 hours annually complying with the contract requirements of rule 17f–4 (*e.g.*, signing contracts with additional custodians or securities depositories) for a total of 942 burden hours.

Rule 17f–4 requires that a custodian, upon request, provide a fund with any available reports on its internal accounting controls and financial strength. The Commission staff estimates that 130 custodians spend 12 hours annually in transmitting such reports to funds. In addition, approximately 47 funds (*i.e.*, one percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. The Commission staff estimates that, for each of the 47 funds, depositories spend 12 hours annually transmitting reports to the funds. The total annual burden estimate for compliance with rule 17f–4's reporting requirement is therefore 2,124 hours.

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officer's instructions). The Commission staff estimates that 47 funds spend 10 hours annually implementing systems to prevent unauthorized officer's instructions, resulting in 470 burden hours for this requirement under rule 17f–4.

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's paperwork requirement is 3,536 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18119 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–P

investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) [68 FR 8438 (Feb. 20, 2003)]. The term "fund" is used in this Notice to mean all registered investment companies.

[3] Article 8 of the UCC governs the ownership and transfer of investment securities. *See* Uniform Commercial Code, 1978 Official Text with Comments, Article 8, Investment Securities (West 1978) ("Prior Article 8"); Use of Depository Systems by Registered Management Companies, Investment Company Act Release No. 10053 (Dec. 8, 1977) [42 FR 63722 (Dec. 19, 1977)] at nn.4–7, 9, 12 and accompanying text (citing provisions of Prior Article 8).

[4] *See* Uniform Commercial Code, Revised Article 8—Investment Securities (With conforming and Miscellaneous Amendments to Articles 1, 4, 5, 9, and 10) (1994 Official Text with Comments) ("Revised Article 8"), Prefatory Note at I.B., C., and D.

[5] Revised Article 8, supra note 3, section 8–102(a)(14) and Prefatory Note at III.A. (defining a "securities intermediary").

[6] *See* supra note 2.

[7] Previously, the custodian was required to send the fund a written confirmation of each transfer of securities to or from the fund's account with the custodian (the "confirmation requirement"). The custodian also had to maintain the fund's securities in a depository account for the custodian's customers that is separate from the depository account for the custodian's own securities (the "segregation requirement") and had to identify on the custodian's records a portion of the total customer securities as attributed to the fund (the "earmarking requirement"). Revised Article 8 made these custodial compliance requirements unnecessary to protect fund assets.

[8] Rule 17f–4(a)(1). This provision simply incorporates into the rule the standard of care provided for by section 504(c) of Revised Article 8 when the parties have not agreed to a standard.

[9] If a fund deals directly with a depository, similar requirements apply to the depository.

[10] The Commission staff estimates that more than 97 percent of all funds now use depository custody arrangements.

[11] Commission staff estimates that about 10 percent of all funds approve new depository custody arrangements yearly or a fund changes custodians (or securities depositories) every 10 years.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

- Rule 17a–8; SEC File No. 270–225; OMB Control No. 3235–0235

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–8 [17 CFR 270.17a–8] under the Investment Company Act of 1940 (the "Act") is entitled "Mergers of affiliated companies." Rule 17a–8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from section 17(a) prohibitions on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 600 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4,200 hours.

This estimate represents an increase of 3,600 hours from the prior estimate of 600 hours. The increase results from an increase in the estimated average annual hour burden of meeting the requirements of 17a–8.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $50,000. The Commission staff estimates that each year approximately 10 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with state law. The total annual cost burden of meeting these requirements is estimated to be $900,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18120 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 53; SEC File No. 270–376, OMB Control No. 3235–0426,

Rule 57(b) and Form U–33–S, SEC File No. 270–376, OMB Control No. 3235–0429

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Sections 32 and 33 of the Public Utility Holding Company Act of 1935, as amended ("Act"), and rules 53, 54, and 57(b) under the Act, permit, among other things, utility holding companies registered under the Act to make direct or indirect investments in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as defined in sections 32 and 33 of the Act, respectively, without the prior approval of the Commission, if certain conditions are met. Rules 53 and 54 do not create a reporting burden for respondents. Rule 53 does, however, contain recordkeeping and retention requirements. As required by Congress, the Commission mandates the maintenance of certain books and records identifying investments in and earnings from all subsidiary EWGs or FUCOs in order to measure their financial effect on the registered systems.

The Commission estimates that the total annual recordkeeping and record retention burden under rules 53 will be a total of 290 hours (10 hours per respondent × 29 respondents = 290 burden hours). It is estimated that there will be no burden hours associated with rule 54.

Under rule 57(b) there is an annual requirement for any public utility company that owns one or more FUCOs to file Form U–33–S. The information contained in Form U–33–S allows the Commission to monitor overseas investments by public utility companies.

The Commission estimates that the total annual reporting burden under rule 57(b) will be 18 hours (3 hours per respondent × 6 filings = 18 hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Rules 53, 54, and 57(b) each impose a mandatory recordkeeping requirement of this information collection. It is mandatory that qualifying companies provide the information required by rules 53, 54 and 57(b). There is no requirement to keep the information confidential because it is public information.

Written comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18121 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 19b–7 and Form 19b–7, SEC File No. 270–495, OMB Control No. 3235–0553.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 19b–7 (Security Futures Product Rule Changes) requires every self-regulatory organization that is an exchange registered with the Commission pursuant to Section 6(g)[2] or that is a national securities association registered pursuant to Section 15A(k)[3] to file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change, in addition to, or deletion from the rules of such self-regulatory organization ("proposed rule change") that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization's obligation to enforce the securities laws. The proposed rule change must be accompanied by a concise general statement of the basis and purpose of such proposed rule change. In addition, Rule 19b–7 requires the Commission to, upon the filing of any proposed rule change, promptly publish notice of any proposed rule filing together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission is also required to give interested persons an opportunity to submit data, views, and arguments concerning the proposed rule change.

The SEC estimates that the total burden for all respondents to the Form 19b–7 would be 1860 hours per year (15.5 hours/filing per respondent x 8 respondents x 15 filings/year per respondent). The SEC estimates that the total cost burden for all respondents would be $203,520 per year ($1696/filing x 8 respondents x 15 filings/year per respondent).

Rule 19b–7 does impose a retention period for any recordkeeping requirements. As set forth in Rule 17a–1 under the Exchange Act,[4] a national securities exchange or national securities association is required to retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, for purposes of the Commission's recordkeeping requirements, Security Futures Product Exchanges and Limited Purpose National Securities Associations must retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[5] Compliance with the rule is mandatory and the information collected is made available to the public. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission by sending an email to: *David_Rostker@omb.eop.gov*, and (b) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: July 27, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18122 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50115; File No. SR–OC–2004–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the OneChicago, LLC Relating to its Market Maker Registration Policy and Procedures

July 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2004, OneChicago, LLC ("OneChicago" 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 OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OneChicago proposes to adopt new Market Maker Registration Policy and Procedures. The text of the proposed rule change appears below. New language is in italics.

* * * * *

[1] 44 U.S.C. 3501 *et seq.*

[2] 15 U.S.C. 78f(g).

[3] 15 U.S.C. 78*o*–3(k).

[4] 17 CFR 240.17a–1.

[5] 15 U.S.C. 78q(b)(4)(B).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

OneChicago

Market Maker Registration Policy and Procedures

OneChicago Market Maker Program

Pursuant to OneChicago Rule 514, the Exchange has adopted a market maker program under which clearing members or exchange members (collectively, "members") may be designated as market makers in respect of one or more OneChicago contracts ("Contracts") to provide liquidity and orderliness in the market for such Contracts. To be designated as a OneChicago market maker, a member must complete and file with the Exchange a OneChicago Market Maker Registration Form (attached below). By signing the registration form, the member will confirm that it meets and will continue to meet the qualifications to act as market maker in accordance with OneChicago Rules. The member will be required to identify all OneChicago Contracts for which it seeks to be designated as a market maker and elect which of the three alternative sets of market maker obligations specified in OneChicago Rule 515(n) it intends to undertake.

Market Maker Exclusion from OneChicago Customer Margin Requirements

To qualify for the market maker exclusion for purposes of OneChicago's customer margin rules, a person must:

(1) be a OneChicago member that is registered with OneChicago as a dealer in security futures as defined in Section 3(a)(5) of the Securities Exchange Act of 1934 ("Exchange Act");

(2) be registered as a floor trader or a floor broker under Section 4f(a)(1) of the Commodity Exchange Act ("CEA") or as a dealer with the Securities and Exchange Commission ("SEC") under Section 15(b) of the Exchange Act;

(3) maintain records sufficient to prove compliance with the requirements of OneChicago Rule 515(n) and the Commodity Futures Trading Commission ("CFTC") Rule 41.42(c)(2)(v) and SEC Rule 400(c)(2)(v) under the Exchange Act as applicable, including without limitation trading account statements and other financial records sufficient to detail activity; and

(4) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.

In addition, the market maker exclusion provides that any market maker that fails to comply with the rules of OneChicago or the margin rules adopted by the SEC and the CFTC shall be subject to disciplinary action in accordance with Chapter 7 of OneChicago's Rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

Market Maker Categories

OneChicago Rule 515(n) specifies three alternative ways for a member to satisfy the requirement that a market maker hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. Each member seeking market maker designation must register for one of the following three market maker categories and will undertake to perform all of the obligations set forth in the elected category:

Category 1. The market maker will provide continuous two-sided quotations throughout the trading day for all delivery months of Contracts representing a meaningful proportion of the total trading volume on the Exchange,[3] subject to relaxation during unusual market conditions as determined by OneChicago (such as a fast market in either a Contract or a security underlying such Contract) at which times such market maker must use its best efforts to quote continuously and competitively; and when providing quotations, quotes for a minimum of one Contract with a maximum bid/ask spread of no more than the greater of $0.20 or 150 per cent of the bid/ask spread in the primary market for the security underlying each Contract; or

Category 2. The market maker will respond to at least 75 per cent of the requests for quotations for all delivery months of Contracts representing a meaningful proportion of the total trading volume on the Exchange, subject to relaxation during unusual market conditions as determined by the Exchange (such as fast market in either a Contract or a security underlying such Contract) at which times such market maker must use its best efforts to quote competitively; and when responding to requests for quotation, quotes within five seconds for a minimum of one Contract with a maximum bid/ask spread of no more than the greater of $0.20 or 150 per cent of the bid/ask spread in the primary market for the security underlying each Contract; or

Category 3. The market maker will be (i) assigned to a group of Contracts that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20 per cent of the Contracts listed on OneChicago ("Limited Assignment"); (ii) at least 75 per cent of such market maker's total trading activity in Exchange products is in its assigned Contracts, measured on a quarterly basis; (iii) during at least 50 per cent of the trading day such market maker has bids or offers in the market that are at or near the best market, except in unusual market conditions as determined by OneChicago (such as fast market in either a Contract or a security underlying such Contract), with respect to at least 25 per cent (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned Contracts; and (iv) the requirements set forth in (ii) and (iii) are satisfied on at least 90 per cent (in the case of an Unlimited Assignment) or 80 per cent (in the case of a Limited Assignment) of the trading days in each calendar quarter.

Qualification for "60/40" Tax Treatment

To qualify as a "dealer" in security futures contracts within the meaning of Section 1256(g)(9) of the Internal Revenue Code of 1986, as amended, (the "Code") a member is required (i) to register as a market maker for purposes of OneChicago's margin rules under Category 1 or Category 2 above; (ii) to undertake in its registration form to provide quotations for all products specified for the market maker exclusion from the OneChicago margin rules; and (iii) to quote a minimum size of

(A) ten (10) contracts for each product not covered by (B) or (C) below;

(B) five (5) contracts for each product specified by the member to the extent such quotations are provided for delivery months other than the next two delivery months then trading; and

(C) one (1) contract for any single stock futures Contract where the average market price for the underlying stock was $100 or higher for the preceding calendar month or for any futures contract on a narrow-based security index, as defined by Section 1a(25) of the CEA.

Products

As noted above in completing the OneChicago Market Maker Registration Form, a member must specify all OneChicago Contracts for which it intends to act as a market maker. The Exchange will assign to the member all of the Contracts listed on its registration form, unless the Exchange provides written notice to the member identifying any Contracts for which such

[3] * *A "meaningful proportion of the total trading volume on the Exchange" shall mean a minimum of 20 per cent of such trading volume.*

assignment is withheld. A member may change the list of Contracts for which he undertakes to act as market maker for any calendar quarter by filing a revised Market Maker Registration Form with the Exchange on any business day prior to the last trading day of such quarter, and such change shall be effective retroactive to the first trading day of such quarter. Each market maker shall be responsible for maintaining books and records that confirm that it has fulfilled its quarterly obligations under the market maker category elected on its Market Maker Registration Form in respect of all Contracts designated for that calendar quarter.

* * * * *

514. Market Maker Programs

The Exchange may from time to time adopt one or more programs under which one or more Clearing Members or Exchange Members may be designated as market makers with respect to one or more Contracts in order to provide liquidity and orderliness in the market or markets for such Contract or Contracts. Any such program may provide for any or all of the following:

(a) Qualifications, including any minimum net capital requirements, that any such market maker must satisfy;

(b) the procedure by which Clearing Members or Exchange Members may seek and receive designation as market makers;

(c) the obligations of such market makers, including any applicable minimum bid and offer commitments; and

(d) the benefits accruing to such market makers, including priority in the execution of transactions effected by Clearing Members or Exchange Members in their capacity as market makers, reduced transaction fees or the receipt of compensatory payments from the Exchange.

Without limiting the generality of the foregoing, the Exchange may adopt a program under which one or more Clearing Members or Exchange Members may be designated as lead market makers, and as such, allocated certain numbers and types of Contracts with respect to which they are required to make two-sided markets. *For further details see "Market Maker Registration Policy and Procedures" at www.onechicago.com/020000_about/oc_020400.html.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OneChicago 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. OneChicago 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

Pursuant to OneChicago Rule 514, the Exchange has adopted a market maker program in which clearing members or exchange members (collectively, "members") may be designated as market makers in respect to one or more OneChicago contracts ("Contracts") to provide liquidity and orderliness in the market for such Contracts. The proposed rule change sets forth the procedures necessary for members to be designated as market makers and the policies in relation to such designation. In addition, the Exchange is making a corresponding amendment to OneChicago Rule 514.

The proposed rule change reiterates the qualifications that members must meet pursuant to OneChicago Rule 515(n) to qualify for the market maker exclusion from customer margin.[4] In addition, the proposed rule change reminds members that under Chapter 7 of the OneChicago rules, failure to comply with OneChicago's rules or the margin rules adopted by the Commission and the Commodity Futures Trading Commission ("CFTC") are subject to disciplinary action. The appropriate sanctions for any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

Under the proposed rule change, a member seeking a market maker designation must submit a Market Maker Registration Form to the Exchange. By signing the registration form, the member confirms that it meets and will continue to meet the qualifications to act as a market maker in accordance with the Exchange's rules. The registration form requires members to list all the Contracts in which they will act as market makers. The registration form also requires a member to identify the qualifying market maker category under OneChicago Rule 515(n)(ii)(C).[5]

The proposed rule change establishes that the Exchange will assign to the member all Contracts listed by the member on its registration form, unless the Exchange provides written notice to the member identifying any Contracts for which such assignment is withheld. Under the proposed rule change, for any calendar quarter, a market maker may change the list of Contracts for which it is designated by filing a revised registration form prior to the last trading day in such calendar quarter. Such change in Contract designation will be effective retroactive to the first trading day of such quarter. The proposed rule change also makes clear that each market maker is responsible for maintaining books and records that confirm that it has fulfilled its quarterly obligations under the market maker category as elected on its registration form for all designated Contracts for that quarter. Under the proposal, each market maker would also be required to maintain such books and records for every Contract and for each calendar quarter in which its designation as market maker is maintained.

In addition, the proposed rule change sets forth the requirements that must be met to qualify as a "dealer" in security futures contracts within the meaning of Section 1256(g)(9) of the Internal Revenue Code of 1986[6], as amended (the "Code"). Under the proposed rule change, to qualify as a dealer within the meaning of the Code a member is required (i) to register as a market maker for purposes of OneChicago's margin rules under Category 1 or 2 (OneChicago

[4] To qualify for the market maker exclusion for purposes of OneChicago's customer margin rules a person must:

(1) Be a OneChicago member that is registered with OneChicago as a dealer in security futures;

(2) Be registered as a floor trader or a floor broker under Section 4f(a)(1) of the Commodity Exchange Act ("CEA") or as a dealer with the Commission under Section 15(b) of the Act;

(3) Maintain records sufficient to prove compliance with the requirements of OneChicago Rule 515(n) and the CFTC Rule 41.42(c)(2)(v) or Rule 400(c)(2)(v) under the Act as applicable, including without limitation trading account statements and other financial records sufficient to detail activity; and

(4) Hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.

[5] Under OneChicago Rule 515(n)(ii)(C), there are three alternative ways for a member to satisfy the requirement that security futures dealer hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis.

[6] 26 U.S.C. 1256(g)(9).

Rule 515(n)(iii)(1) or (2)); (ii) to undertake in its registration form to provide quotations for all products specified for the market maker exclusion from the OneChicago margin rules; and (iii) for each delivery month to quote a minimum size of

(A) Ten contracts of a product not covered by (B) or (C) below;

(B) five contracts of a product specified by the market maker for delivery months other than the next two delivery months trading at the time the quotations are made; [7]

(C) one contract of any single stock futures product where the average market price for the underlying stock was $100 or higher for the preceding calendar month or for each delivery month of any futures contract on a narrow-based security index, as defined by Section 1a(25) of the CEA.

2. Statutory Basis

OneChicago believes that the proposal is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that exchange rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and in general to protect investors and the public interest. The Exchange believes that the proposed rule change establishes procedures and policies for its market maker program, which, according to OneChicago, is designed to provide liquidity and orderliness in the market for OneChicago Contracts. Thus, OneChicago believes that the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] Under this requirement a market maker must quote for at least five contracts when it is quoting in the back delivery months. For example, a market maker designated to trade Contracts on XYZ, Corp, which is trading two quarterly and two serial months (the March Contract, the April Contract, the May Contract and the June Contract), would be required to have a size of at least five Contracts for its quotes in the May and June Contracts in order for the market maker to qualify as a "dealer" for purposes of Section 1256(g)(9) of the Code. 26 U.S.C. 1256(g)(9).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OC–2004–01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and OneChicago Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OC–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of OneChicago. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OC–2004–01 and should be submitted on or before August 30, 2004.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[12] In addition, the Commission believes that the proposed rule change is consistent with Section 7(c)(2)(B) of the Act,[13] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures and prevent systemic risk. The Commission also believes that the proposed rule change is consistent with Rule 400(c)(2)(v) under the Act,[14] which permits a national securities exchange to adopt rules containing specified requirements for security futures dealers to qualify for an exclusion from the margin requirements for securities futures under Section 7(c)(2)(B) of the Act.[15] The Commission believes that the proposed obligations for market makers satisfy this requirement. Specifically, the Commission believes that the Exchange's market maker registration policy and procedures, and the qualification requirements for "60/40" tax treatment should help ensure that market makers provide liquidity and orderliness in the market for OneChicago Contracts.

OneChicago has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that the market maker registration policy and procedures, and the qualification requirements for "60/40" tax treatment, are an extension of the obligations previously adopted in connection with OneChicago's Margin Rule,[16] which sets forth the standards

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78g(c)(2)(B).

[14] 17 CFR 242.400(c)(2)(v).

[15] 15 U.S.C. 78g(c)(2)(B).

[16] *See* Securities Exchange Act Release No. 47810 (May 7, 2003), 68 FR 26369 (May 15, 2003).

under which a OneChicago member may be excluded from the Exchange's margin requirements as a "market maker," and therefore should raise no novel regulatory issues related to margin requirements. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[17] to approve the proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[18], that the proposed rule change (File No. SR–OC–2004–01) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18125 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50139; File No. SR–PCX–2004–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Schedule of Fees and Charges

August 3, 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 July 7, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On July 28, 2004, PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its Schedule of Fees and Charges in order to adopt a fee that will apply to each OTP Holder that accesses the Exchange's server capacity to use the Actant quoting software employed in PCX Plus. The text of the proposed rule change is available at PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a fee for those OTP Holders that wish to access the Exchange's server capacity to use the Actant quoting software employed in PCX Plus. Actant is a third-party vendor the Exchange has contracted with to provide quoting software to be employed in PCX Plus. PCX represents that, since it would be prohibitively expensive for small OTP Holders to purchase their own servers, the Exchange will create a server bank from which each OTP Holder could lease capacity. The Exchange believes that this will facilitate participation from smaller OTP Holders that might not have the expertise, capital, or staff to acquire and maintain the servers needed to support the quoting software. The Exchange states that it will charge the fee to each OTP Holder that accesses the Exchange's server capacity in order to use the Actant software.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of section 6(b)(4) of the Act,[5] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b-4[7] thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange.

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.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

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[17] 15 U.S.C. 78s(b)(2).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2004 ("Amendment No. 1"). In Amendment No. 1, PCX clarified that Actant is a third-party vendor the Exchange has contracted with to provide quoting software to be employed in PCX Plus. PCX also amended the rule text to clarify that the proposed fee will apply to each OTP Holder that accesses the Exchange's server capacity to use the Actant quoting software and made conforming changes to the description and purpose sections of the proposal. Amendment No. 1 supercedes and replaces the proposed rule change in its entirety.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission considers that period to commence on July 28, 2004, the date PCX filed Amendment No. 1 to the proposed rule change.

Number SR–PCX–2004–62 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–62 and should be submitted on or before August 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–18123 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50131; File No. SR–PCX–2004–29]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 to Add a Provision in the Minor Rule Plan and Recommended Fine Schedule for Failure to Maintain Continuous, Two-Sided Q Orders in Those Securities in Which the Market Maker is Registered to Trade

July 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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 Exchange. On July 2, 2004, the PCX amended the proposed rule change.[3] On July 26, 2004, the PCX again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the PCXE Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") to add a provision in the MRP and RFS for failure to maintain continuous, two-sided Q Orders in those securities in which a PCXE market maker is registered to trade. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals

* * * * *

Minor Rule Plan

Rule 10.12(a)–(f)—No change.

(g) Minor Rule Plan: Minor Trading Rule Violations.

(1)–(2)—No change.

(3) Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).

* * * * *

[1] Fines for multiple violations of Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

* * * * *

(i) Minor Rule Plan: Recommended Fine Schedule.

	1st violation	2nd violation	3rd violation
(1)–(2)—No change..			
(3) Failure to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade. (Rule 7.23(a)(1))[2]	$100.00	$250.00	$500.00

[2] This schedule is based on the number of violations for a particular security and the number of violations shall be calculated on a monthly basis and is intended to apply to inadvertent violations of Rule 7.23(a)(1). In cases of deliberate or other aggravated circumstances, other disciplinary action may be sought.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the PCXE MRP and RFS to add a

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 1, 2004 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

[4] *See* letter from Tania J.C. Blanford, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 23, 2004 ("Amendment No. 2"). Amendment No. 2 replaced footnote #2 (on page 3 of Amendment No. 1) and footnote #4 (on page 8 of Amendment No. 1).

provision in the MRP and RFS for failure to maintain continuous, two-sided Q Orders in those securities in which a PCXE market maker is registered to trade. PCXE Rule 7.23(a)(1) states that a market maker must maintain continuous, two-sided Q Orders in those securities in which it is registered to trade as a component of the market maker's obligations. The proposed fines are $100 for a first violation, $250 for a second violation, and $500 for a third violation for failure to maintain continuous, two-sided Q Orders in those securities in which the market maker is registered to trade. The fine schedule and the number of violations are based on each failure to quote and for each security, depending on the number of securities involved. For example, if a market maker failed to maintain continuous, two-sided Q Orders for "IBM" on Day 1, then failed to maintain continuous, two-sided Q Orders in "Microsoft" and "Yahoo" on Day 2, such violations will be calculated as violations 1, 2, and 3, respectively, assuming that Day 1 and 2 are within the same month. Violations would be calculated on a monthly basis [5] and the proposed MRP is intended to apply to inadvertent violations of PCXE Rule 7.23(a)(1).[6]

The Exchange believes that the proposed rule change would strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The proposed rule change should also aid the Exchange in carrying out its surveillance and enforcement functions. The Exchange does not minimize the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's MRP. The Exchange relies on its MRP as a tool to address enumerated violations via the MRP process that provides the Exchange with greater flexibility to address violations that may not require formal disciplinary proceedings. Under the proposed rule change, the Enforcement Department would continue to exercise its discretion under PCXE Rule 10.13(f) and take cases out of the MRP to pursue them as formal disciplinary matters if the facts or circumstances warrant such action.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange also believes the proposal is consistent with Section 6(b)(6),[8] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–29 and should be submitted on or before August 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–18124 Filed 8–6–04; 8:45 am]

BILLING CODE 8010–01–U

[5] Monthly basis means a strict month-to-month calculation. The calculation would restart at the beginning of each month. For example, if a market maker incurred a first violation on July 15th and incurred another violation on August 15th, the August 15th violation would be calculated as a first violation since it occurred during a different month.

[6] An inadvertent violation is when a market maker inadvertently fails to put in quotes as opposed to purposely backing away from maintaining a fair and orderly market. An example of an inadvertent violation is when a market maker puts in a maximum tradable size for a given security and the entire size is traded, which would leave the security without a quote. An example of a deliberate failure is when a market maker pulls a quote in reaction to a drop in stock price. Such an action would be evident from the surveillance report review process and would be taken out of the MRP and pursued as a formal disciplinary proceeding.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 8, 2004. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Portfolio Financing Report.
Form No: 1031.
Frequency: On occasion.
Description of Respondents: Small Business Investment Companies.
Responses: 440.
Annual Burden: 800.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 04–18162 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9ZN2; Amdt. #1]

State of Alaska

The above numbered declaration is hereby amended to include the Matanuska-Susitna Borough in the State of Alaska as an economic injury disaster area due to damages caused by wildfires that began on June 28, 2004, and continue to burn.

In addition, applications for economic injury loans from small businesses located in the contiguous political areas of Kenai Peninsula Borough, Municipality of Anchorage, Iditarod Area Regional Education Attendance Area (REAA), and Chugach REAA in the State of Alaska may be filed until the specified date at the previously designated location. All other political areas contiguous to the above named primary borough have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is April 25, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002).

Dated: August 2, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–18093 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P040; Amdt. #2]

State of Arkansas

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 9, 2004, the above numbered declaration is hereby amended to include Benton and Franklin Counties in the State of Arkansas as disaster areas due to damages caused by severe storms and flooding occurring on May 30, 2004, and continuing through July 9, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 30, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: August 3, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–18095 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3604]

Territory of Guam

The Territory of Guam constitutes a disaster area as a result of damages caused by Tropical Storm Tingting that occurred on June 26 and continued through June 29, 2004. The storm caused structural damages throughout the Island of Guam from wind, flooding and mudslides. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 1, 2004, and for economic injury until the close of business on May 2, 2005, at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 4 Office, P. O. Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 360406 and for economic damage is 9ZN500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 2, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–18097 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3602]

Commonwealth of Kentucky

Breckinridge County and the contiguous counties of Grayson, Hancock, Hardin, Meade, and Ohio in the Commonwealth of Kentucky; and Perry County in the State on Indiana constitute a disaster area due to damages caused by severe thunderstorms and high winds that occurred on July 13, 2004, and are continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 1, 2004, and for economic injury until the close of business on May 2, 2005, at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	5.500
Businesses and non-profit organizations without credit Available Elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The number assigned to this disaster for physical damage is 360211 for Kentucky and 360311 for Indiana. The number assigned to this disaster for economic injury is 9ZN300 for Kentucky and 9ZN400 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 2, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–18096 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3598; Amdt. #1]

State of New Jersey

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective July 23, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning July 12, 2004 and continuing through July 23, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 14, 2004, and for economic injury the deadline is April 18, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 2, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–18092 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P043; Amdt. #1]

State of South Dakota

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 28, 2004, the above numbered declaration is hereby amended to include Yankton County in the State of South Dakota as a disaster area due to damages caused by severe storms and flooding occurring on May 28, 2004, and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 20, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: August 3, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–18094 Filed 8–6–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4797]

In the Matter of the Redesignation of Communist Party of the Philippines, Also Known as the CPP, Also Known as New People's Army, Also Known as the NPA, Also Known as the CPP/NPA, as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State has concluded that there is a sufficient factual basis to find that the relevant circumstances described in Section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA"), 8 U.S.C. 1189, continue to exist with respect to the Communist Party of the Philippines. The Communist Party of the Philippines is also known as the CPP, also known as the New People's Army, also known as the NPA, and also known as the CPP/NPA.

Therefore, effective August 9, 2004, the Secretary of State hereby redesignates that organization as a Foreign Terrorist Organization pursuant to section 219(a) of the INA.

Dated: August 3, 2004.

Ambassador Cofer Black,

Coordinator for Counterterrorism, Department of State.

[FR Doc. 04–18019 Filed 8–6–04; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Northwest Alabama Regional Airport, Muscle Shoals, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Northwest Alabama Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Suite B; Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John B. Lehrter, Airport Director of the Northwest Alabama Regional Airport Authority, Inc., at the following address: 1729 T. Ed Campbell Drive, Suite A, Muscle Shoals, AL 35661–2016.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Northwest Alabama Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B; Jackson, MS 39208–2307, 601–664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Northwest Alabama Regional Airport under the provisions of the Aviation

Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Northwest Alabama Regional Airport Authority, Inc. was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 26, 2004.

The following is a brief overview of the application.

PFC Application No.: 04–04–C–00–MSL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2004.

Proposed charge expiration date: December 31, 2008.

Total estimated net PFC revenue: $57,355.00.

Brief description of proposed project(s): Construct Taxiway "E" (phase II and III); Acquire Americans with Disabilities (ADA) passenger lift device; Acquire Commuter Walk; Extend Taxiway "B" to Runway 18; and Rehabilitate/Sealcoat/Mark Runway 11–29 and Taxiway "A".

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Northwest Alabama Regional Airport.

Issued in Jackson, AL, on July 23, 2004.

Rans D. Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 04–18071 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

PS–ACE100–2004–10023, Final Policy for Flammability of Electrical Wire Used in Part 23 Aircraft per 14 CFR, Part 23, §§ 23.853 and 23.1359

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This notice announces the issuance of PS-ACE100–2004–10023. ThisPolicy Statement clarifies the applicability of AC 43.13–1B, Change 1 for flammability of electrical wire used in part 23 aircraft. Electrical wire listed in section 7 of AC 43.13–1B,Change 1 complies with §§ 23.853 and 23.1359 and is acceptable for use in part 23 aircraft without further testing. The draft policy statement was issued for Public Comment on March 26, 2004. When possible, comments received were used to modify the draft policy.

DATES: PS–ACE100–2004–10023 was issued by the Manager, Small Airplane Directorate on July 9, 2004.

FOR FURTHER INFORMATION CONTACT: A paper copy of PS–ACE100–2004–10023 may be obtained by contacting Mr. Leslie B. Taylor, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4134, fax (816) 329–4090. The policy will also be available on the Internet at *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri on July 12, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–18060 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; South Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed Interstate 73 (I–73) highway project in eastern South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick L. Tyndall, Environmental Program Manager, Federal Highway Administration, 1835 Assembly Street, Suite 1270, Columbia, South Carolina 29201; Telephone (803) 765–5411; email: *Patrick.tyndall@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT), will prepare an environmental impact statement (EIS) on the proposed I–73 project. The proposed interstate highway is ultimately planned to connect to I–73 in North Carolina and would enter South Carolina near Marlboro County. The portion of the roadway to be evaluated in this proposed EIS is the portion from the vicinity of I–95, southeast to the Conway/Myrtle Beach area, a distance of approximately 60 miles. The proposed study area includes Dillon, Marion, and Horry Counties.

Improvements to the corridor are considered necessary to improve national and regional connectivity to the Conway/Myrtle Beach area of South Carolina by providing a direct interstate link. This link will enhance economic opportunities and tourism in South Carolina. The proposed project would fulfill part of the congressional intent, as originally proposed in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and confirmed in the Transportation Equity Act (TEA–21) of 1998. The proposed action will also facilitate a more effective evacuation of the Conway/Myrtle Beach area during emergencies. Alternatives to be evaluated include the no action alternative, the upgrade of existing roads, construction on new alignment, and combinations of upgrades and new alignments.

The FHWA and SCDOT are seeking input as a part of the scoping process to assist in identifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An interagency coordination process will begin soon, with the invitations to Cooperating Agencies and a formal scoping meeting to occur in the late summer of 2004. A public involvement plan is being developed for this project and will include a variety of opportunities for interested parties to be involved in the project. Two public interest group/public scoping meetings will be held in September 2004 at different locations in eastern South Carolina. These meetings will be well publicized in advance, giving the location and time for each meeting. Additional coordination with the public, public interest groups, elected officials, and state and federal agencies will be performed between September 2004 and July 2006. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be

directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 3, 2004.

Robert D. Thomas,

Acting Division Administrator, Federal Highway Administration, Columbia, South Carolina.

[FR Doc. 04–18113 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; South Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tiered environmental impact statement will be prepared for the proposed Interstate 73 (I–73) highway project in eastern South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick L. Tyndall, Environmental Program Manager, Federal Highway Administration, 1835 Assembly Street, Suite 1270, Columbia, South Carolina 29201; Telephone (803) 765–5411; email: *Patrick.tyndall@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the South Carolina Department of Transportation (SCDOT), will prepare a Tier 1 environmental impact statement (EIS) on the proposed I–73 project. The proposed interstate highway is planned to connect to I–73 in North Carolina and would enter South Carolina near Marlboro County. The portion of the roadway to be evaluated in this proposed Tier 1 EIS is the portion from the South Carolina/North Carolina state line to the vicinity of I–95, a distance of approximately 35 miles. The proposed study area includes Marlboro and Dillon Counties.

Improvements to the corridor are considered necessary to improve national and regional connectivity to the Conway/Myrtle Beach area of South Carolina by providing a direct link to North Carolina. This link will enhance economic opportunities and tourism in South Carolina. The proposed project would fulfill part of the congressional intent, as originally proposed in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and confirmed in the Transportation Equity Act (TEA–21) of 1998. Alternatives to be evaluated include the no action alternative, the upgrade of existing roads, construction on new alignment, and combinations of upgrades and new alignments.

The FHWA and SCDOT are seeking input as a part of the scoping process to assist in identifying issues relative to this project. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. An interagency coordination process will begin soon, with the invitations to Cooperating Agencies and a formal scoping meeting to occur in the fall of 2004. A public involvement plan is being developed for this project and will include a variety of opportunities for interested parties to be involved in the project. A public scoping meeting will be held in the fall of 2004 in northeastern South Carolina. This meeting will be well publicized in advance, giving the location and time the meeting. Additional coordination with the public, public interest groups, elected officials, and state and federal agencies will be performed between the Fall of 2004 and Summer of 2006. The draft Tier 1 EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 3, 2004.

Robert D. Thomas,

Acting Division Administrator, Federal Highway Administration, Columbia, South Carolina.

[FR Doc. 04–18114 Filed 8–6–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Ex Parte No. 333]

Sunshine Act Meeting

TIME AND DATE: 10 a.m., August 11, 2004.

PLACE: The Board's Hearing Room, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE CONSIDERED:

STB Docket No. 42084, *CF Industries, Inc.* v. *Kaneb Pipe Line Partners, L.P. and Kaneb Pipe Line Operating Partnership, L.P.*

STB Docket No. 42060, *North America Freight Car Association—Protest and Petition for Investigation—Tariff Publications of The Burlington Northern and Santa Fe Railway Company.*

Embraced case:

STB Docket No. 42060 (Sub-No. 1), *North America Freight Car Association v. The Burlington Northern and Santa Fe Railway Company.*

STB Finance Docket No. 34425, *City of Lincoln—Petition for Declaratory Order.*

STB Finance Docket No. 34444, *Town of Milford, MA—Petition for Declaratory Order.*

STB Ex Parte No. 552 (Sub-No. 8), *Railroad Revenue Adequacy—2003 Determination.*

Docket No. AB–167 (Sub-No 1094)A, *Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY.*

STB Docket No. AB–855 (Sub-No. 1X), *A & R Line, Inc.—Abandonment Exemption—in Cass and Pulaski Counties, IN.*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Congressional and Public Services, telephone: (202) 565–1596, FIRS: 1–800–877–8339.

Dated: August 4, 2004.

Vernon A. Williams,

Secretary.

[FR Doc. 04–18149 Filed 8–4–04; 1:32 pm]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development.

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 and/or CRADA Collaboration under 15 U.S.C. 3710a 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: Dr. Mindy Aisen, Acting Director, Technology Transfer Program, Office of Research and Development (12TT), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *mindy.aisen@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:

International Patent Application No. PCT/US04/00889 "Inducing Weight Loss by Vagus Nerve Stimulations in the Neck."

Dated: July 30, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–18107 Filed 8–6–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
August 9, 2004

Part II

Department of Housing and Urban Development

Notice of Funding Availability for HOPE VI Neighborhood Networks Grants Fiscal Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4933–N–01]

Notice of Funding Availability for HOPE VI Neighborhood Networks Grants Fiscal Year 2003

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title:* HOPE VI Neighborhood Networks Grants Fiscal Year 2003.

C. *Announcement Type:* Initial announcement.

D. *Funding Opportunity Number:* The **Federal Register** number for this NOFA is: FR–4933–N–01. The OMB approval number for this program is: 2577–0208.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* The CFDA number for this NOFA is 14–866, "Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI)":

F. *Dates:*

1. *Application Due Date:* The application due date is September 8, 2004. See the *General Section* of the SuperNOFA for application submission, delivery and timely receipt requirements.

2. *Estimated Grant Award Date:* The estimated award date will be no later than September 30, 2004.

Full Text Of Announcement

I. Funding Opportunity Description

Purpose of the Program. This NOFA announces the availability of approximately $5 Million in Fiscal Year (FY) 2003 funds to implement and expand a Neighborhood Networks program in support of public housing agency-owned (PHA) affordable housing.

A. Part of the HOPE VI Program

The Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization and Demolition Grants; Fiscal Year 2003, as published in the **Federal Register** on October 21, 2003, page 60178 to 60276, Docket Number FR–4861–N–01 (HOPE VI NOFA), stated that funding for Neighborhood Networks within the HOPE VI program would be offered under a separate Neighborhood Networks NOFA. This is that NOFA.

B. Statutory Authority

1. The program authority for the HOPE VI Program is Section 24 of the United States Housing Act of 1937 Act (42 U.S.C. 1437v), as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), as amended.

2. The funding authority for Neighborhood Networks for HOPE VI Revitalization grantees is provided by the Consolidated Appropriations Resolution, 2003 (Pub. L 108–7, approved February 20, 2003), under Division K, Title II, Public and Indian Housing, Revitalization of Severely Distressed Public Housing (HOPE VI).

3. The FY2003 appropriation for HOPE VI allocated approximately $5 million for a Neighborhood Networks initiative for activities authorized in Section 24(d)(1)(G) of the Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The HOPE VI Neighborhood Networks grant provides funding to be used in conjunction with the grantees' HOPE VI revitalization effort to enhance or create new Neighborhood Networks Centers (NNCs). The focus of the awards is to provide computer and Internet training and communication access centers for public housing and other low-income HOPE VI revitalization development residents.

C. Definition Of Terms

1. *HOPE VI Neighborhood Networks Plan* is a compilation of information about the demographics and digital needs of the HOPE VI Revitalization Development's residents, as well as the grantee's plan to develop and implement its Neighborhood Networks program. The Plan Guide is written in accordance with Form HUD–52775, "HOPE VI Neighborhood Networks Plan Guide," a document that contains guidance to assist in the development of a HOPE VI Neighborhood Networks Plan.

2. *Neighborhood Networks Centers (NNCs)* are community centers or rooms that provide public housing and other low-income HOPE VI revitalization development residents access to computers and the Internet for the purpose of:

a. Training in digital technology, which consists of items such as interactive computer learning sessions, Internet web access, Internet web telecasts, and producing and receiving satellite broadcasts; and

b. Accessing information about community and supportive services.

3. *Match.* Means at least five percent of the requested grant amount is required to be donated from sources other than federal funding for Neighborhood Networks uses. Community Development Block Grant (CDBG) funds are considered local funds, not federal funds.

4. *Neighborhood Networks Coordinator (NNC Coordinator)* is a person who is responsible for coordinating proposed Neighborhood Networks activities, such as ensuring timely implementation in accordance with the Neighborhood Networks program.

a. Neighborhood Networks Coordinator Duties. The Neighborhood Networks Coordinator is responsible for:

(1) Ensuring that the NNC's programs achieve your application's goals and objectives.

(2) Marketing the program to residents;

(3) Assessing participating residents' needs, interests, skills, and job readiness;

(4) Assessing participating residents' needs for supportive services; *e.g.*, childcare during NNC program classes, and transportation to the NNC for disabled residents;

(5) Designing and coordinating grant activities based on residents' needs;

(6) Monitoring the progress of program participants and evaluating the overall success of the program.

(7) Coordinating the type of Neighborhood Networks training provided to each participant with other available supportive services programs in an effort to ensure proper instructional level.

5. *Nonprofit organization* is an organization that is exempt from federal taxation. A nonprofit organization can be organized for charitable, religious, educational, scientific, literary, or other purposes.

6. *Owner entity* is the legal entity that holds title to real property that contains public housing units.

7. *Person with disabilities* means a person who:

a. Has a condition defined as a disability in Section 223 of the Social Security Act;

b. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

c. Is determined to have a physical, mental, or emotional impairment which:

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

d. The term "person with disabilities" may include persons who have acquired immunodeficiency syndrome (HIV/AIDS) or any conditions arising from the etiologic agent for AIDS. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

e. The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in Section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for the purpose of reasonable accommodation.

8. *Procured Developer* is a legal entity that has a contract or "Developer Agreement" with a Public Housing Agency (PHA) to finance, rehabilitate and/or construct housing units, community centers (if required), and to provide community and supportive services for a HOPE VI revitalization grantee.

9. *Program* means the HOPE VI Neighborhood Networks program that will be developed or expanded by the recipients of grant funds offered by this NOFA.

10. *Project* is the same as "low-income housing project" as defined in Section 3(b)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et. seq.*) (1937 Act).

11. *Target Group* means the group of residents and families that will be given the option of participating in programs at the grantee's Neighborhood Networks Center (NNC). See Section III.C. for group member requirements.

12. *Surrounding Community* means the area surrounding the NNC and should be limited to a distance wherein residents are likely to travel to the NNC. This distance varies by locality.

D. Program Description

1. This NOFA provides grants to qualified Public Housing Agencies (PHAs) to (1) update, maintain, and expand existing NNCs; or (2) establish new NNCs. This expansion or establishment may include construction, computer and information technology hardware, staffing, and services.

2. By providing access to computers and the Internet to public housing residents, NNCs offer access to a full range of supportive services that promote job training; reduction of welfare dependency; economic self-sufficiency; increased use of computer technology; expanded educational opportunities for residents; and access to health and nutrition information. NNCs also fulfill other public housing and other low-income HOPE VI revitalization development resident needs through access to information via computers and the Internet.

3. An NNC may be existing or new.

a. An existing NNC is:

(1) A computer lab or community technology center that serves residents of public housing and is already owned and operated by a PHA, nonprofit or procured developer, and which has not received prior Neighborhood Networks funding and therefore is not officially designated a HUD Public and Indian Housing (PIH) NNC; or

(2) A computer lab or community technology center officially designated a HUD PIH NNC by virtue of PIH funding received prior to award of this NOFA.

b. A new NNC is one that:

(1) Is not operational;

(2) Is in development; or

(3) Needs funding under this grant program to become fully operational and serve residents of public housing.

E. Eligible Activities

Funding from this NOFA may be expended on the following services, equipment, and improvements:

1. *Information Technology Equipment.* Purchase of computers, printers, network hardware, Internet connection hardware, software, and other peripheral equipment.

2. *Services.*

a. Increased computer and Internet access for residents during all phases of the HOPE VI revitalization process and grant term period, including services to those residents that are temporarily or permanently relocated using Housing Choice Vouchers (HCV).

b. Training courses related to computer and Internet use and technology;

c. Use of the NNC as a focus for computer and online access to information regarding community and supportive services; and

d. Creation of online groups whose purpose is to better connect residents to each other and the public housing revitalization process.

3. *Physical Improvements.*

a. The construction, renovation, conversion, wiring, and physical repair of current or proposed NNC space;

b. Architectural, engineering, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections for the above physical improvements;

c. Modification to create a space that is accessible to persons with disabilities;

d. The construction, renovation, conversion, or joining of vacant dwelling units in a PHA development to create appropriate space for the equipment needs and activities of an NNC (such as computers, printers, and office space); and

e. The renovation or conversion of existing common areas in a PHA development to accommodate an NNC.

4. *Maintenance and Insurance Costs.* This includes installing and training in the use and maintenance of hardware and software, and obtaining insurance coverage for the space and equipment.

5. *Security and Related Costs.* This includes minor refitting and locks and other equipment for safeguarding the center.

6. *Distance Learning Equipment Costs.* Distance learning equipment (including the costs for video casting and purchase/lease/rental of distance learning equipment) provided the proposal indicates possibly working in a virtual setting with a college, university, or other educational organization. If a PHA operates more than one center, distance-learning equipment can be used to link one or more centers for courses being physically offered at a single site.

7. *Administrative Costs.* Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, salaries for resident employees hired as part of this grant program, quality assurance, local travel, and utilities.

F. SuperNOFA Reference

The subsection entitled "Funding Opportunity Description" in Section I. of the *Notice of HUD's Fiscal Year 2004 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the Super NOFA for HUD's Discretionary Programs* (SuperNOFA), Docket No. FR–4900–N–01, published in the **Federal Register** on May 14, 2004 is hereby incorporated by reference.

II. Award Information

A. *Available Funds.* A total of $4,967,500 is available for funding which must be obligated in FY2004.

B. *Number of Awards.* This NOFA will result in approximately 20 awards.

C. *Range of Amounts of Each Award.* You may request up to $250,000.

D. *Start Date, Period of Performance.* The term of the grants that result from this NOFA will start on the date that the

grant award document is signed by HUD and will continue for 54 months.

E. *Type of Instrument.* Grant Agreement.

F. *Supplementation.* Current HOPE VI Revitalization and HOPE VI Neighborhood Networks grantees may supplement their existing HOPE VI Neighborhood Networks program through this grant.

G. *SuperNOFA Reference.* Section II, "Funding Available," of the SuperNOFA is hereby incorporated by reference.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include, and are limited to, current HOPE VI Revitalization grantees. Eligible applicants include all PHAs that are carrying out HOPE VI revitalization programs for severely distressed public housing, including economic development activities that promote the economic self-sufficiency of residents under the revitalization program in accordance with Section 24(d)(1)(G) of the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*).

B. Cost Sharing or Match

1. Match

HUD is required by the Quality Housing and Work Responsibility Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. You are required to have in place a match of five percent of the requested grant amount in cash or in-kind donations. Applications that do not demonstrate the minimum five percent match will not be considered for funding.

a. Match donations must be *firmly committed.* "Firmly committed" means that the amount of match resources and their dedication to Neighborhood Networks activities must be explicit, in writing, and signed by a person authorized to make the commitment. The commitment must be in place at the time of award.

b. You may propose to use your own, non-public housing grant funds to meet the match requirement.

c. The PHA's staff time is not an eligible cash or in-kind match.

d. Funds from other federal assistance are not an eligible cash or in-kind match. CDBG funds are considered local funds, not federal assistance funds.

e. See Section IV.B. of this NOFA for match documentation requirements.

C. Other

1. Thresholds

a. NNC Location: If your NNC is not located within the boundaries of one of the public housing projects that are included in any of your HOPE VI revitalization developments, your application will not be rated or ranked and will be ineligible for funding. See Section I.C. of this NOFA for the definition of a project.

b. Target Group. If your target group includes residents other than public housing or other low-income HOPE VI revitalization development residents, your application will not be rated or ranked and will be ineligible for funding. See Section I.C. of this NOFA for the definition of Target Group.

c. Incorporation of Sections of SuperNOFA. The following subsections of Section III. of the SuperNOFA are hereby incorporated by reference:

(1) Dun and Bradstreet Data Universal Numbering System (DUNS) number requirement;
(2) Compliance with fair housing and civil rights laws;
(3) Conducting business in accordance with core values and ethical standards;
(4) Delinquent federal debts;
(5) Name check review;
(6) False statements;
(7) Prohibition against lobbying activities; and
(8) Debarment and suspension.

2. Match Commitment Letters/ Memoranda Of Understanding (MOU)

If the commitment letter/MOU for any match funds/in-kind services is not included in the application and provided before the NOFA due date, the related match will not be considered. This is not a technical deficiency and cannot be corrected during the deficiency period. If the match is not met, the application will not be eligible for funding.

3. Program Requirements

a. Target Group Members: The target group is to be comprised of public housing and other low-income HOPE VI revitalization development residents.

b. Resident Needs. Programs offered by NNCs shall be designed to meet public housing residents' needs, by emphasizing:

(1) Helping residents transition from welfare to work;

(2) Assisting school-age children and youth with homework;

(3) Providing guidance and preparatory programming to high school students (or other interested residents) for postsecondary education (college or trade schools);

(4) Offering life-skills and job training for youth, adults, and seniors; and

(5) Providing access to health care information and other services as deemed necessary by results obtained from resident surveys.

c. Hiring a Neighborhood Networks Coordinator. You are required to hire a qualified Neighborhood Networks Coordinator to run the Neighborhood Networks program. The coordinator should have two years of experience in running a community technology center. The coordinator should be hired for the entire term of the grant.

d. Resident Assessment. You are required to assess residents' needs and interests so that program activities are designed to address their needs.

e. Sustainability. You are required to design the program to be sustainable after the grant term expires. This can be achieved through partnering.

f. Partnering. You are required to partner with other organizations, such as local businesses, schools, libraries, banks, and employment agencies, that will help you deliver computer- and Internet-related supportive services that fulfill residents' needs. These organizations can provide additional expertise, volunteers, office supplies, training materials, software, equipment, and other resources.

g. Charging for Services. The NNC may charge non-public housing/HOPE VI development organizations or individuals for services rendered, provided that the timing of, and amount of, charged services do not interfere with the amount or scheduling of services to public housing and other low-income HOPE VI revitalization development residents. Income from this source is considered to be program income and must be used to further the HOPE VI Neighborhood Networks program.

h. Wage Rates. Laborers and mechanics employed in the development and operation of Neighborhood Networks Centers must be paid Davis-Bacon or HUD-determined prevailing wage rates, respectively, unless they meet the qualifications of a volunteer (see 24 CFR part 70).

i. Energy Star. The Department of Housing and Urban Development has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency and the Department of Energy have formed a partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote

energy efficiency in affordable housing stock while protecting the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star building by home buyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 888–STAR–YES (888–782–7937). Persons with hearing or speech impairments can call toll-free through 888–588–9920 (TTY).

j. Communications. Notices of, and communications during, all training sessions and meetings must be effective for persons who have hearing and/or visual disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations at 24 CFR 8.6.

k. Environmental Requirements. (1) HUD Approval. HUD notification that you have been selected to receive a HOPE VI Neighborhood Networks grant constitutes only preliminary approval. Grant funds may not be released under this NOFA (except for activities that are excluded from environmental review under 24 CFR part 58 or 50) until the responsible entity, as defined in 24 CFR 58.2(a)(7), completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review).

(2) Responsibility. If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity must assume the environmental review responsibilities for projects being funded by this NOFA. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct it in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(3) Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you, and any participant in the development process, must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–00, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(4) Request for Release of Funds. You and any participant in the development process may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA. Also, you and any participant in the development process may not commit or expend HUD or local funds for these activities until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the responsible entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(5) HUD's environmental Web site is located at *http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

l. Site Control. If new construction, renovation, conversion, or repair is done off of the public housing project site, before start of construction, you must provide documentation that its procured developer or owner entity has control of the proposed property for at least 15 years. Control can be demonstrated through a lease agreement, ownership documentation, or other appropriate documentation.

m. Lead-Based Paint. You must comply with lead-based paint testing and abatement requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for testing and abatement activities. The National Lead Information Hotline is 800–424–5323.

n. The following subsections of Section III of the SuperNOFA are hereby incorporated by reference:

(1) The Americans with Disabilities Act of 1990;

(2) Affirmatively Furthering Fair Housing;

(3) Economic Opportunities for Low- and Very Low-Income Persons (Section 3);

(4) Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

(5) Accessible Technology;

(6) Procurement of Recovered Materials;

(7) Participation in HUD-Sponsored Program Evaluation;

(8) Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

(9) OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs; and

(10) Drug-Free Workplace.

4. Requirements and Procedures Applicable to All Programs

a. The following subsections of Section III of the SuperNOFA are hereby incorporated by reference:

(1) Statutory and Regulatory Requirements; and

(2) Ineligible Applicants.

b. Salary Limitation for Consultants. FY2003 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant whether retained by the federal government or the grantee at more than

the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

IV. Application and Submission Information

A. Addresses To Request Application Package

1. This section describes how a PHA may obtain application forms, additional information about HUD program NOFAs, and technical assistance. Copies of the published NOFAs and application forms for HUD programs announced via NOFA may be downloaded from the following Web site: *http://www.grants.gov/Find* or obtained by calling HUD's NOFA Information Center at 800–HUD–8929. Persons with speech or hearing impairments may call 800–877–8339.

a. Application Kits. There are no application kits for our programs this year. All the information you need to apply will be in the NOFA and available on the Internet.

b. The published **Federal Register** document is the official document that HUD uses to evaluate applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided on the Internet or in paper copy, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** file of the NOFA.

B. Content and Form of Application Submission

1. Maximum Length of Application

a. There are two narrative portions of the application: the Rating Factor Response and the HOPE VI Neighborhood Networks Plan. The maximum length of each of the two above narratives is 15 pages, for a total of 30 pages. Any pages after the first 15 for each of the narrative sections will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, and may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the page limit.

The narratives must be double-spaced on 8½ × 11-inch paper, with a minimum font size of Times New Roman 12 point and one-inch margins on all four sides of the page. Oversized pages will be counted as two pages. Single-spaced pages will be counted as two pages. Tables or columns are permitted to be single-spaced. Each 15-page maximum does not include forms required by the NOFA, including the HOPE VI Neighborhood Networks Plan Guide or supporting documentation, *e.g.*, commitment and support letters.

b. Supporting Documentation: Supporting documentation is limited to 50 documents or 100 pages, whichever is less. If more than one reduced-size image of a page is included on one page, the page will count as two pages. Supporting documentation is limited to third-party correspondence and applicant commitment documents that are signed by the executive director or a board member.

c. You should make every effort to submit only that supporting documentation which is necessary.

2. Number of Applications Permitted

Each applicant may submit only one application.

3. Joint Applications

Joint applications are not permitted. However, you may enter into subgrant agreements with procured developers, other HOPE VI partners, nonprofit organizations, or state or local governments to perform the activities proposed under the application.

4. Exceeding the Maximum Number of Pages

There maximum length of each narrative portion of the application is 15 pages. For each of the narrative portions of the application, any pages in addition to the first 15 will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, and may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 15-page limits.

5. Application Components

a. The Grant Application Detailed Budget (HUD–424–CB) contains information that will assist you in developing your application. To assist you in filling out the form, HUD has available for your voluntary use a Grant Application Detailed Budget Worksheet (HUD–424–CBW) and Grant Application Detailed Budget Worksheet Instructions (HUD–424–CBWI). They can be downloaded from *http://www.grants.gov/Find.*

b. The application is to be set up as follows:

Front of Application:

- Acknowledgment of Application Receipt (Form HUD–2993);
- Application for Federal Assistance (Form SF–424)

Tab 1: Response for Rating Factor 1:
- Rating Factor Response Narrative
- Specific Neighborhood Networks Plan and Document References

Tab 2: Response for Rating Factor 2:
- Rating Factor Response Narrative
- Specific Neighborhood Networks Plan and Document References

Tab 3: Response for Rating Factor 3:
- Rating Factor Response Narrative
- Specific Neighborhood Networks Plan and Document References

Tab 4: Response for Rating Factor 4:
- Document References

Tab 5: Response for Rating Factor 5:
- Rating Factor Response Narrative
- Specific Neighborhood Networks Plan and Document References

Tab 6: Response for Rating Factor 6:
- Regulatory Barriers Questionnaire (Form HUD–27300);

Tab 7: Neighborhood Networks Plan:
- Neighborhood Networks Plan (based on Form HUD–52775);

Tab 8: Leverage Commitment Documents:
- Letters/MOUs from Partners attesting to leverage donations

Tab 9: Forms and Certifications:
- Applicant Assurances and Certifications (Form HUD–424B)
- Grant Application Detailed Budget (Form HUD–424–CB)
- Grant Application Detailed Budget Worksheet (Form HUD–424–CBW)
- Applicant/Recipient Disclosure/ Update Report (Form HUD–2880)
- Disclosure of Lobbying Activities (SF–LLL)—if applicable
- Logic Model (Form HUD–96010)

c. Place the application in a three ring binder and package it as securely and simply as possible.

6. Match

a. Documentation to demonstrate that match donations are *firmly committed* include letters of commitment or Memoranda of Understanding (MOUs) that are on organization letterhead and are signed by a person authorized to make the stated commitment, whether it be in cash or in-kind services. The letters of commitment/MOUs must indicate the annual level and/or amount of commitment in dollars and indicate how the commitment will relate to the proposed program.

b. If you propose to use your own, non-public housing grant funds to meet the match requirement, a document from you that states how the match relates to your Neighborhood Networks program must be included in the application and signed by the authorized person.

c. The letters of commitment/MOUs must be dated no earlier than 90 days prior to the publication date of this NOFA.

d. You shall annotate the HUD–424–CB, Grant Application Detailed Budget, listing the sources and amount of each match.

7. Rating Factor Format

The only narrative portions of the application are your response to the rating factors and the Plan. An executive summary is not necessary. To ensure proper credit for information applicable to each rating factor, you should include page-number references to the Plan, forms, and supporting documentation in the rating factor responses. Your rating factor responses should be as descriptive as possible, ensuring that every requested item is addressed. You should make sure to include all requested information, according to the instructions of this NOFA. This will help ensure fair and accurate review of your application. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

8. Rating Factor Documentation

a. References to the Neighborhood Networks Plan. (1) When writing your factor narrative, you should reference information in your Plan. The purpose of including references to the Plan in your factor narrative is to increase the amount of information you can include in the factor narrative, which is limited in length. It is NOT necessary to repeat in the factor narratives the information that you included in your Plan.

(2) Each reference to the Plan should be specific. Each reference should include a table name or a one- or two-word subject that the reference applies to and the page number of the Plan where the referenced information can be found. More than one specific reference to the Plan may, and probably should, be included for any one subject or factor's narrative.

b. *Knowledge and Experience.* (1) Documentation that demonstrates staff experience and knowledge may include:

(a) Lists of contracts, grants, or program descriptions from contractors, subgrantees and partners;

(b) Resumes of current in-house staff listing programs that they worked on;

(c) Neighborhood Networks program descriptions;

(d) Digital training program descriptions;

(e) Community and social services program descriptions;

(f) Course lists;

(g) Participant completion certificates or lists;

(h) Attendance rosters;

(i) Third-party evaluation data and reports; and

(j) Other documentation showing participation and/or outcomes.

c. *Staff Capacity.* Documentation that demonstrates staff capacity may include:

(1) The number of hours per week that in-house staff who were included in the documentation of the knowledge and experience subfactor will devote to the Neighborhood Networks program;

(2) MOUs or letters of commitment that include resumes of key staff and starting dates;

(3) Employment agreements that include resumes and starting dates; and

(4) Other documents that include such information.

d. *Program Administration and Fiscal Management.* (1) Documentation that demonstrates program administration and fiscal management MUST include:

(a) A description of the procurement system structure that you have in place, including internal controls;

(b) A description of the fiscal management structure that you have in place, including fiscal controls and internal controls;

(c) A summary of the results of the last available annual external, independent audit, including findings, if any;

(d) A list of any findings issued or material weaknesses concerning PHA operations found by HUD or other federal or state agencies. A description of how you addressed the findings and/or weaknesses. If no findings or material weaknesses exist, include a statement to that effect in the narrative; and

(e) A description of your management control structure, including management roles and responsibilities and evidence that your management is results-oriented, e.g., that it has existing production, rental, and maintenance goals.

e. *Need/Extent of the Problem.* Documentation of need should include:

(1) The sources of the data that you used to contrast the number of public housing residents in the existing or proposed NNC's surrounding community to availability of no-cost Neighborhood Networks type training currently in the surrounding community.

(2) A list and explanation of Neighborhood Networks and Community and Supportive Services (CSS) needs as they apply to the related HOPE VI development's public housing residents;

(3) Specific plan references to data on public housing residents; and

(4) Information on the lack of Neighborhood Networks-related training programs currently available and easily accessible to public housing residents in the surrounding community. List no-cost training that is available through either the PHA or other local or state community organizations, including schools and libraries.

f. *Specific Services and/or Activities.* You should describe, or reference the Plan description of, the following areas:

(1) How partners are integrated into grant period and grantee activities are sustained;

(2) How staff roles relate to planned courses for paid and volunteer staff;

(3) How temporary and permanently relocated residents will be linked to the NNC;

(4) How computer and Internet knowledge relates to obtaining community and supportive services;

(5) What generally accepted training certifications will be offered to participants;

(6) How training courses build upon one another to teach residents job hunting and employment skills; and

(7) How training courses that build upon one another teach residents to use computers and the Internet to provide themselves with community and supportive services.

g. *Commitment Letters.* Commitment letters/MOU must be submitted to HUD with the NOFA application. If a commitment document is not included in the application, the donation will not be counted toward this factor. Missing commitment documents are not considered "technical deficiencies" and cannot be submitted during the technical deficiencies cure period after the application due date.

(1) Documentation to demonstrate that leverage is "firmly committed."

(a) "Firmly committed" means that the amount of leverage resources and their dedication to Neighborhood Networks activities must be explicit, in writing, and signed by a person authorized to make the commitment. Letters of commitment or Memoranda of Understanding (MOUs) must be on organization letterhead and signed by a person authorized to make the stated commitment whether it be in cash or in-kind services. The letters of commitment/MOUs must indicate the annual level and/or amount of commitment in dollars, the number of days after grant award at which the cash or in-kind services will be available, the duration of in-kind services, and how the commitment will relate to the proposed Neighborhood Networks

program. The letters of commitment/MOUs must be dated no earlier than 90 days prior to the publication date of this NOFA.

(2) You shall annotate the HUD–424–CB to list the sources and amount of each donation. Note that public housing funds of any kind are not an eligible donation. Applicant staff time is not an eligible donation.

h. *Achieving Results and Evaluation Methods.* (1) Your narrative should identify what you are going to measure, how you are going to measure it, and the steps you have in place to adjust your plans if outcomes are not met within established time frames.

(2) You must complete and include the Logic Model (Form HUD–96010) in your application.

i. *Incentive Criteria on Regulatory Barrier Removal.* You must include the completed Form HUD–27300 in your application.

9. HOPE VI Neighborhood Networks Plan Information

Your HOPE VI Neighborhood Networks Plan, which is based upon the *Neighborhood Networks Plan Guide,* Form HUD–52775, contains a large amount of information that applies to your rating factors. Page references to the Plan should be included where similar information is presented in the Rating Factor narrative of the NOFA. It is not necessary to repeat the text of the Plan information in other parts of the application.

C. Submission Dates and Times

1. *Application Due Date.* The application due date is September 8, 2004. See the *General Section* of the SuperNOFA for application, submission and timely receipt requirements.

2. *No Facsimiles or Videos.* HUD will not accept for review and evaluation, or funding, any applications sent by facsimile (fax). However, facsimile corrections to technical deficiencies will be accepted, as described in Section V.B.1.b. of this NOFA. Also, videos submitted as part of an application will not be viewed.

3. See Section IV.F.1. of this NOFA for the application submission address.

D. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs. Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. HUD implementing regulations are published in 24 CFR part 52. Executive Order 12372 allows each state to designate an entity to perform a state review function. The official listing of state points of contact (SPOCs) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application prior to submission to HUD.

Please make sure that you allow ample time for this review process when developing and submitting your applications. If your state does not have a SPOC, you may send applications directly to HUD.

E. Funding Restrictions

1. *Statutory Obligation Period.* Funds available through this NOFA must be obligated on or before September 30, 2004.

2. *Transfer of Funds.* HUD does not have the discretion to transfer funds available through this NOFA to any other program, grant, or area of your current HOPE VI grant.

3. *Limitation on Eligible Expenditures.* Expenditures on services, equipment, and physical improvements must directly relate to NNC activities.

4. *Ineligible Activities.* The following activities are not allowed:

a. Payment of wages and/or salaries to participants receiving supportive services and/or training programs;

b. Purchase or rental of land;

c. Purchase or rental of vehicles;

d. Security guard services;

e. Purchase or rental of telephones and telephone services for general use by the program participants;

f. Cost of application preparation;

g. Charging for services to public housing/HOPE VI development residents and Family Self-Sufficiency (FSS) participants; and

h. Incurring other costs that are not allowable under the HOPE VI program, in accordance with Section 24 of the 1937 Act (42 U.S.C. 1437v), as added by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), as amended, and the HOPE VI Grant Implementation Guidebook, dated October 1999, as amended, and that are not stated as allowable under this NOFA.

5. *Pre-Award Activities.* Award funds may not be used to reimburse pre-award expenses.

6. *Administrative Costs.* Administrative costs must adhere to OMB Circular A–87. Administrative costs are included in, and will be reviewed with, your budget.

7. *Environmental Reviews.* The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI program.

F. Other Submission Requirements

1. *Address for Submitting Applications.* Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important in ensuring that your application is properly accepted and not misdirected.

2. Applications mailed to the wrong location or office designated for receipt of the application, which result in the designated office not receiving your application in accordance with the requirements for timely submission, will result in your application being considered late and will not receive funding consideration. HUD will not be responsible for directing packages to the appropriate office(s).

3. See Section IV.F. of the SuperNOFA for requirements concerning timeliness of submission and method of delivery.

4. *SuperNOFA References.* The following subsections of Section IV of the SuperNOFA are hereby incorporated by reference:

(1) Addresses to Request Application Package;

(2) Application Kits;

(3) Guidebook and Further Information;

(4) Delivery and Receipt Procedures;

(5) Proof of Timely Submission; and

(6) Addresses.

V. Application Review Information

A. Criteria (Factors)

1. Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (22 Points)

This factor addresses whether you have the organizational resources necessary to successfully implement the proposed activities within the grant period. In rating this factor, HUD will consider the extent to which the proposal demonstrates that you will have qualified and experienced staff dedicated to administering the program.

a. Knowledge and Experience (8 Points)

(1) *Description.* Your current capacity to complete the requirements of the

NOFA is based upon the demonstrated knowledge and experience of your proposed NNC coordinator, staff, contractors, subgrantees, and other partners in planning and successfully managing programs similar to the Neighborhood Networks program for which funding is being requested. Experience will be judged in terms of recent, relevant, and successful experience of your team to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 3 years to be recent; experience should relate to specific activities and specific accomplishments. You must provide documentation of knowledge, experience, and success. See Section IV.B.8.b of this NOFA for documentation requirements for this factor.

(2) *Scoring:* (a) If your proposed team has demonstrated knowledge and experience working in both computer-related and supportive service programs, and that experience is shown to be successful in supporting documentation, you may receive up to 8 points.

(b) If your proposed team demonstrates that it has knowledge and experience in both computer-related and supportive service areas, but does not have documentation that shows successful outcomes, you may receive up to 6 points.

(c) If your team has demonstrated knowledge and experience in only one area, but does not have documented success, you may receive up to 2 points for this subfactor.

(d) If your team cannot demonstrate knowledge and successful experience in either area, you will receive a score of zero points for this subfactor.

b. Staff Capacity (7 Points)

(1) *Description.* You will be evaluated based on whether you, your contractors, subgrantees, and partners have sufficient experienced and knowledgeable personnel, or will be able to quickly access enough qualified experts or professionals to deliver the proposed activities in a timely and effective fashion. Knowledge and experience must be documented. See Section IV.B.8.c of this NOFA for documentation requirements for this factor.

(2) *Scoring:* (a) If you have staff and partners in place to begin the proposed grant at full effort between the grant award date and three months after award, you will receive up to a maximum of 7 points;

(b) If your proposal includes a plan to have staff and partners in place to begin the proposed work between three and six months after grant award, you will receive up to a maximum of 6 points;

(c) If your proposal includes a plan to have staff and partners in place to begin the proposed work between six and nine months after grant award, you will receive up to a maximum of 4 points;

(d) If your proposal includes a plan to have staff and partners in place to begin the proposed work between nine and 12 months after grant award, you will receive up to a maximum of 2 points; and

(e) If your proposal includes a plan to have the staff and partners in place later than 12 months after award, you will receive zero points.

c. Program Administration and Fiscal Management (7 Points)

(1) *Description.* Describe how you will manage the program; how HUD can be sure that there is program and financial accountability; and describe staff/team members' roles and responsibilities. See Section IV.B.8.d. of this NOFA for documentation requirements for this factor.

(2) *Scoring:* (a) If you show fiscal management controls, a procurement system and a results-oriented management structure that are adequate to manage a grant from this NOFA, and you do not have any outstanding Inspector General (IG) findings related to the Capital Fund Program or HOPE VI, you will receive up to 7 points;

(b) If you show fiscal management controls, a procurement system and management structure and controls that are adequate to manage a grant from this NOFA, but you do not demonstrate that your management structure and controls are results-oriented, and you do not have any outstanding findings, you will receive up to 5 points;

(c) If you show fiscal management controls, a procurement system and management structure and controls that are adequate to manage a grant from this NOFA, and you have outstanding findings that have not been addressed and closed, you will receive up to 2 points;

(d) If you do not describe your program management structure and fiscal management controls and show that they are adequate, you will receive 0 points.

2. Rating Factor 2: Need/Extent of the Problem (8 Points)

a. *Description.* (1) This factor addresses the extent to which there is a need for funding your proposed program and your indication of the importance of meeting the need in the target area. In responding to this factor, you will be evaluated on the extent to which you *describe and document* the level of need for your proposed activities and the urgency in meeting the need.

(2) Contrast the number of public housing residents in the area around the existing or proposed NNC to availability of no-cost Neighborhood Networks type training currently in the surrounding community.

(3) See Section IV.B.8.e of this NOFA for documentation requirements for this factor.

b. *Scoring:* (1) If there are no computer and Internet facilities available in the HOPE VI development's surrounding community to address the needs of the public housing residents, you may receive from 7 to 8 points;

(2) If computer and Internet facilities available in the HOPE VI development's surrounding community are only sufficient to address the needs of between 1 and 25 percent of the public housing residents, you may receive from 5 to 6 points;

(3) If computer and Internet facilities available in the HOPE VI development's surrounding community are only sufficient to address the needs of between 26 and 50 percent of the public housing residents, you may receive from 3 to 4 points; and

(4) If computer and Internet facilities available in the HOPE VI development's surrounding community are only sufficient to address the needs of 51 to 75 percent of the public housing residents, you may receive from 1 to 2 points; and

(5) If there are sufficient computer and Internet facilities available in the HOPE VI development's surrounding community to fulfill the needs of your public housing residents, you will receive 0 points.

3. Rating Factor 3: Soundness of Approach (30 Points)

This factor addresses both the quality and cost-effectiveness of your program, as presented in your rating factor responses and your Plan. Your factor responses must indicate a clear relationship between your proposed activities, the targeted population's needs, and the purpose of the program funding. You should include references to your Plan.

a. Specific Services and/or Activities (24 Points)

(1) *Description.* This factor addresses the services and courses that you are going to include in your Neighborhood Networks program and their beneficiaries. You must describe the specific services and activities you plan to offer, who will benefit from them and

how they will benefit from them. Tie specific services/activities to specific sub-groups, including persons with disabilities, within the target group. Your rating factor response must indicate the types of activities and training programs you will offer which can help residents successfully transition from welfare to work, earn higher wages and/or be able to graduate from use of the public housing program. See Section IV.B.8.f of this NOFA for documentation requirements for this factor.

(2) *Scoring:* (a) If all seven of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 24 points;

(b) If six of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 20 points;

(c) If five of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 16 points;

(d) If four of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 12 points;

(e) If three of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 8 points;

(f) If two of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive up to 4 points;

(g) If less than two of the areas listed in Section IV.B.8.f of this NOFA are addressed and fulfill the needs of your public housing residents, you will receive 0 points;

b. Feasibility (6 Points)

(1) *Description.* This factor examines whether your overall application is logical, feasible, and likely to achieve its stated purpose during the term of the grant. You will be evaluated based on whether your application shows that you can communicate well with your public housing residents regarding computers and the Internet, whether you are using a logical approach in planning and implementing the program and whether the amount of funds requested is commensurate with the level of effort necessary to accomplish your goals and anticipated results.

(2) *Scoring:* (a) If your application shows financial feasibility, the ability to work with the target group of residents and low-income families, a logical plan to provide training courses, and that the amount of requested funds is commensurate with the level of effort necessary to accomplish your goals and anticipated results, you will receive up to 6 points.

(b) If your application shows financial feasibility and the ability to work with the target group of residents and low-income families, you will receive up to 4 points.

(c) If your application shows only financial feasibility, you will receive up to 2 points.

(d) If your application as a whole is not logical and shows poor planning, you will receive zero points.

4. Rating Factor 4: Leveraging Resources (25 Points)

a. *Description.* (1) This factor addresses your ability to secure community resources that can be combined with HUD's grant resources to achieve program purposes. In rating this factor, HUD will look at the *extent* to which your partner, coordinates, and leverages your services with other organizations serving the same or similar populations.

(2) Leverage Description and Requirements.

(a) Leverage may be cash or other resources/services that can be donated and may include: in-kind services, contributions, or administrative costs provided to you; funds from federal sources (not including public housing/HOPE VI funds) as allowed by statute, including for example, CDBG; funds from any state or local government sources; and funds from private contributions.

(b) Leverage funds and in-kind services ("donations") must be *firmly committed.* See Section IV.B.8.g for documentation requirements to demonstrate firm commitment.

(c) Public housing funds of any kind are not an eligible donation. Applicant staff time is not an eligible donation.

(d) Points for this factor will be awarded based on the documented evidence of partnerships and firm commitments and the ratio of requested funding to the total proposed grant budget.

(e) Matching funds cannot be counted toward your leverage amount. Five percent of the leverage amount stated in your application will be subtracted in calculating your leverage amount to avoid double counting match funds.

(f) See Section IV.B.8.g for documentation requirements for this factor.

b. *Scoring:* (1) Points will be assigned based on the following scale:

Leverage as percent of grant amount	Points awarded
Less than 25 percent	0 points.
25 but less than 50 percent	7 points.
50 but less than 100 percent	16 points.
100 or more	25 points.

5. Rating Factor 5: Achieving Results and Evaluation Methods (13 Points)

a. *Description.* (1) Under this rating factor, you must demonstrate how they propose to measure their success and outcomes. This rating factor requires that you identify goals, interim and final program outcomes, and their time frames. Examples of outcomes are: increasing the homeownership rates among participants, increasing participants' financial stability (*e.g.*, increasing assets of a household through savings), or increasing employment stability (*e.g.*, whether persons assisted obtain or retain employment for one or two years during participation).

(2) Performance indicators should be objectively quantifiable and measure actual achievements against anticipated achievements.

(3) See Section IV.B.8.h of this NOFA for documentation requirements.

b. *Scoring:* (1) If you show interim and final measurable outcomes, with time frames, for each of several participant sub-groups, and show plans for adjusting your program, you will receive up to 13 points.

(2) If you show interim and final measurable outcomes, with time frames, but without plans for adjusting your program, you will receive up to 8 points.

(3) If you show interim and final measurable outcomes, but without time frames and plans for adjusting your program, you will receive up to 4 points.

(4) If you do not show interim and final measurable outcomes you will receive zero points.

6. Rating Factor 6: Incentive Criteria on Regulatory Barrier Removal (2 Points)

a. *Description.* (1) HUD's Notice, *America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations; Federal Register* Docket Number FR–4882–N–03, published on March 22, 2004, provides that most of HUD's competitive NOFAs will include an incentive for local and state governments to decrease their regulatory barriers to the development of affordable housing.

(2) Form HUD–27300 contains questions that describe your local and

state governments' efforts to decrease regulatory barriers.

b. *Scoring:* (1) If you are considered a local unit of government with land use and building regulatory authority, an agency or department of a local unit of government, a nonprofit organization, or other qualified applicant applying for funding for a project located in the local unit of government's jurisdiction, you are invited to answer the 20 questions in Part A of Form HUD–27300. For those applications in which regulatory authority is split between jurisdictions (*e.g.*, county and town), the applicant should answer the question for that jurisdiction that has regulatory authority over the issue in question.

(a) If you answer "yes" in Column 2 for five to ten questions from Part A, you will receive one point in the NOFA evaluation.

(b) If you answer "yes" in Column 2 for eleven or more questions from Part A, you will receive two points in the NOFA evaluation.

(2) If you are considered a state government, or an agency or department of a state government, applying for funding for a project located in the state government's jurisdiction, or areas otherwise not covered in Part A, you are invited to answer the 15 questions in Part B.

(a) If you answer "yes" in Column 2 for four to seven questions from Part B, you will receive one point in the NOFA evaluation.

(b) If you answer "yes" in Column 2 for eight or more questions from Part B, you will receive two points in the NOFA evaluation.

(3) Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed if an award is made.

(4) In no case will an applicant receive for this policy priority greater than two points for barrier removal activities.

B. Review and Selection Process

HUD's selection process is designed to ensure that grants are awarded to eligible PHAs with the most meritorious applications.

1. *Application Screening.* a. HUD will screen each application to determine if:

(1) It meets the threshold criteria listed in Section III.C of this NOFA; and

(2) It is deficient, *i.e.*, contains any technical deficiencies. Omissions or incorrect/omitted signatures of the forms and certifications listed under Tab 9 in Section IV.B.5.b. of this NOFA are considered technical deficiencies.

b. *Corrections to Deficient Applications.* The subsection entitled, "Corrections to Deficient Applications," in Section V.B. of the SuperNOFA applies, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within seven calendar days of the date of receipt of the HUD notification.

c. *Applications that will not be rated or ranked.* HUD will not rate or rank applications that are deficient at the end of the cure period stated in Section V.B.1.b. of this NOFA or have not met the thresholds described in Section III.C of this NOFA. Such applications will not be eligible for funding.

2. *Preliminary Rating and Ranking.*

a. Rating.

(1) HUD staff will preliminarily rate each eligible application, *solely* on the basis of the rating factors described in Section V.A. of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 100.

b. Ranking.

(1) After preliminary review, applications will be ranked in score order.

3. *Final Panel Review.*

a. A Final Review Panel made up of HUD staff will:

(1) Review the preliminary rating and ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the preliminary rating and ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection *the most highly rated applications,* subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

4. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

5. In accordance with the FY2003 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

6. *Tie Scores.* If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Soundness of Approach Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

7. *Remaining Funds.*

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under Section 24 of the Act.

(1) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

8. *Additional Funds.* HUD, at its discretion, may award funds above the requested grant amount to applications that present a grant program that demonstrates that the additional funds can and will be expended efficiently and effectively.

9. The following subsections of Section V. of the SuperNOFA are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. Award Notices

1. *Initial Announcement.* The HUD Reform Act prohibits HUD from notifying you whether or not you have been selected to receive a grant until it has announced all grant recipients. If your application has been found to be ineligible or if it did not receive enough points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. *Authorizing Document.* The notice of award signed by the Assistant

Secretary for Public and Indian Housing (grants officer) is the authorizing document. This notice will be delivered via fax and the U.S. Postal Service.

3. *Applicant Debriefing.* Upon request, HUD will provide an applicant a copy of the total score received by their application and the score received for each rating factor.

4. *SuperNOFA References.* The following subsections of Section VI.A. of the SuperNOFA are hereby incorporated by reference:

a. Adjustments to Funding; and

b. Debriefing.

B. Administrative and National Policy Requirements

1. *Grant term.* The time period for completion shall not exceed 54 months from the date the NOFA award is executed.

2. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a grant agreement.

3. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

4. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

C. Reporting

1. *Periodic Reporting.* Grantees will be required to submit Neighborhood Networks information on a quarterly basis. The type of information that will be required is listed within the scope of the *HOPE VI Neighborhood Networks Plan Guide,* Form HUD–52775. Grantees will furnish this information in the CSS portion of the online HOPE VI quarterly progress report.

2. *Logic Model Reporting.* The reporting shall include submission of a completed logic model indicating results achieved against the proposed output goal(s) and proposed outcome(s) which you stated in your approved application and agreed upon with HUD. The submission of the logic model and required information should be in accord with the reporting time frames as identified in your grant agreement.

3. *Final Report.* The grantees shall submit a final report, which will include a financial report and a narrative evaluating the overall performance of its HOPE VI Neighborhood Networks Plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in their application. The financial report shall contain a summary of all expenditures made from the beginning to the end of the grant agreement and shall include any unexpended balances. The final narrative and financial report shall be due to HUD 90 days after the full expenditure of funds or when the Neighborhood Networks program activities are complete.

VII. Agency Contacts

A. Technical Assistance

1. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing and/or speech challenges may access these telephone numbers via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

B. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted on the following Web site: *www.Grants.gov.*

2. Any technical corrections will also be published in the **Federal Register**.

3. You are responsible for monitoring these sites during the application preparation period.

C. General Information

General information about HUD's Neighborhood Networks program can be found on the Internet at *http://www.hud.gov/offices/hsg/mfh/nnw/nnwindex.cfm.*

VIII. Other Information

A. *SuperNOFA References.* The following subsections of Section VIII of the SuperNOFA are hereby incorporated by reference:

1. Executive Order 13132, Federalism;

2. Public Access, Documentation and Disclosure;

4. Section 103 of the HUD Reform Act; and

5. The FY2004 HUD NOFA Process and Future HUD Funding Processes.

B. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. *Paperwork Reduction Act Statement.* The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD 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. Public reporting burden for the collection of information is estimated to average 68 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

D. *Sense of Congress.* It is the sense of Congress, as published in section 409(a) of the Conference Report of HJR 2, that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

Dated: July 30, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
	Department:
Organizational DUNS:	Division:
Address:	Name and telephone number of person to be contacted on matters involving this application (give area code)
Street:	Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	7. TYPE OF APPLICANT: (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	
13. PROPOSED PROJECT Start Date: Ending Date:	14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e: Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal Identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

Applicant Assurances and Certifications

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017
(expires 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or as an individual must provide the following assurances and certifications. By submitting this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C.4321 et seq.) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. That no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage by the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that, I the applicant, knowingly made an erroneous certification or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

Budget Summary for Competitive Grant Programs	U.S. Department of Housing and Urban Development							OMB Approval No. 2501-0017 (exp. 03/31/2005)	
Section A - Budget Categories	**Grant Program, Function or Activity**								
	Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**
1. Object Class Categories	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$ 0.00
b. Fringe Benefits									0.00
c. Travel									0.00
d. Equipment (Only Items > $5,000 Depreciated Value)									0.00
e. Supplies (Only Items with Depreciated Value < $5,000)									0.00
f. Contractual									0.00
g. Construction									0.00
1. Administrative and legal expenses									0.00
2. Land, structures, rights-of way, appraisals, etc.									0.00
3. Relocation expenses and payments									0.00
4. Architectural and engineering fees									0.00
5. Other architectural and engineering fees									0.00
6. Project inspection fees									0.00
7. Site Work									0.00
8. Demolition and removal									0.00
9. Construction									0.00
10. Equipment									0.00
11. Contingencies									0.00
12. Miscellaneous									0.00
h. Other (Direct Costs)									0.00
1.									0.00
2.									0.00
3.									0.00
4.									0.00
5.									0.00
6.									0.00
I. Subtotal of Direct Costs	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges (% Approved Indirect Cost Rate:_____%)									0.00
k. Total Costs									0.00
l. Program Income									

form HUD-424-C (2/2003)

Instructions for the HUD-424-C, Budget Summary for Competitive Grant Programs

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form consolidates OMB's Standard Form 424-A (Budget Summary - Non-Construction Programs) and Standard Form 424-C (Budget Summary Construction Programs) into a single Summary Budget for use with HUD competitive program applications.

This form is designed so that an application can be made for any of HUD's grant programs. In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets be separately shown by function or activity.

Your budget information should show the entire cost of your proposed program of activities. If you are not using funds in any of the line item categories, you should leave the item blank. If you are not doing construction as part of your program, you do not have to complete that information.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Section A. Budget Categories

For each budget category (personnel, fringe benefits, travel, etc.) you should complete the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.
Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.
Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.
Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.
Column 5 - Identify any State funds that you will be adding to this program.
Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.
Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.
Column 8 - Identify any program income that you expect to generate under this program.
Column 9 - Add columns 1 - 8 across and place the total in Column 9.

Section A. Budget Categories (Continued)

Object Class Categories

The object class categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each column.

Lines a-f--Show the totals of Lines 1a to 1f in each column.
Line g.1.--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.
Line g.2.--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, end/or easements).
Line g.3.--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.
Line g.4.--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).
Line g.5.--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.
Line g.6.--Enter estimated engineering inspection costs.
Line g.7.--Enter the estimated site preparation and restoration which are not included in the basic construction contract.
Line g.8.--Enter the estimated costs related to demolition activities.
Line g.9.--Enter estimated costs of the construction contrect.
Line g.10.--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.
Line g.11.--Enter eny estimated contingency costs.
Line g.12.--Enter estimated miscellaneous costs.
Line h.--Enter eny other costs not elready addressed above.
Line i.--Calculate the totals of all epplicable columns to determine the Subtotal of Direct Costs.
Line j.--Indicate your approved Indirect Cost Rate (if eny) and calculate the indirect costs in accordance with the terms of your approved indirect cost rate and enter the resulting emount.
Line k.--Enter the sum of lines i and j under column 9.
Line l.--Enter the amount of program income that you expect to receive, allocate end generate through this program. The program income source may be from the current grant funds, other HUD program funds, your matching funds, or other funds. If you heve no projection for receipt of progrem income, please leave the line blenk. For discretionary grants the estimated emount of program income may be considered by HUD in determining the total emount of the grant eward.

Grant Applications
Detailed Budget

U.S. Department of Housing and Urban Development

OMB Approvoal No. 2501-0017
(expires 03/31/2005)

	Functional Categones [Year 1.__] [Year 2:__] [Year 3:__] [All Years.__]								
Name of Project/Activity:	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
	HUD Share	Applicant Match	Other HUD Funds	Other Fed Share	State Share	Local/Tribal Share	Other	Program Income	Total
a. Personnel (Direct Labor)	$	$	$	$	$	$	$	$	$ 0.00
b. Fringe Benefits									0.00
c. Travel									0.00
d. Equipment (only items > $5,000 depreciated value)									0.00
e. Supplies (only items < $5,000 depreciated Value)									0.00
f. Contractual									0.00
g. Construction									0.00
1. Administration and legal expenses									0.00
2. Land, structures, rights-of way, eppraisals, etc.									0.00
3. Relocation expenses and payments									0.00
4. Architectural and engineering fees									0.00
5. Other architectural and engineering fees									0.00
6. Project inspection fees									0.00
7. Site work									0.00
8. Demolition and removal									0.00
9. Construction									0.00
10. Equipment									0.00
11. Contingencies									0.00
12. Miscellaneous									0.00
h. Other (Direct Costs)									0.00
i. Subtotal of Direct Costs									0.00
j. Indirect Costs (% Approved Indirect Cost Rate:___%)									
Grand Total (Year:___):									0.00
Grand Total (All Years):									

form HUD-424-CB (1/2004)

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Separate sheets must be used for each proposed program year and for a summary of all years.

Check applicable program year or all years box at top of page to indicate which applies.

On the final sheet enter the Grand Total for all years in the applicable box at the bottom of the page. In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown seperately by function or activity. Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank. Pages may be duplicated to show budget data for individual programs, projects or activities.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each applicable column.

Lines a-f.--Show the totals of Lines a to f in each column.

Lines g. Show construction related expenses in the appropriate categories below.

Line g.1.--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.

Line g.2.--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line g.3.--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line g.4.--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line g.5.--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line g.6.--Enter estimated engineering inspection costs.

Line g.7.--Enter the estimated site preperation and restoration which are not included in the basic construction contract.

Line g.8.--Enter the estimated costs related to demolition activities.

Line g.9.--Enter estimated costs of the construction contract.

Line g.10.--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line g.11.--Enter any estimated contingency costs.

Line g.12.--Enter estimated miscellaneous costs.

Line h.--Enter any other direct costs not already addressed above.

Line i.--Calculate the totals of all applicable columns to determine the Subtotal of Direct Costs.

Line j.--Indicate the approved Indirect Cost Rate (if any) and calculate the indirect cost in accordance with the terms of your approved indirect cost rate and enter the resulting amount.

Grand Total (Year:__)--Enter the sum of lines i. and j. under column 9 for each year, and enter the applicable year, in the blank, for each sheet completed

Grand Total (All Years)--Enter the sum of all the, "Grand Total (Year:__)" amounts from each sheet completed, under column 9, for all proposed years.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

Column 1 - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

Column 2 - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

Column 3 - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

Column 4 - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

Column 5 - Identify any State funds that you will be adding to this program.

Column 6 - Identify any Local or Tribal Government funds that you will be adding to this program.

Column 7 - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

Column 8 - Identify any program income that you expect to generate under this program.

Column 9 - Add columns 1 - 8 across and place the total in Column 9.

Save Data

OMB Approval No. 2501-0017

Grant Application Detailed Budget Worksheet

(Exp. 03/31/2005)

Name and Address of Applicant:

Detailed Description of Budget (for full grant period)

Category											
1. Personnel (Direct Labor)	Estimated Hours	Rate per Hour	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Position or Individual											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Direct Labor Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
2. Fringe Benefits	Rate (%)	Base	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Fringe Benefits Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3. Travel											
3a. Transportation - Local Private Vehicle	Mileage	Rate per Mile	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Trans - Local Private Vehicle			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

3b. Transportation - Airfare (show destination)	Trips	Fare	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Transportation - Airfare			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3c. Transportation - Other	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Transportation - Other			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
3d. Per Diem or Subsistence (indicate location)	**Days**	**Rate per Day**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Per Diem or Subsistence			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Travel Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
4. Equipment (Only items over $5,000 Depreciated value	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Total Equipment Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

Federal Register / Vol. 69, No. 152 / Monday, August 9, 2004 / Notices 48295

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

5. Supplies and Materials (Items under $5,000 Depreciated Value)

5a. Consumable Supplies	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Consumable Supplies			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

5b. Non-Consumable Materials	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Non-Consumable Materials			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Supplies and Materials Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

6. Consultants (Type)	Days	Rate per Day	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Consultants Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

7. Contracts and Sub-Grantees (List individually)	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Subcontracts Cost			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

Grant Application Detailed Budget Worksheet

Detailed Description of Budget

8. Construction Costs

8a. Administrative and legal expenses	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Administrative and legal expenses			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8b. Land, structures, rights-of way, appraisal, etc	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Land, structures, rights-of way, ...			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8c. Relocation expenses and payments	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Relocation expenses and payments			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8d. Architectural and engineering fees	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Architectural and engineering fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8e. Other architectural and engineering fees	**Quantity**	**Unit Cost**	**Estimated Cost**	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Other architectural and engineering fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

8f. Project inspection fees	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Project inspection fees			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8g. Site work	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Site work			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8h. Demolition and removal	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Demolition and removal			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8i. Construction	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Construction			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8j. Equipment	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
			0.00								
Subtotal - Equipment			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8k. Contingencies	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Contingencies			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
8l. Miscellaneous	**Quantity**	**Unit Cost**	**Estimated Cost**	**HUD Share**	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
			0.00								
			0.00								
			0.00								
Subtotal - Miscellaneous			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Construction Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Grant Application Detailed Budget Worksheet

9. Other Direct Costs	Quantity	Unit Cost	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Item											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Other Direct Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Subtotal of Direct Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

10. Indirect Costs	Rate	Base	Estimated Cost	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income
Type											
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
			0.00								
Total Indirect Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Estimated Costs			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

form HUD-424-CBW (2/2003)

OMB Approval No. 2501-0017

Grant Application Detailed Budget Worksheet

(Exp. 03/31/2005)

Detailed Description of Budget			
Analysis of Total Estimated Costs		Estimated Cost	Percent of Total
1	Personnel (Direct Labor)	0.00	0.00%
2	Fringe Benefits	0.00	0.00%
3	Travel	0.00	0.00%
4	Equipment	0.00	0.00%
5	Supplies and Materials	0.00	0.00%
6	Consultants	0.00	0.00%
7	Contracts and Sub-Grantees	0.00	0.00%
8	Construction	0.00	0.00%
9	Other Direct Costs	0.00	0.00%
10	Indirect Costs	0.00	0.00%
	Total:	0.00	100.00%
	HUD Share:	0.00	100.00%
	Match (Expressed as a percentage of the Federal Share):	0.00	0.00%

form **HUD-424-CBW** (2/2003)

Instructions for Completing the Grant Application Detailed Budget Worksheet

Item	Discussion
This form is to be used to provide detailed budget information regarding your proposed program. If your program requires you to provide program activity information you should use a separate HUD-424-CBW to provide information related to each program activity. The detailed information provided on this form can be summarized on the HUD-424-CB form by checking the "All Years" box at the top of the form and inputting the summary information.	
1 - Personnel (Direct Labor)	This section should show the labor costs for all individuals supporting the grant program effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here. Please include all labor costs that are associated with the proposed grant program, including those costs that will be paid for with in-kind or matching funds. Do not show fringe or other indirect costs in this section. Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant.
2 - Fringe Benefits	Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment.
3 - Travel	
3a - Transportation - Local Private Vehicle	If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section.
3b - Transportation - Airfare	Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets. Each program notice of funding availability (NOFA) discusses the travel requirements that should be listed here.
3c - Transportation - Other	If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section. Provide estimates for other transportation costs that may be incurred (taxi, etc.).

3d - Per Diem or Subsistence	For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel. Each program NOFA discusses the travel requirements that should be listed here.
4 – Equipment	Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Each program NOFA describes what equipment may be purchased using grant funding.
5 - Supplies and Materials	Supplies and materials are consumable and non-consumable items that have a depreciated unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials.
5a - Consumable Supplies	List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate.
5b - Non-consumable materials	List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost.
6 – Consultants	Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate.
7 - Contracts and Sub-Grantees	List the contractors and sub-grantees that will help accomplish the grant effort. Examples of contracts that should be shown here include contracts with Community Based Organizations; liability insurance; and training and certification for contractors and workers. If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Grant Application Detailed Budget (Worksheet) should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section. Unless your proposed program will perform the primary grant effort with in-house employees (which should be listed in section 1), the costs of performing the primary grant activities should be shown in this section. Types of activities which should be shown in this section: • Contracts for all services • Training for individuals not on staff • Contracts with Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed above) • Insurance if your program will procure it separately Please provide a short description of the activity the contractor or subgrantee will perform, if not evident.

form **HUD-424-CBW-I** (1/2004)

8 – Construction Costs	
8a – Administrative and legal expenses	Enter estimated amounts needed to cover administrative expenses. Do not include costs that are related to the normal functions of government.
8b – Land, structures, rights-of way, appraisal, etc.	Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).
8c – Relocation expenses and payments	Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.
8d – Architectural and engineering fees	Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).
8e – Other architectural and engineering fees	Enter estimated engineering costs, such as surveys, tests, soil borings, etc.
8f – Project inspection fees	Enter estimated engineering inspection costs.
8g – Site work	Enter the estimated site preparation and restoration costs that are not included in the basic construction contract.
8h – Demolition and removal	Enter the estimated costs related to demolition activities.
8i – Construction	Enter estimated costs of the construction contract.
8j - Equipment	Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.
8k – Contingencies	Enter any estimated contingency costs.
8l – Miscellaneous	Enter estimated miscellaneous costs.
9 - Other Direct Costs	Other Direct Costs include a number of items that are not appropriate for other sections. Other Direct Costs may include: • Staff training • Telecommunications • Printing and postage Relocation, if costs are paid directly by your organization (if relocation costs are paid by a subgrantee, it should be reflected in Section 7)
10 - Indirect Costs	Indirect costs (including Facilities and Administration costs) are those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. Indicate your approved Indirect Cost Rate (if any) and calculate the indirect costs in accordance with the terms of your approved indirect cost rate and enter the resulting amount. Also show the applicable cost base amount and identify the proposed cost base type.
Total Estimated Costs	Enter the grand total of all the applicable columns.

The eight rightmost columns allow you to identify how the costs will be spread between the HUD Share and other contributors (including Match funds and Program Income). This information will help the reviewers better understand your program and priorities.

America's Affordable Communities Initiative	U.S. Department of Housing and Urban Development	OMB approval no. 2510-0013 (exp. 01/01/2006)

Public reporting burden for this collection of information is estimated to average 3 hours. This includes the time for collecting, reviewing, and reporting the data. The information will be used for encourage applicants to pursue and promote efforts to remove regulatory barriers to affordable housing. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Questionnaire for HUD's Initiative on Removal of Regulatory Barriers

Part A. Local Jurisdictions. Counties Exercising Land Use and Building Regulatory Authority and Other Applicants Applying for Projects Located in such Jurisdictions or Counties [Collectively, Jurisdiction]

	1	2
1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4.	☐ No	☐ Yes
2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?	☐ No	☐ Yes
3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.). If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.	☐ No	☐ Yes
4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?	☐ Yes	☐ No

5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.	☐ No	☐ Yes
6. If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?	☐ No	☐ Yes
7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?	☐ No	☐ Yes
8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
9. Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.	☐ No	☐ Yes
10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?	☐ No	☐ Yes

11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms.	☐ No	☐ Yes
13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (*e.g.* water, sewer, street width) to significantly reduce the cost of housing?	☐ No	☐ Yes
14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.)	☐ No	☐ Yes
15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?	☐ No	☐ Yes
16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community?	☐ No	☐ Yes
17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?	☐ No	☐ Yes
18. Does your jurisdiction allow "accessory apartments" either as: a) a special exception or conditional use in all single-family residential zones or, b) "as of right" in a majority of residential districts otherwise zoned for single-family housing?	☐ No	☐ Yes
19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?	☐ No	☐ Yes
20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?	☐ Yes	☐ No
Total Points:		

Part B. State Agencies and Departments or Other Applicants for Projects Located in Unincorporated Areas or Areas Otherwise Not Covered in Part A

		1	2
1	Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a "housing element?" If no, skip to question # 4	☐ No	☐ Yes
2.	Does you state require that a local jurisdiction's comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate, and middle income families, for at least the next five years?	☐ No	☐ Yes
3.	Does your state's zoning enabling legislation require that a local jurisdiction's zoning ordinance have a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped in these categories, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?	☐ No	☐ Yes
4.	Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing?	☐ No	☐ Yes
5.	Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability address these barriers to affordability?	☐ No	☐ Yes
6.	Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?	☐ No	☐ Yes
7.	Does your state have specific enabling legislation for local impact fees? If no skip to question #9.	☐ No	☐ Yes
8.	If yes to the question #7, does the state statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (*nexus*) and a method for fee calculation?	☐ No	☐ Yes
9.	Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?	☐ No	☐ Yes

10. Does your state have a mandatory state-wide building code that a) does not permit local technical amendments and b) uses a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? Alternatively, if the state has made significant technical amendment to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?	☐ No	☐ Yes
11. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
12. Within the past five years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other State-administered permits or programs involving housing development. If yes, briefly list these changes.	☐ No	☐ Yes
13. Within the past five years, has your state (i.e., Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
14. Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the states' "Consolidated Plan submitted to HUD?" If yes, briefly list these major regulatory reforms.	☐ No	☐ Yes
15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.	☐ No	☐ Yes
Total Points:		

HOPE VI Neighborhood Networks Plan Guide

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Public Housing Investments

OMB Approval No. 2577-0208
(exp. 03/31/2007)

Public Housing Agency: _____

City: _____ **State:** _____

HOPE VI Revitalization Grant Number related to Neighborhood Networks Center(s): _____

HOPE VI Revitalization Development Name related to Neighborhood Networks Center(s): _____

GENERAL GUIDE FORMAT

This HOPE VI Neighborhood Networks Plan Guide is part of the HOPE VI Neighborhood Networks NOFA application. Upon grant award, the NOFA application will become the grantee's HOPE VI Neighborhood Networks Program Plan ("Plan") and will be referred to by both the grantee and the HUD CSS Grant Manager during the grant period. The Plan information should be submitted in a combination of text and table formats. Tables will provide a quick-reference to the grantee's program, which will streamline HUD's administrative and grant management actions. The required table formats and, when applicable, required information lists are included in this Plan Guide as Exhibits. Text should be used to present items that do not fit into a table format, e.g., description of the technology related needs assessment process. Text should also be used to expand upon and clarify information listed in tables.

A. Definitions

1. Target Audience: This means the group of residents and families that will be given the option of participating in programs at the grantee's Neighborhood Networks Center (NNC). This group must include public housing residents, should include HOPE VI development residents. This group may also include residents of the NNC community, provided that services to public housing and HOPE VI residents do not suffer.

2. Surrounding Community: This means the area surrounding the NNC and should be limited to a distance wherein residents are likely to travel to the NNC. This distance varies by locality.

B. Neighborhood Networks Center Profile

1. Complete Exhibit A to this Plan Guide. The Exhibit illustrates the required table format. The profile will be used to enter the NNC into HUD's NNC database, see < http://www-domino4.hud.gov/NN/contacts.nsf/ centersearch?OpenForm>. The information items in Exhibit A are NOT samples. Inclusion of this information is required.

2. In Exhibit A, the applicant should fill out a Neighborhood Networks Center (NNC) profile for each Neighborhood Networks Center that will be developed or enhanced. This Section does not require a narrative description.

C. Demographics and community needs

1. Complete Exhibit B to this Plan Guide. The Exhibit illustrates the required table format. The information items in Exhibit B are NOT samples. Inclusion of this information is required.

2. Complete Exhibit C to this Plan Guide. The Exhibit illustrates the required table format. The technology related needs listed are samples. Actual technology related needs are to be determined by the applicant.

3. In Exhibit B, describe the residents that will be served: HOPE VI Community and Supportive Services (CSS) eligible families, families from the surrounding community.

a. Provide general social statistics and demographics for the surrounding community, including education levels, income levels, quality of schools, number of youth on free and reduced lunch etc.
b. Provide detailed demographics for HOPE VI CSS eligible residents that will be served by the center.
c. How many non-public housing residents live in the community? What is the anticipated economic breakdown of this group i.e., households in:
   i. market rate rentals or owned homes;
   ii. tax-credit only rentals;
   iii. owned homes where the household received purchase assistance (closing costs, soft-second mortgages, etc.);
   iv. rent-to-own homeownership units; and,
   v. assisted rentals
d. This Section does not require a narrative description.

4. The housing authority must conduct a technology related needs assessment. Describe the process for assessing technology related needs among PHA housed families (public and non-public housing) and other surrounding community residents.
   a. Did the housing authority conduct a survey? If so, how many residents were interviewed, what percentage of the target audience was interviewed and how were residents chosen for the assessment?
   b. Did the housing authority conduct focus groups? If so, describe this process, how many residents participated, the composition of the focus groups and how residents were chosen for participation.
   c. This section should be addressed in your narrative.

5. In Exhibit C, describe technology related needs identified in the needs assessments, focus groups and analyses of demographic characteristics of the service population.
   a. Provide a quantified summary of needs.
   b. Highlight needs for important sub-groups e.g., elderly, youth, disabled.
   c. Prioritize the needs. Describe the needs the authority will address through this plan. Prioritization should be founded on the amount of need or importance of the need.
   d. This Section does not require a narrative description.

D. Services and Partners

1. Complete Exhibit D, the HOPE VI Neighborhood Networks Service Matrix. The Exhibit illustrates the required table format. The partners and services listed are samples. Actual partners and services are to be determined by the applicant
   a. In this matrix the housing authority must list anticipated overall service outputs to CSS eligible families and other community members.
   b. The matrix should itemize all in-kind leverage commitments submitted in the HOPE VI Neighborhood Networks Application and the expenditure of HOPE VI Neighborhood Networks funds across service partners. Partners with to-be-determined (TBD) in-kind commitments or contract amounts should not be listed.
   c. This Section does not require a narrative description.

2. Provide a brief summary of services that will be provided to address the needs described above. This section should be addressed in your narrative.

3. List and describe the leverage partners that will assist the housing authority in providing the services. Who are they? What services do they provide in the community? What need will they address and what service will they provide as part of this plan? The description for each partner should be short – 2-3 sentences. This section should be addressed in your narrative.

4. Submit MOUs, partnership agreements or contracts for each partner that is receiving HOPE VI funds or providing leverage.

E. Facilities, Hardware and Line Charges

1. Complete Exhibit E to this Plan Guide. The Exhibit illustrates the required table format. The facilities, hardware and software items listed are samples. Actual facilities, hardware and software items are to be determined by the applicant

2. Describe current hardware and facilities
   a. Where are these facilities located?
   b. How and where will services be provided until new or rehabilitated facilities are brought online?
   c. What computer hardware is available at these facilities?
   d. Do these facilities have an Internet connection?
   e. This section should be addressed in your narrative.

3. Describe facilities, e.g., space, hardware (computers, routing boxes and other line hardware, network), line charges (T1, DSL set-up and subscriptions, etc.) and software (Office Suite, education software, etc.) that will be funded by this grant.
   a. Where will new facilities be located?
   b. When will these facilities be ready for use?
   c. This section should be addressed in your narrative.

F. Program Implementation

1. This entire Section F. should be addressed in the narrative.

2. Describe staffing for the center. How will volunteers be utilized?
   a. Provide an organizational chart for the center - include in this chart how NNC staff are linked to HOPE VI CSS staff, the housing authority and developer.
   b. How will residents be involved in NNC decision-making and leadership? How will the resident council be involved in NNC leadership?
   c. The housing authority should establish an advisory board for the center. Describe this board, its composition, and its role. HUD encourages grantees to include corporate partners on this board.

3. How will NNC programs and the operation of the NNC be linked to the CSS plan and case management activities.

4. How will residents be linked to services at the NNC during relocation (if applicable)?

5. Will the NNC offer flexible hours for working adults and school age children, including weekends and evenings?

6. Describe the marketing and community outreach plan for the center.
   a. What is the internal marketing plan for attracting public housing families that are CSS eligible or residents of the new community to the NNC?
   b. What is the external marketing plan for attracting community members and potential partners to the NNC.

G. Goals and Objectives

1. Complete Exhibit F to this Plan Guide. The Exhibit illustrates the required table format. The courses and outputs and outcomes listed are samples. Actual courses and outputs and outcomes are to be determined by the applicant

2. Provide quantified participant goals and objectives that describe service outputs and outcomes for the needs identified above. Provide yearly goals over a five-year period for each objective. This Section does not require a narrative description

3. Add to this list the outputs and outcomes tracked in the HOPE VI Quarterly Progress Report:
   a. Number of individuals accessing the NNC (all individuals);
   b. Number of enrollments in NNC classes (by HOPE VI public housing residents);
   c. Number of enrollments in NNC classes (by all other individuals);
   d. Number of completions of NNC classes (by HOPE VI public housing residents); and,
   e. Number of completions of NNC classes (by all other individuals).

H. Monitoring and Evaluation

1. This entire Section H should be addressed in the narrative.

2. Who will perform the evaluation?

3. What will be evaluated?

4. Describe the evaluation process and how it will be linked to improving program implementation?

5. How and when will the information be shared with the housing authority?

I. Annual Budget/Sustainability/Milestones

1. Milestones
   a. Complete Exhibit G to this Plan Guide. This exhibit illustrates the required table format and list of development and sustainability milestones. The milestones in Exhibit G are NOT samples. Inclusion of this information in this format is required.

2. Sustainability:
   a. Two of the milestones in Exhibit G pertain to sustainability of the NNC after funds from this grant have been expended. In addition to the milestones, describe your sustainability plan,i.e., what actions will be taken to ensure that NNC activities are sustainable beyond the closeout of the grant. Things to consider when completing this section include:
      i. Who will be involved in defining the sustainability strategy?
      ii. Is the housing authority including funding organizations, local service providers, local government, universities and faith-based organizations in defining this strategy?'
      iii. How will the strategy be developed?
      iv. Will the housing authority convene a separate working group to define the strategy or will they rely on existing committees / working groups e.g., the community task force or its sub-committees?
      v. How will the housing authority put the plan into action? Who will have responsibility for coordinating implementation of the plan? How will partners and stakeholders in the plan be included in this process?
      vi. Does the housing authority plan to develop an endowment trust? If so, describe this trust and its purpose. What role will the trust play within the sustainability strategy that the housing authority develops with its partners
      vii. When will the housing authority begin the process for developing their sustainability strategy?

viii. When will the housing authority complete their draft sustainability plan?
ix. When will the housing authority begin implementing this plan?
x. This Section should be addressed in the narrative.

3. Annualized Service Related Budget Plan
   a. Complete Exhibit H to this Plan. Exhibit H illustrates the annualized budget format. Inclusion of Exhibit H is mandatory. However, the program areas listed are samples. Actual program areas are to be determined by the applicant. This Section does not require a narrative description.

EXHIBIT A
Neighborhood Networks Profile

The profile information items in this table are NOT samples. Inclusion of this information is required.

Please fill in all information, current or planned, for each NNC:

NAME AND LOCATION		NNC CONTACT INFORMATION	
Center Name		First Name	
Street Address		Middle Name	
City		Last Name	
State		Prefix	
Zip		Street Address	
E-mail		City	
Phone		State	
Fax		Zip	
PUBLIC HOUSING DEVELOPMENT INFORMATION		E-mail	
Project Name		Phone	
Project Number		Fax	
Street Address			
City			
State			
Zip			

EXHIBIT B
Demographics

The demographic information items in this table are NOT samples. Inclusion of this demographic information is required.

SAMPLE TABLE HOPE VI NNC TARGET AUDIENCE DEMOGRAPHICS	HOPE VI and Public Housing Residents	All Other Residents of the Community
Total Number of Residents		
Number of Adults 21 - 61 years old		
Number of Adults 62 and older		
Number of Children 0 - 6 years old		
Number of Children 7 - 13 years old		
Number of Children 14 - 17 years old		
Number of Young Adults 18 - 20 years old		
Number of ESL (English as Second Language)		
Number of Single Parent Household		
Number of Physically Disabled Residents		
Number of Learning Disabled Residents		
Number of Public Assistance Recipients		
Number of Adults High School (GED) Not Completed		
Number of Adults High School (GED) Completed		
Number of Adults Some College Completed		
Number of Adults Bachelors Degree		
Number of Children Failing in School		
Number of Children Passing in School		
Number of Children in Advanced/Honors Classes		

HOPE VI NNC TARGET AUDIENCE DEMOGRAPHICS	HOPE VI and Public Housing Residents	All Other Residents of the Community
Number Adults Employed Full Time		
Number Adults Employed Part Time		
Number Adults Unemployed Seeking Work		
Number Adults on Public Assistance		
Number of Residents with Above Average Computer Literacy		
Number of Residents with Average Computer Literacy		
Number of Residents with Below Average Computer Literacy		
Number of Residents with Minimal Computer Literacy		
Number of Families in market rate units		
Number of Families in tax credit only units		
Number of Families in purchase-assisted homes		
Number of Families in rent-to-own units		
Number of Families in assisted rental units		
Number of Families in public housing units		
Other demographic information		

EXHIBIT C
Needs Focus

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

Need	Number of HOPE VI and Public Housing Residents That Have This Need	Number of All Other Residents of the Community That Have This Need
Sample Needs – Job Skills Training/Employment, Basic Adult Education, Literacy, ESL, GED		

EXHIBIT D

HOPE VI Neighborhood Networks Services Matrix

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

Leverage Partner Name (In order of Service Areas)	Number in Need of Services	Number that will be Served	Expected Measurable Outcome	HOPE VI Neighborhood Networks Grant Funds	HOPE VI Revitalization Grant Funds	Partner Contribution	Total Cost	Hrs / Week	Begin Date	End Date
Education										
Sample Education Partner	300	50	GED Completions			$ 50,000	$ 50,000	6	Sep-04	Sep-08
Education Total Amounts						$ 50,000	$ 50,000			
Job Training / Employment										
Job Training Total										
Youth and Family Development										
Youth & Family Dev Totals										
Total						$ 50,000	$ 50,000			

EXHIBIT E

Facilities, Hardware, Software

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

Currently Available

Sample Item List	Item Description	Number Available
HARDWARE		
Computers, Networked		
Computers, Non-		
Internet Service Type		
Modems		
Routers		
Printers		
Telephone Lines		
Photocopiers		
Fax Machines		
SOFTWARE		
Anti-virus		
Firewall		
Networking		
Word Processing		
Spreadsheet		
Database		
Graphics		
Other		
FURNITURE		
Computer Tables		
Work Stations		
Chairs		
Filing Cabinets		
Bulletin Boards		

Planned/Funded by Grant

Sample Item List	Item Description	Number Available
HARDWARE		
Computers, Networked		
Computers, Non-		
Internet Service Type		
Modems		
Routers		
Printers		
Telephone Lines		
Photocopiers		
Fax Machines		
SOFTWARE		
Anti-virus		
Firewall		
Networking		
Word Processing		
Spreadsheet		
Database		
Graphics		
Other		
FURNITURE		
Computer Tables		
Work Stations		
Chairs		
Filing Cabinets		
Bulletin Boards		

EXHIBIT F
Course List and Goals

Course/Program completion must be evidenced by a Completion Certificate issued to the Participant and kept on file by the NNC.

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

Name of Program/Event/Course/Class	Date of First Occurance	Number of Hours of Instruction	Frequency Given (Weekly, Monthly, etc)	Enrolled Number HOPE VI and Public Housing (Mandatory Column)	Enrolled Number All Other Residents of the Community (Mandatory Column)	Completions Number of HOPE VI and Public Housing Participants (Mandatory Column)	Completions Number of All Other Residents of the Community (Mandatory Column)
Sample Courses – Basic PC Operating System, Web Searching,							
Sample Courses – GED Preparation, Microenterprise Development, Job Interview							
Sample Courses – Preparation, Employer Expectations, After School Core Curriculum, etc.							

EXHIBIT G
Milestones

Indicate proposed beginning and end dates for the following items that apply to your center. If not applicable, enter "NA".

The Milestones contained in this table are NOT samples. This information is required.

	START DATE	COMPLETION DATE
Set-Up Financing for Development of NNC Facility		
Submit Proposal for Development of NNC Facility to HUD, if applicable (Proposal may be part of a HOPE VI Phase Proposal)		
Submit Evidentiaries for Development of NNC Facility to HUD, if applicable (Evidentiaries may be part of a HOPE VI Phase's Evidentiaries)		
Close on Financing for Development of NNC Facility, if applicable		
Construction of NNC Facility		
Staffing of Center (trained and on board)		
Equipment (Hardware, software, etc.) Procurement		
Equipment (Hardware, software, etc.) Installation and Testing		
Opening of Center		
Training Program and Courses Begin		
Completion of First Course		
Development of Permanent Sustainability Plan		
Permanent Sustainability Plan Implementation		

EXHIBIT H
Annualized Budget Plan

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

HOPE VI Neighborhood Networks Annualized Budget Plan	**Year 1**			**Year 2**			**Year 3**		
Program Areas	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding
Sample Area – Basic Personal Computer Use Training	$10,000		$5,000						
Sample Areas – Job Skills Training/ Employment	$20,000		$100,000			$100,000			$50,000
Sample Area – Internet access		$6,000			$6,000			$6,000	
Sample Area – GED Preparation	$15,000	$30,000		$15,000	$30,000		$15,000	$30,000	
Totals									

form **HUD 52775** (3/22/2004)

(All information in this table is for example only. The information does not reflect the applicant's Neighborhood Networks program.)

HOPE VI Neighborhood Networks Annualized Budget Plan	Year 4			Year 5			Totals		
Program Areas	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding	HOPE VI Neighborhood Networks Grant Funding	Other Public Housing Funding	Leverage Partner Services and Funding
Sample Area – Basic Personal Computer Use Training	$10,000		$5,000				$20,000	$10,000	
Sample Areas – Job Skills Training/ Employment	$20,000		$100,000			$100,000	$40,000		$450,000
Sample Area – Internet access		$6,000			$6,000			$30,000	
Sample Area – GED Preparation	$15,000	$30,000		$15,000	$30,000		$60,000	$120,000	
Totals	**$45,000**	**$36,000**	**$105,000**	**$15,000**	**$36,000**	**$100,000**	**$120,000**	**$160,000**	**$450,000**

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 08/31/2006)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:
My Home, 14401 Artery LN #21, Dale City, VA 22193

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ Yes ☐ No.

If you answered **"No"** to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form.
However, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(Note: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Logic Model

U.S. Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114
(exp. 12/31/2006)

Program Name: _____

Component Name: _____

Strategic Goals	Policy Priorities	Problem, Need, Situation	Service or Activity	Benchmarks		Outcomes		Measurement Reporting Tools	Evaluation Process
				Output Goal	Output Result	Achievement Outcome Goals	End Results		
1		2	3	4	5	6	7	8	9
Policy		Planning		Intervention		Impact		Accountability	
				Short Term				a. b. c. d. e.	
				Intermediate Term				a. b. c. d. e.	
				Long Term				a. b. c. d. e.	

HUD's Strategic Goals

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

Policy Priorities

1. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD programs
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

form **HUD-96010** (11/2003)

Logic Model Instructions U.S. Department of Housing And Urban Development Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114 (exp. 12/31/2006)

The public reporting burden for this collection of information for the Logic Model is estimated to average 18 hours per response for applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD. HUD may not conduct, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, in the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2535-0114.

The information submitted in response to the Notice of Funding Availability for the Logic Model is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

Policy Priority: Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs.
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.

Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term. (Do not fill out this section with the application)

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6. (Do not fill out this section with the application)

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*: 4c	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 04–17885 Filed 8–3–04; 11:10 am]
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Federal Register

Monday,
August 9, 2004

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Coke Oven Batteries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0051; FRL–7797–8]

RIN 2060–AJ96

National Emission Standards for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On October 27, 1993, pursuant to section 112 of the Clean Air Act, the EPA issued technology-based national emission standards to control hazardous air pollutants (HAP) emitted by coke oven batteries. This proposal would amend the standards to include more stringent requirements for certain by-product coke oven batteries to address health risks remaining after implementation of the 1993 standards. We are also proposing amendments to the 1993 standards for emissions of hazardous air pollutants from non-recovery coke oven batteries.

DATES: *Comments.* Comments must be received on or before October 8, 2004.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0051, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov*.
- Fax: (202) 566–1741.
- Mail: National Emission Standards for Coke Oven Batteries Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington DC 20503.
- Hand Delivery: Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0051. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at the National Emission Standards for Coke Oven Batteries Docket, Docket ID No. OAR–2003–0051 or A–79–15, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lula Melton, Emission Standards Division, Office of Air Quality Planning and Standards (C439–02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–2910, fax number (919) 541–3207, e-mail address: *melton.lula@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Cateogry	NAIC code[1]	Examples of regulated entities
Industry	331111 324199	Existing by-product coke oven batteries subject to emission limitations in 40 CFR 63.302(a)(2) and non-recovery coke oven batteries subject to new source emission limitations in 40 CFR 63.303(b). These are known as "MACT track" batteries
Federal government	.....	Not affected
State/local/tribal government	.....	Not affected

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in § 63.300 of the national emission standards for coke oven batteries. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

Do not submit information containing CBI to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI

only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2003–0051. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's proposed amendments is also available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

D. Will There Be a Public Hearing?

If anyone contacts the EPA requesting to speak at a public hearing by August 30, 2004, a public hearing will be held on September 8, 2004. If a public hearing is requested, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby.

E. How Is This Document Organized?

The information presented in this preamble is organized as follows:

II. Background

A. What Is the Statutory Authority for Development of the Proposed Amendments?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as "major sources"), as well as for certain "area sources" emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. The EPA is then required to review these technology-based standards and to revise them "as necessary, taking into account developments in practices, processes and control technologies," no less frequently than every 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires, first, that EPA prepare a Report to Congress discussing (among other things) methods of calculating risk posed (or potentially posed) by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health effects to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report ("Residual Risk Report to Congress," EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk phase.

Section 112(f)(2) requires us to determine for each section 112(d) source category whether the MACT standards protect public health with an ample margin of safety. If the MACT standards for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," EPA must promulgate residual risk standards for the source category (or subcategory) as necessary to provide an ample margin of safety. The EPA must also adopt more stringent standards to prevent an adverse environmental effect (defined in section 112(a)(7) as "any significant and widespread adverse effect * * * to wildlife, aquatic life, or natural resources * * *."), but must consider cost, energy, safety, and other relevant factors in doing so.

B. What Is Our Approach for Developing These Standards?

Following our initial determination that the individual most exposed for the emissions category considered exceeds a 1 in a million excess individual cancer risk, our approach to developing residual risk standards is based on a two-step determination of acceptable

risk and ample margin of safety. The first step, consideration of acceptable risk, is only a starting point for the analysis that determines the final standards. The second step determines an ample margin of safety which is the levels at which the standards are set.

The terms "individual most exposed," "acceptable level," and "ample margin of safety" are not specifically defined in the CAA. However, section 112(f)(2)(B) retains EPA's interpretation of the terms "acceptable level" and "ample margin of safety" provided in our 1989 rulemaking (54 FR 38044, September 14, 1989), "National Emission Standards for Hazardous Air Pollutants (NESHAP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/ Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants," essentially directing EPA to use the interpretation set out in that notice [1] or to utilize approaches affording at least the same level of protection.[2] The EPA likewise notified Congress in its Residual Risk Report that EPA intended to use the Benzene NESHAP approach in making section 112(f) residual risk determinations.[3]

In the Benzene NESHAP (54 FR 38044, September 14, 1989), we stated as an overall objective:

> * * * in protecting public health with an ample margin of safety, we strive to provide maximum feasible protection against risks to health from hazardous air pollutants by (1) protecting the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million; and (2) limiting to no higher than approximately 1 in 10 thousand [*i.e.*, 100 in a million] the estimated risk that a person living near a facility would have if he or she were exposed to the maximum pollutant concentrations for 70 years.

As explained more fully in our Residual Risk Report, these goals are not "rigid line[s] of acceptability," but rather broad objectives to be weighed "with a series of other health measures and factors." [4]

[1] This reading is confirmed by the Legislative History to section 112(f); *see, e.g.*, "A Legislative History of the Clean Air Act Amendments of 1990," vol. 1, page 877 (Senate Debate on Conference Report).

[2] Legislative History, vol. 1 p. 877, stating that: "* * * the managers intend that the Administrator shall interpret this requirement [to establish standards reflecting an ample margin of safety] in a manner no less protective of the most exposed individual than the policy set forth in the Administrator's benzene regulations * * *."

[3] Residual Risk Report to Congress, EPA–453/R–99–001, March 1999, p. ES–11.

[4] *Id.*

C. What Is Unique About the Regulatory Regime for Coke Ovens?

The proposed amendments are case-specific for HAP *emissions from coke oven doors, lids, offtake systems, and charging. As explained below, Congress enacted a unique regulatory regime for control of coke oven HAP emissions. Thus, because these emissions are treated uniquely under the CAA, the methods and policies reflected in the proposed amendments should not necessarily be construed as setting a precedent for future rules under the residual risk program established by section 112(f).

As explained in more detail later in this preamble, emissions from charging, door leaks, and topside (lids and offtake systems) leaks are subject to specific statutory requirements and schedules. In particular, section 112(d)(8) established a deadline of December 31, 1992 for the promulgation of MACT standards for designated emission points from these sources and established special requirements for the standards. In addition, section 112(i)(8) established the framework for an alternative regulatory approach that allowed these sources to defer residual risk standards until 2020 by electing to meet two tiers of more stringent standards reflecting the lowest achievable emission rate (LAER) (a technology-based standard more stringent than MACT). The regulations (58 FR 57911, October 27, 1993) included a second set of additional, more stringent standards for MACT track batteries that must be met on and after January 1, 2003, unless superseded by residual risk standards promulgated under section 112(f).

D. How Does Today's Action Comply With the Requirements of Section 112(d)(8) and (i)(8) That Specifically Apply to Regulation of Coke Ovens?

Section 112 includes several provisions that specifically govern our implementation of section 112(d) and (f) with respect to coke ovens. First, section 112(d)(8) sets specific minimum targets for technology-based standards promulgated for emissions from charging, door leaks, and topside leaks at coke ovens. Section 112(i)(8) establishes two "tracks" of technology-based standards and specifies different compliance timetables depending on the track chosen by the source. These tracks are generally referred to as the MACT track and the LAER track.

The LAER track batteries are those sources that elected to meet more stringent technology-based standards beginning in 1993. The LAER standards become more stringent over time with the final LAER technology standards becoming effective in 2010. The LAER track batteries are exempt from any residual risk standards until 2020. Consequently, today's proposed amendments would not set residual risk standards for LAER track batteries.

Today's proposed amendments would instead apply to those existing by-product coke oven batteries that chose the MACT track (five batteries at four plants). These existing by-product coke oven batteries were required, beginning in 1995, to comply with the 1993 MACT standards promulgated for charging, door leaks, and topside leaks. Unlike the LAER track batteries, the MACT track batteries are not entitled to an extension of the residual risk compliance date. Thus, today's action determines, in accordance with section 112(f)(2), that residual risk standards are required for MACT track batteries and accordingly proposes residual risk standards for them.

The specific provisions in section 112(d)(8) and (i)(8) only apply to charging, door leak, and topside leak emissions at coke oven batteries. Our initial list of source categories published on July 16, 1992 (57 FR 31576) also contains a category entitled, "Coke Ovens: Pushing, Quenching, and Battery Stacks." We promulgated MACT standards for these emission points on April 14, 2003 (68 FR 18008). An assessment and decision on any potential residual risk standards for those emission points is required by 2011.

Because the pushing, quenching, and battery stack emission points are an integral part of the same facilities covered by the MACT standards for charging, door leaks, and topside leaks (they not only are part of the same process but emit the same HAP), it is important to consider emissions from all of these points in assessing the risk associated with HAP emissions from coke ovens.[5] As explained more fully below, we are proposing to make residual risk determinations on a facilitywide basis and we further propose that it is reasonable to defer a total facility risk determination until we make a residual risk determination for

[5] *See* Legislative History, vol. 1, p. 868, where Sen. Durenberger stated that "EPA shall consider the combined risks of all sources that are colocated with such sources within the same major source." The Senator continued, however, that these standards need not be set at the same time, provided "the standard for the categories in the first group must be sufficiently stringent so that when all residual risk standards have been set, the public will be protected with an ample margin of safety from the combined emissions of all sources within a major source."

the pushing, quenching, and battery stack emission points. Thus, our determination of the ample margin of safety-level for the total coke oven facility (all emission points from coke oven batteries) will not be fully addressed until residual risk assessments for all coke plant source categories are completed. Nonetheless, we include estimates of total facility risks in today's proposal, and we believe that the standards we are proposing today for charging, doors, and topside leaks are sufficiently stringent so that when all residual risk standards have been set for coke plant source categories, the public will be protected with an ample margin of safety from the combined emissions from all emission points from coke oven batteries. We specifically request comment on our proposed use of the facilitywide approach.

E. What Is Cokemaking?

In a coke oven battery, coal undergoes destructive distillation to produce coke. The coke industry consists of two sectors, integrated plants and merchant plants. Integrated plants are owned by or affiliated with iron- and steel-producing companies that produce furnace coke primarily for consumption in their own blast furnaces. There are nine integrated plants owned by six iron and steel companies. These plants account for 72 percent of United States (U.S.) coke production. Independent merchant plants produce furnace and foundry coke for sale on the open market. Foundry coke is used in foundry furnaces for melting scrap iron to produce iron castings. There are ten merchant plants. As of April 2003, there are 19 coke plants operating 56 coke oven batteries; 46 are by-product batteries, and ten are non-recovery batteries.

A typical by-product battery consists of 40 to 60 adjacent ovens with common side walls made of high quality silica and other types of refractory brick. A weighed amount or specific volume of coal is discharged from the coal bunker into a larry car—a charging vehicle that moves along the top of the battery. The larry car is positioned over the empty, hot oven; the lids on the charging ports are removed; and the coal is discharged from the hoppers of the larry car into the oven. Typically, the individual slot ovens are 36 to 56 feet long, 1 to 2 feet wide, and 8 to 20 feet high, and each oven holds between 15 and 25 tons of coal.

The coal is heated in the oven in the absence of air to temperatures approaching 2,000 degrees Fahrenheit (° F) which drives off most of the volatile organic constituents of the coal as gases and vapors, forming coke which consists almost entirely of carbon. The organic gases and vapors that evolve are removed through an offtake system and sent to a by-product plant for chemical recovery and coke oven gas cleaning.

Coking temperatures generally range from 1,650 to 2,000°F and are on the higher side of the range to produce blast furnace coke. Coking continues for 15 to 18 hours to produce blast furnace coke and 25 to 30 hours to produce foundry coke.

At the end of the coking cycle, doors at both ends of the oven are removed, and the incandescent coke is pushed out of the oven by a ram that is extended from the pusher machine. The coke is pushed through a coke guide into a special rail car, called a quench car, which transports the coke to a quench tower, typically located at the end of a row of batteries. Inside the quench tower, the hot coke is deluged with water so that it will not continue to burn after being exposed to air. The quenched coke is discharged onto an inclined "coke wharf" to allow excess water to drain and to cool the coke.

There are two non-recovery plants (ten non-recovery batteries) operating in the U.S. As the name implies, this process does not recover the chemical by-products as does the by-product coking process. All of the coke oven gas is burned and instead of recovery of chemicals, this process allows for heat recovery and cogeneration of electricity. Non-recovery ovens operate under negative pressure and are of a horizontal design (as opposed to the vertical design used in the by-product process).

F. What HAP Are Emitted From Cokemaking?

The primary HAP emitted from cokemaking are "coke oven emissions," which includes many organic compounds. Constituents of primary interest because of adverse health effects include semi-volatiles, such as polycyclic organic matter (POM) and polynuclear aromatic hydrocarbons (PAH). The emissions also include volatile organic compounds (VOC), such as benzene, toluene, and xylene.

Emissions occur at multiple stages of the coking process. Coke oven emissions can be released when the oven is charged with coal. During coking with the oven under positive pressure, emissions occur from leaking doors, lids, and offtakes. On rare occasions during an equipment failure or process upset, coke oven emissions may occur from bypass stacks. We promulgated emission standards for each of these emission points with limits for charging, doors, lids, and offtakes and a requirement to flare any bypassed coke oven gas (40 CFR part 63, subpart L) in 1993.

Coke oven emissions are also released from pushing, quenching, and battery stacks. As noted earlier, we promulgated MACT standards that address these three emission points (40 CFR part 63, subpart CCCCC) in 2003.

Emissions of HAP also occur from the by-product plant that recovers various chemicals from the coke oven gas. The primary HAP in these emissions is benzene. We promulgated the NESHAP for benzene emissions from coke by-product recovery plants (40 CFR part 61, subpart L) in 1989.

G. What Are the Health Effects Associated With These HAP?

The toxic constituents of coke oven emissions, the listed HAP, include both gases (*e.g.*, VOC such as benzene) and respirable particulate matter (PM) of varying chemical composition. In addition to the noncarcinogenic effects, there is concern over the potential carcinogenic and/or cocarcinogenic effects of POM, as well as various aromatic compounds (*e.g.*, benzene) and trace metals (*e.g.*, arsenic, beryllium, cadmium, and nickel).

The HAP that would be controlled by the proposed amendments are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, cancers, blood disorders, central nervous system and respiratory effects) and acute health disorders (*e.g.*, irritation of skin, eyes, and mucous membranes and depression of the central nervous system).

The degree of adverse health effects experienced by exposed individuals can vary widely. The extent and degree to which the health effects may be experienced depend on various factors, many of which have been considered in the risk assessment performed for the proposed amendments and discussed later in this preamble. Those factors include:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- Ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- Frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyle), which vary significantly within the population.

Studies of coke oven workers who were exposed to higher levels of coke oven emissions than the populations affected by these proposed amendments have reported an increase in cancer of the lung, trachea, bronchus, kidney, prostate, and other sites. Chronic (long-term) exposure of workers to coke oven emissions has also been associated with conjunctivitis, severe dermatitis, and lesions of the respiratory system and digestive system. We have classified coke oven emissions as a Group A, known human carcinogen.

One of the more important constituents of coke oven emissions (from a health effects point of view) is the trace metal arsenic, a known human carcinogen. Studies of humans occupationally exposed to higher levels of arsenic than the populations affected by these proposed amendments have found increased incidence of lung cancers. Chronic (long-term) exposure to inorganic arsenic has also been associated with irritation of the skin and mucous membranes, and with neurological injury. Animal studies of inhalation exposure have indicated developmental effects.

Another important constituent of coke oven emissions, benzene, is a known human carcinogen. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene, and we have derived a range of inhalation cancer unit risk estimates for benzene. The value at the high end of the range was used in this assessment. Chronic (long-term) inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells, in occupationally exposed humans. Reproductive effects have been reported in women exposed by inhalation to high levels of benzene, and adverse effects for high dose exposures on the developing fetus have been observed in animal tests.

III. Summary of the Proposed Amendments

A. What Are the Affected Sources and Emission Points?

The affected sources would be each coke oven battery subject to the emission limitations in 40 CFR 63.302 or 40 CFR 63.303 (*i.e.*, the MACT track batteries). As noted above, the proposed amendments would cover emissions from doors, topside port lids, offtake systems, and charging on existing by-product coke oven batteries and emissions from doors and charging on new and existing non-recovery batteries.

B. What Are the Proposed Requirements?

For existing by-product batteries, the proposed amendments would limit visible emissions from coke oven doors to 4 percent leaking doors for tall batteries and for batteries owned or operated by a foundry coke producer. Short batteries would be limited to 3.3 percent leaking doors. Visible emissions from other emission points would be limited to 0.4 percent leaking topside port lids and 2.5 percent leaking offtake systems. No change would be made in the limit for charging—emissions must not exceed 12 seconds of visible emissions per charge. Each of these visible emission limits would be based on a 30-day rolling average. The proposed amendments would replace the less stringent limits that became effective on January 1, 2003, for MACT track batteries and are equivalent to the limits that will become effective on January 1, 2010, for LAER track batteries. We are not proposing to amend the standards for new by-product batteries.

The monitoring, reporting, and recordkeeping requirements in the existing MACT standards would continue to apply to existing by-product coke oven batteries on the MACT track. These requirements include daily performance tests to determine compliance with the visible emission limits. Each performance test must be conducted by a visible emissions observer certified according to the test method requirements. A daily inspection of the collecting main for leaks is also required. Specific work practice standards must also be implemented if required by the provisions in 40 CFR 63.306(c). Under the existing standards, companies must make semiannual compliance certifications; report any uncontrolled venting episodes or startup, shutdown, or malfunction events; and keep records of information needed to demonstrate compliance.

We are also proposing amendments for the improved control of charging emissions from a new non-recovery battery (*i.e.*, constructed or reconstructed on or after August 9, 2004. Fugitive charging emissions would be subject to an opacity limit of 20 percent. A weekly performance test would be required to determine the average opacity of five consecutive charges for each charging emissions capture system. Emissions from a charging emissions control device would be limited to 0.0081 pounds of PM per ton (lb/ton) of dry coal charged. A performance test using EPA Method 5 (40 CFR part 60, appendix A) would be required to demonstrate initial compliance with subsequent performance tests at least once during each title V permit term. If any visible emissions are observed from a charging emissions control device, the owner or operator would be required to take corrective action and followup with a visible emissions observation by EPA Method 9 (40 CFR part 60, appendix A) to ensure that the corrective action had been successful. Any Method 9 observation greater than 10 percent opacity would be reported as a deviation in the semiannual compliance report. The proposed amendments would also require the owner or operator to implement a new work practice standard designed to ensure that the draft on the oven is maximized during charging.

We are also proposing a work practice standard for the control of door leaks from all non-recovery coke oven batteries on the MACT track. The owner or operator would be required to observe each coke oven door after each charge and record the oven number of any door from which visible emissions occur. If a coke oven door leak is observed at any time during the coking cycle, the owner or operator would be required to take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks would be allowed from doors on that oven for the remainder of that oven's coking cycle. However, we are also proposing to allow up to 45 minutes instead of 15 minutes to stop the leak for no more than two occurrences per battery during each semiannual reporting period. The limit of two occurrences per battery would not apply if a worker must enter a cokeside shed to take corrective action to stop a door leak. In this case, 45 minutes would be allowed to stop the leak, and the evacuation system and control device for the cokeside shed must be operated at all times that there is a leaking door under the cokeside shed. The owner or operator would also be required to identify malfunctions that might cause a door to leak, establish preventative measures, and specify types of corrective actions for such events in its startup, shutdown, and malfunction plan. Recordkeeping and reporting requirements necessary to demonstrate initial and continuous compliance are also proposed.

We are also proposing an amendment to clarify that the work practice standard for charging in 40 CFR 63.303(a)(2) that applies to existing non-recovery batteries also applies to new non-recovery batteries. These work

practices are described in 40 CFR 63.306(b)(6).

As specified in the CAA section 112(f)(4)(A), the owner or operator of an existing by-product coke oven battery on the MACT track would have to comply with the proposed amendments within 90 days of the effective date of the final rule amendments. We are also proposing that non-recovery coke oven batteries on the MACT track comply within 90 days (or upon startup for a new non-recovery battery which comes into existence after August 9, 2004).

IV. Rationale for the Proposed Amendments

A. How Did We Estimate Risks?

Cancer and noncancer health impacts caused by environmental exposures generally cannot be isolated and measured directly. Even if it were possible to do so, we would not be able to use measurements to assess the impacts of future or alternative regulatory control strategies. As a result, modeling-based risk assessment is used as a tool to estimate health risks for many EPA programs. In risk assessments, there are many possible levels of analysis from the most basic screening approach to the more refined, detailed assessment.

Our "Residual Risk Report to Congress" (EPA–453/R–99–011) provides the general framework for conducting risk assessments to support decisions made under the residual risk program. The 1999 Report to Congress acknowledged that each risk assessment design would have some common elements. In general, each assessment would contain a problem formulation phase where the content and scope of each assessment would be specified, an analysis phase where the exposure and effects relationship would be evaluated, and the risk characterization phase where the risks would be calculated and interpreted. While the final risk assessment used to support the decisions in these proposed amendments used advanced modeling of site-specific data for many modeling parameters and population characteristics derived from census data, we also used default assumptions for exposure parameters—some of which are assumed to be health protective (*e.g.*, exposure frequency and exposure duration, 70-year constant emission rates).[6, 7] However, in keeping with the tiered approach laid out in the Report to Congress, we decided that a quantitative description of uncertainty in the final risk characterization was not necessary for this assessment because it likely would not have altered the decision to propose further standards. The approach used to assess the risks associated with our coke oven standards is consistent with the technical approach and policies described in the Report to Congress.

B. What Did We Analyze in the Risk Assessment?

We performed a detailed risk assessment for the four by-product coke facilities (five MACT track batteries). Given the small number of facilities, we chose to analyze each of these facilities in a site-specific manner. As described earlier, there are multiple source categories associated with coke ovens, each with its own standards. There are two MACT standards that affect this industry (*i.e.*, the 1993 national emission standards for charging, topside leaks, and door leaks and the 2003 NESHAP for pushing, quenching, and battery stacks), as well as the 1989 NESHAP for coke by-product recovery plants and the 1990 NESHAP for benzene waste operations. Using an iterative assessment approach, we assessed emissions and estimated risks from all emission points at each coke facility. The initial screening-level analysis considered all emission points to determine if a more refined analysis was necessary and to determine the focus of such an analysis. A more refined analysis was then performed to determine the maximum individual risk and the risk distribution around the facilities. Results from the refined analysis are presented in this preamble.

Emission points associated with the coking process include charging, door leaks, topside leaks, pushing, quenching, battery stacks, and the by-product recovery plant. To estimate baseline risks (both baseline facility-wide emissions and baseline of 1993 MACT emission points), we assumed that each battery was in compliance with its required performance level and that emission rates were equivalent to those allowed by the national emission standards. We modeled emissions at the rate allowed by the national emission standards because it represents the source's potential emissions and risks, and is, therefore, consistent with the language in section 112(f)(2), which states that "if standards promulgated pursuant to subsection (d) * * * do not reduce lifetime risk * * * to less than one in a million, the Administrator shall promulgate standards under this subsection * * *" We specifically request comments on this interpretation of section 112(f)(2).

Emission estimates for individual batteries were based on battery-specific data such as coking time; the number of doors, lids, and offtakes on each battery; and the number of charges per year, as well as the performance standards for those emission points (5 percent leaking doors, 0.6 percent leaking lids, 3 percent leaking offtakes, and 12 seconds of visible emissions per charge). For the facility with two operating coke batteries, emission estimates for both batteries were combined to yield a risk estimate from the facility. The battery characteristics were obtained from a survey of the industry and from an EPA report that assessed control performance for these emission points at a coke facility that is similar to those included in this assessment. Information on the tons of coke produced and the tons of coal charged were also obtained from the industry survey. Emission estimates were based on emission factors for each emissions point and the applicable regulatory emissions limit. Our uncertainty analysis shows that the use of site-specific data and emission factors results in an uncertainty range for the emission estimates for leaks from doors, lids, and offtakes that may be a factor of 2 lower or a factor of 3 higher for these combined emission points. The uncertainty is dominated by the emissions from leaking doors, which comprise approximately 90 percent of the total emissions. We did not evaluate the uncertainty in estimates of charging emissions, which contribute less than 7 percent of the total emissions. Additional information on the uncertainty analysis is included in the risk assessment document.

Emissions from pushing, quenching, and battery stacks were derived from two EPA tests, one at a battery producing foundry coke and one at a battery producing furnace coke. Pushing emission estimates included fugitive emissions and emissions from control devices. Because emissions vary depending on the type of push experienced (*e.g.*, "green" pushes result when coal is not fully coked), emission factors were used for the range of pushes experienced. Supporting data for estimating the number and frequency of green pushes were obtained from visible emission observations at several facilities. We then calculated an overall pushing emissions rate based on the frequency of green pushes and emission factors for each type of push. Emissions farom quenching and battery stacks were based on emissions tests.

Emissions from the by-product recovery plant were estimated from

[6] Additional details are provided in Table 2–10 of the risk assessment document in the rulemaking docket.

[7] Residual Risk Report to Congress, pp. B–18 and B–22.

information on the type of processes at each facility, emission factors for each process, and the facility capacity. Emissions from equipment leaks were based on the number of equipment components at each facility, the composition of process liquids, and emission factors for each component. Emissions from benzene waste operations were estimated from site-specific data on the quantity of benzene in wastewater. In assessing risk from all of the emission points mentioned above, we used a combination of site-specific data and estimation techniques as inputs to the models used to evaluate risk and hazard.

Our analysis of non-recovery batteries on the MACT track indicates that emissions from charging and door leaks are relatively low. There are no emissions from lids and offtakes because existing non-recovery batteries in the U.S. do not have these emission points. There are no emissions from door leaks during most normal operations because the ovens usually operate under negative pressure. Our modeling approach based on allowable emissions under MACT (zero percent leaking doors for non-recovery batteries) would estimate no door leak emissions at all. However, we recently obtained information that indicates certain equipment failures or operating problems can temporarily create a positive pressure in an oven and cause a door to leak. These events are considered to be short in duration and the problem can be quickly remedied (typically within 5 to 15 minutes). In order to ensure that door leak emissions are minimized, we have addressed these equipment failures and operating problems in our proposed amendments to the 1993 national emission standards. The proposed revisions would require that corrective actions be implemented promptly if such events occur.

With respect to emissions from charging, non-recovery ovens are operated under maximum draft during charging, and the organic compounds that may be generated during the process are mostly contained within the oven and combustion system. A small amount of charging emissions may escape from an oven through the opening used for charging. However, all non-recovery batteries have a capture hood and baghouse to control these emissions.

Consequently, we would not anticipate any adverse public health or environmental impacts due to emissions from charging and coke oven doors at non-recovery batteries.

C. How Were Cancer and Noncancer Risks Estimated?

The primary HAP emitted by this category are coke oven emissions which include POM, PAH, benzene, and other air toxics known or suspected to cause cancer and other health problems. For estimating cancer health risk due to inhalation exposure, emissions were based on the benzene soluble organics (BSO) fraction that was used as the surrogate for coke oven emissions in the epidemiology study which established coke oven emissions as a human carcinogen. In the assessment of noninhalation risk, coke oven emissions were characterized and speciated (*i.e.*, individual constituents were identified). A set of 13 constituents [8] was selected based on an analysis of their persistence, bioaccumulation, and toxicity (PBT). Emission estimates were determined for all constituents identified based on measurements of the chemical composition of the emissions from various emission sources. For this risk assessment, emission estimates for coke oven emissions (as BSO) were determined for charging, door leaks, topside leaks, fugitive pushing, and quenching emission points for by-product batteries. Emission rates for individual constituents were estimated for the pushing control device and battery stack emission points. Emission rates also were estimated for the HAP compounds known to be emitted from the by-product recovery plant (benzene, xylene, and toluene).

To characterize the risk from exposure to these HAP, toxicity information was integrated with results from the exposure assessment. For this assessment, we modeled exposures to the total population living within 50 kilometers (km) of each of these facilities and estimated the exposure concentrations where people live and the cancer risks associated with lifetime exposures to coke oven emissions and to the individual constituents for which we have cancer unit risk factors. Where reference values for noncancer effects were available, we also evaluated the potential hazard associated with those effects. The selection and use of cancer unit risk factors and reference dose or concentration values for this assessment follows the approach outlined in the 1999 "Residual Risk Report to Congress." The approach used to assess the risks associated with our coke oven standards is likewise consistent with the technical approach and policies described in the report. Our assessment has also been peer-reviewed to ensure that its methodology rests on sound scientific principles, and we have revised the assessment document to reflect comments made as part of the peer-review process. The assessment document, comments made during the peer review, and a summary of our responses to those comments are included in the docket for the proposed amendments.

D. How Did We Estimate the Atmospheric Dispersion of Emitted Pollutants?

As described in our Report to Congress, risk assessments may use a variety of models to describe the fate and transport of HAP released to the atmosphere. The models chosen must be appropriate for the intended application. In the fairly unique case of coke ovens, the collective heat rising from various emission points can significantly enhance the rise of the emissions plume, functioning like a "representative" stack. In order to include this aspect in the modeling, we used the Buoyant Line and Point Source (BLP) dispersion model. The BLP model, however, was not designed to consider the effects of the surrounding terrain on dispersion nor to model deposition of HAP as the plume disperses. To allow consideration of these parameters, we coupled the BLP model with the Industrial Source Complex Short Term (ISCST3) model. In this application, we used the BLP model to estimate the plume height and then used that value as an input to the ISCST3 model. The ISCST3 model was used to simulate the subsequent dispersion and transport of the emissions. Site-specific inputs to the BLP model such as facility location, battery layout, dimensions, orientation, and operating temperatures were provided by the industry.

Both the BLP and the ISCLT3 models have undergone standard scientific peer reviews prior to this assessment. The concept of coupling these two models together was peer-reviewed for the first time as part of this assessment. The reviewers agreed with the modeling concept and approach. Monitoring data may be useful for evaluating modeling approaches used to estimate ambient concentrations (see the risk assessment document for discussion of when this is appropriate). For the sites and pollutants included in this risk assessment, no ambient monitoring data were available. Therefore, it was not possible to evaluate the modeling

[8] Constituents of coke oven emissions selected for this assessment include: acenaphthene, anthracene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, cadmium, chrysene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, lead, and pyrene.

approach beyond what was done in the peer review. Moreover, even if comprehensive and high quality monitoring data were available, they would not be adequate by themselves for evaluating the impacts of alternative control strategies.

E. What Factors Are Considered in the Risk Assessment?

The risk assessment was designed to generate a series of risk metrics that would provide information for a regulatory decision. The metrics consider both the maximum individual risk and the total population risk, the latter providing perspective on the potential public health impact by addressing each of the following questions:

- How many people living around the four by-product facilities have potential risk greater than 1 in a million?
- How many people are there at various risk levels?
- What are the impacts for different routes of exposure (*e.g.*, inhalation and ingestion)?

In addition, we are to determine if any adverse environmental effects exist.

Consistent with standard atmospheric dispersion modeling practice, we assessed inhalation risks within 50 km (about 30 miles) of each of the four facilities. The annual average concentrations at the area-weighted centers of census blocks or block groups were estimated using the ISCST3 model for each emission point. Based on the number of people residing in each block or block group along with the estimated concentrations in each block or block group, we generated an estimate of risk for all people living within 50 km (about 30 miles) of each coke facility, including an identification of which census block group had the estimated maximum air concentration. For this estimate, we assumed that the individual is exposed to the maximum level of coke oven emissions allowed by the 1993 national emission standards, and, as prescribed in the 1989 Benzene NESHAP, that they are exposed to these emissions 24 hours a day for 70 years. Where risk estimates exceeded 1 in a million, we identified the number of people at the various risk levels exceeding 1 in a million (*i.e.*, the population risk distribution). For this estimate, we also assumed exposure occurred 24 hours a day for 70 years because we wanted a conservative upper-bound estimate of the population at risk.

Because of their chemical and physical properties, some HAP are known to present potential health risks as a result of deposition, persistence, and bioaccumulation in environmental media other than air. As a result, exposure to these HAP may occur by ingestion as well as by inhalation. Thirteen constituents of coke oven emissions were identified as PBT chemicals (*i.e.*, they are environmentally persistent, they may bioaccumulate, and are toxic). Emissions of these pollutants are transported from the emission site by atmospheric processes and removed from the air by both wet and dry deposition. Upon deposition, they may cycle through various environmental compartments, such as soil, plants, animals, and surface water. The movement of these constituents through these compartments can be modeled using a fate and transport model in order to estimate human exposure through the ingestion pathway.

We conducted multimedia, multipathway exposure modeling (using the EPA's Indirect Exposure Model) to determine if emissions from coke ovens present potential risks by routes of exposure other than inhalation. Site-specific modeling was performed for all four facilities using information collected on land use, population, soil types, farming activity, and watershed/waterbody locations and areas. The assessment was based on a subsistence farmer scenario located where land-use data identified actual farming activity around each of the four facilities (agricultural lands were identified at distances ranging from 1.7 to 11 km from the four coke facilities). This scenario reflects an adult living on a farm and consuming meat, dairy products, and vegetables that the farm produces. The animals raised on the farm subsist primarily on forage that is grown on the farm. We also assumed that the farm family fishes in nearby waters at a recreational level, and that they eat the fish they catch. These results allow for comparison of risks by ingestion with those presented by inhalation.

F. How Did We Calculate Risks?

Cancer risks were characterized for the inhalation exposure pathway using lifetime excess cancer risk estimates which are calculated as the product of the unit risk estimate (URE) (the unit risk estimate is an upper-bound estimate of the probability of developing cancer over a lifetime) and the exposure concentration estimated for each HAP. The cancer risk estimates for each HAP are summed across all carcinogenic HAP. These estimates represent the probability of developing cancer over a lifetime as a result of exposure to emissions from these coke ovens.

Noncancer risks were characterized through the use of hazard quotient (HQ) and hazard index (HI). An HQ is calculated as the ratio of the exposure concentration of a pollutant to its benchmark concentration. An HI is the sum of HQ for HAP that target the same organ or system.

The maximum individual risk was estimated deterministically. More probabilistic presentations and analyses (ranging from simple risk distributions to more quantitative Monte Carlo simulations)[9] may be done to better understand the assessment uncertainty and variability. As our Residual Risk Report to Congress suggested, we would consider doing a probabilistic analysis after considering the needs and scope of the assessment. This is consistent with the policy of EPA as stated in the 1997 "Policy for Use of Probabilistic Analysis in Risk Assessment," which states "* * * it is not the intent of this policy to recommend that probabilistic analysis be conducted for all risk assessments supporting risk management decisions."[10] The policy also states "* * * probabilistic methods should be used wherever the circumstances justify these approaches." As discussed earlier in this preamble, we determined that this level of refinement was not necessary for this risk assessment because the results of a probabilistic analysis are unlikely to affect the proposed risk management decisions.

G. How Did We Assess Environmental Impacts?

In order to assess whether the continuing emissions from these four coke oven facilities could contribute to adverse environmental effects, we performed a screening-level ecological risk assessment. We intentionally designed this assessment to be protective of the health of ecological receptors. It was not intended to be used in predicting specific types of effects to individuals, species, populations, or communities or to the structure and function of the ecosystem. We used the assessment to identify HAP or sources which may pose potential risk or hazard to ecological receptors and, if so, would need to be evaluated in a more refined level of risk assessment.

The screening endpoints were the structure and function of generic aquatic and terrestrial populations and communities, including threatened and endangered species, that might be

[9] Residual Risk Report to Congress, pp. 94–128.

[10] Policy for Use of Probabilistic Analysis in Risk Assessment, EPA Science Policy Council. May 15, 1997.

exposed to HAP emissions from these four facilities. The assessment endpoints were relatively generic with respect to descriptions of the environmental values that are to be protected and the characteristics of the ecological entities and their attributes. We assumed in the assessment that these ecological receptors were representative of sensitive individuals, populations, and communities that may be present near these facilities.

The HAP included in the ecological assessment were the metals cadmium and lead and 11 PAH: Acenaphthene, anthracene, benzo(a)pyrene, benzo(a)anthracene, chrysene, benzo(b)fluoranthene, benzo(k)fluoranthene, fluoranthene, fluorene, pyrene, and indeno-123(cd)pyrene. We derived estimated media concentrations for each of these HAP from the media concentrations estimated in the multipathway exposures assessment. We chose exposure pathways to reflect the potential routes of exposure through sediment, soil, water, and air. We selected these environments because they are considered representative of locations of generic populations and communities most likely to be exposed to the HAP. Within these environments the receptors evaluated consisted of two distinct groups: Terrestrial and aquatic (*i.e.*, including aquatic, benthic, and soil organisms; terrestrial plants and wildlife; and herbivorous, piscivorus, and carnivorous wildlife).

The chronic ecological toxicity screening values used in the assessment were estimates of the maximum concentrations that should not affect survival, growth, or reproduction of sensitive species after long-term (more than 30 days) exposure to HAP. We screened HAP, pathways, and receptors using the ecological HQ method, which simply calculates the ratio of the estimated environmental concentrations to the selected ecological screening values.

H. What Are the Results of the Risk Assessment?

Table 1 of this preamble summarizes the estimated maximum individual risk using the modeled ambient air concentrations from the refined air modeling assessment and risk distribution for the four facilities at the baseline emissions level (*i.e.*, risks based on MACT allowable emission levels allowed by the three regulations for all emission points assessed across the four coke facilities). Table 1 of this preamble also shows the estimated risks attributable to emissions from only charging, door, and topside leaks under the 1993 national emission standards. These latter emissions contribute about 38 percent of total facility HAP emissions.

TABLE 1.—BASELINE RISK ESTIMATES DUE TO HAP EXPOSURE BASED ON 70-YEAR EXPOSURE DURATION [1]

Parameter	Facility	1993 national emission standards
Maximum individual risk from facility with highest risk	500 in a million	200 in a million.
Annual cancer incidence summed for all four facilities (cases/year)	0.1	0.04
Population at risk across all four facilities (modeled to 50 km):		
> 1 in a million	900,000	300,000
> 10 in a million	50,000	8,000
> 100 in a million	300	8
Total modeled	4,000,000	4,000,000

[1] All risk, cancer incidence, and population estimates are rounded to one significant figure.

The maximum individual facility-level risk (*i.e.*, modeled risk based on emission levels allowed by the three regulations for all emission points assessed) is 500 in a million compared to 200 in a million for emissions only from those processes associated with the 1993 national emission standards. This level of risk was seen at only one of the four facilities assessed. The maximum individual facility-level risk values for the other three facilities were 50, 100, and 100 in a million compared with risks of 20, 50, and 70 in a million, respectively, for emissions associated with only the 1993 national emission standards.

The annual cancer incidence (the number of cancer cases estimated to occur) for all facilities combined is 0.1 and 0.04 cases per year based on the facility level versus the emissions level from sources subject to the 1993 national emission standards, respectively. Across all four facilities, and assuming the entire population is exposed for 70 years, approximately 900,000 persons (approximately 20 percent of total population) are estimated to be exposed to risks greater than 1 in a million for the total facility emissions compared to 300,000 persons (approximately 7 percent) for the emission points subject to the 1993 national emission standards.

We also evaluated potential risks for adverse health effects other than cancer. The estimated maximum inhalation HI for any noncancer effect from an entire facility is 0.4 for hematologic (blood) effects due to benzene. In addition, results from a multipathway risk assessment presented in the risk assessment document shows that cancer risks from inhalation exposures exceed cancer risks due to ingestion, generally, by an order of magnitude. In this same assessment, the noncancer ingestion HI was estimated to be 0.001. This level was seen at two facilities assessed with high-end exposure factors.

The results of a screening-level ecological assessment show that each of the coke plants had ecological HQ values less than 1 for all pollutants assessed. Therefore, it is not likely that the HAP emitted would pose an ecological risk to ecosystems near any of these facilities. It is also not likely that any threatened and endangered species, if they exist around these facilities, would be adversely affected by these HAP emissions because they are not likely to be any more sensitive to the effects of these HAP than the species evaluated.

The risk analysis assumed that all emission points from the batteries are leaking or emitting at the maximum rate allowable under the 1993 national emission standards for charging, doors, and topside leaks, since it is theoretically possible that these amounts of emissions could occur. However, this assumption (although theoretically possible) overstates actual emission levels. We analyzed 1,000 to 2,600 daily compliance determinations for each battery to compare the actual average emissions to the maximum rate allowed under the 1993 national emission standards as modeled.[11] The

[11] We updated the database to include inspections in 2003. There was only a small change from the previous database used in the risk analysis for actual emissions, and the update did not have a

results of this analysis indicate that average performance is better than the current MACT limits and is closer to the more stringent 2010 LAER limits. The five MACT track batteries average 44 percent of the MACT limit for doors leaks, 16 percent of the limit for lid leaks, 21 percent of the limit for offtake leaks, and 27 percent of the limit for charging. An average performance that is better than the limit is to be expected because if batteries were to operate on average at the level of the 1993 national emission standards, they would likely exceed the standards a high percent of the time. Consequently, facility owners and operators consistently operate below the standards to avoid violations.

Table 2 of this preamble repeats (from Table 1) the estimated risks attributable to charging, doors, lids, and offtakes at the baseline level (*i.e.*, the level of risk assuming emissions from the batteries are at the maximum allowed by the 1993 national emission standards). Table 2 of this preamble further projects risks at the 2010 LAER level.

TABLE 2.—RISK ESTIMATES DUE TO HAP EXPOSURE BASED ON 70-YEAR EXPOSURE DURATION

Parameter	1993 national emission standards	2010 LAER
Maximum individual risk at facility with highest risk	200 in a million	180 in a million.[1]
Annual cancer incidence summed for all four facilities (cases/year)	0.04	0.03
Population at risk across all four facilities (modeled to 50 km):		
> 1 in a million	300,000	200,000
> 10 in a million	8,000	7,000
> 100 in a million	8	6
Total modeled	4,000,000	4,000,000

[1] The maximum individual risk estimate of 180 in a million is presented with two significant figures in order to show the risk reduction expected by the 10 percent decrease in emissions we anticipate seeing between the 1993 and 2010 emission levels.

The maximum individual risk is 200 in a million for the baseline and 180 in a million for the 2010 LAER limits. For the baseline, 93 percent of the total modeled population is exposed to risk levels less than 1 in a million compared to 95 percent for the 2010 LAER limits (based on 70-year exposure duration). However, because these facilities are in fact performing better than the limits in the 1993 national emission standards (*i.e.*, they could already meet the 2010 LAER limits), the difference in risk between the two scenarios may be smaller than the table indicates (and could be as small as zero).

We acknowledge that there are uncertainties in various aspects of risk assessment due to the use of some modeling and exposure assumptions. In this risk assessment, the use of these assumptions is likely to result in our overestimating the maximum individual risk and the magnitude of risk experienced by individual members of the population. For example, Tables 1 and 2 of this preamble present estimates of the number of people whose individual risk exceeds various levels (*e.g.*, 1 in a million, 10 in a million, 100 in a million) under different scenarios (*e.g.*, 1993 national emission standards, 2010 LAER). We based these estimates on an assumption that everyone in the modeled population (4 million people) is exposed to the maximum level of coke oven emissions allowed by the MACT standard rather than the actual emissions known to occur now, and that they were exposed to these emissions in one place of residence for 70 years. Such a scenario is very unlikely because individuals typically do not occupy the same residence for such a long period of time (*e.g.*, the median residential occupancy period is approximately 9 years, and less than 0.1 percent of the population is estimated to occupy the same residence for greater than 70 years). Because EPA typically assumes that an individual's excess lifetime risk of cancer is directly proportional to their duration of exposure to the carcinogen(s) in question, reducing the duration of exposure for individuals in the modeled population would reduce the estimates of their risk. To illustrate this, we performed an additional analysis that showed that the average excess lifetime cancer risks for individuals in the modeled population are likely to be about six times less than we predicted. These results are based on using the national average residency time of 12 years as the exposure duration rather than 70 years. We then used these results to develop a rough lower-bound estimate of the distribution of population risks, which suggests that the numbers of people exposed to risk levels greater than 100, 10, and 1 in a million could be as low as 0, 200, and 70,000, respectively. These are likely to be under-estimates because we assumed people would move entirely out of the area after their current stay. We are working on a better way to more accurately estimate population risks for future residual risk assessments.

We must temper these data with the understanding that when individuals move to another location, they are replaced by new residents which would increase the total number of people exposed beyond the 4 million assumed in this assessment. Also, because of the assumed proportionality described above, if a more detailed exposure duration treatment were used, the predicted cancer incidence in the total modeled population would not change, but the expected distribution of risk in that population would have fewer individuals in the upper risk ranges. In addition, the risks may not change appreciably for individuals moving elsewhere in the same community. As a result, the total number of exposed individuals likely would be greater than we predicted in Tables 1 and 2 of this preamble (the number of exposed individuals is a function of the length of time that the emissions, as modeled, continue).

I. What Is Our Decision on Acceptable Risk and Ample Margin of Safety?

Section 112(f)(2)(A) of the CAA states that if the MACT standards for a source emitting a:

> * * * known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category * * * to less than one in one million, the Administrator shall promulgate [residual risk] standards * * * for such source category.

The risk to the individual most exposed to emissions from coke ovens is 1 in a million or greater. Coke oven batteries subject to the proposed amendments emit known, probable, and possible human carcinogens, and, as shown in Tables 1 and 2 of this preamble, we estimate that the

significant impact on the estimate of emissions and risks.

maximum individual risk (discussed below) associated with the limits in the 1993 national emission standards is 200 in a million. Even if we were to consider the uncertainty and variability in the exposure and modeling assumptions used to derive our estimate of maximum individual risk, such an analysis is unlikely to change any decisions that would be made based on that level of risk.

In the 1989 Benzene NESHAP, the first step of the ample margin of safety framework is the determination of acceptability (*i.e.*, are the estimated risks due to emissions from these facilities "acceptable"). This determination is based on health considerations only. The determination of what represents an "acceptable" risk is based on a judgment of "what risks are acceptable in the world in which we live" (54 FR 38045, quoting the *Vinyl Chloride* decision at 824 F.2d 1165) recognizing that our world is not risk-free.

In the 1989 Benzene NESHAP, we determined that a maximum individual risk of approximately 100 in a million should ordinarily be the upper end of the range of acceptable risks associated with an individual source of pollution. We defined the maximum individual risk as "the estimated risk that a person living near a plant would have if he or she were exposed to the maximum pollutant concentrations for 70 years." We explained that this measure of risk "is an estimate of the upperbound of risk based on conservative assumptions, such as continuous exposure for 24 hours per day for 70 years." We acknowledge that maximum individual risk "does not necessarily reflect the true risk, but displays a conservative risk level which is an upper bound that is unlikely to be exceeded."

Understanding that there are both benefits and limitations to using maximum individual risk as a metric for determining acceptability, the Agency acknowledged in the 1989 Benzene NESHAP that "consideration of maximum individual risk * * * must take into account the strengths and weaknesses of this measure of risk." Consequently, the presumptive risk level of 100 in a million provides a benchmark for judging the acceptability of maximum individual risk, but does not constitute a rigid line for making that determination. In establishing a presumption for the acceptability of maximum individual risk, rather than a rigid line for acceptability, we explained in the Benzene NESHAP that risk levels should also be weighed with a series of other health measures and factors, including:

- The numbers of persons exposed within each individual lifetime risk range and associated incidence within, typically, a 50 km (about 30 miles) exposure radius around facilities;
- The science policy assumptions and estimation uncertainties associated with the risk measures;
- Weight of the scientific evidence for human health effects;
- Other quantified or unquantified health effects;
- Effects due to co-location of facilities and co-emission of pollutants; and
- The overall incidence of cancer or other serious health effects within the exposed population.

In some cases, these health measures and factors may provide a more realistic description of the magnitude of risk in the exposed population than that provided by "maximum individual risk."

We consider the level of risk resulting from the limits in the 1993 national emission standards to be acceptable for this source category. Although the calculated level of maximum individual risk (200 in a million) is greater than the presumptively acceptable level of maximum individual risk under the Benzene NESHAP formulation (100 in a million), we also considered other factors in making our determination of acceptability, as directed by the Benzene NESHAP. The principal factors that influenced our decision are the following: more than 93 percent of the exposed population has risks less than 1 in a million; fewer than 8 people in the exposed population have risks exceeding 100 in a million; the annual incidence of cancer resulting from the limits in the 1993 national emission standards is estimated as 0.04 cases, or 1 case per 25 years; and, in practice facilities are achieving emissions levels less than the limits in the 1993 national emission standards, such that the actual risks from those sources are less than those presented for the modeled population in Tables 1 and 2 of this preamble. The levels of these measures of risk, when considered in combination, are acceptable. In addition, no significant noncancer health effects or adverse ecological impacts would be anticipated at this level of emissions. Therefore, the risks associated with the limits in the 1993 national emission standards are acceptable after considering maximum individual risk, the population exposed at different risk levels, the projected absence of noncancer effects and adverse ecological effects, estimation uncertainty, and the other factors described earlier.

In the second step of the ample margin of safety framework, we considered setting standards at a level which may be equal to or lower than the acceptable risk level and which protect public health with an ample margin of safety. In making this determination, we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors.

We considered options that might provide a level of control more stringent than the acceptable risk level for this source category (1993 national emission standards). One obvious option is to evaluate the 2010 LAER limits, since these limits are already specified in the statute as benchmarks. Our review of the data shows that these limits can be achieved by the MACT track batteries and will result in improved emission control. Three of the batteries have never exceeded the 2010 LAER limits for all four emission points. The historical data show that the remaining two batteries have exceeded the limit for doors in a few instances. These same two batteries have never exceeded the 2010 LAER limits for charging and offtakes. One of these two batteries has occasionally exceeded the limit for lids. The control technology for these emission points is a work practice program that includes procedures to identify leaks and to seal them when they occur. Increased diligence in controlling door and lid leaks would allow these batteries to achieve compliance with the 2010 LAER limits. The additional effort to control door and lid leaks would not require additional personnel. The available information indicates that an increase in maintenance labor and sealing materials would be the primary components of any small increase in costs. The cost is estimated at $4,500/yr based on the projected number of additional leaks to be sealed and a conservative estimate of 30 minutes of labor per leak.

We also considered the feasibility of emission limits more stringent than the 2010 LAER limits. We analyzed emissions data from the four by-product coke plants consisting of 3 to 7 years of daily compliance demonstrations for each battery. The inspection data show that the batteries have achieved the 2010 LAER limits a high percentage of the time. However, the data also show that there is variability in the level of control that is achieved over time, and emission limits that are not-to-be exceeded must account for this variability. Variability can be

introduced by a number of factors, such as the type of seals (metal, luted, or water seals); coking conditions (cycle time, temperature, coal mix, oven pressure, whether furnace or foundry coke is produced); battery features (design, age, condition of brickwork and structural steel); weather conditions; and different work crews, as well as the variability inherent in Method 303 inspections.

For door leaks, recent Method 303 inspection data show that three batteries have consistently achieved the 2010 LAER limits, but these batteries have had compliance determinations that approached those limits (*e.g.*, 3.5 percent leaking doors compared to a limit of 4 percent). The other two batteries sometimes were higher than the proposed limit of 4 percent leaking doors and reported maximum values of 4.7 and 4.4 percent leaking. These two batteries averaged only one door leak during inspections. Considering that leaks cannot be entirely eliminated at all times, we are not certain that more stringent limits that approach zero door leaks can be achieved consistently. The data show that the 2010 LAER limits have been achieved a high percent of the time; however, the data do not show that these batteries have achieved more stringent levels on a not-to-be-exceeded basis.

The data show a similar situation for lid leaks and the proposed limit of 0.4 percent leaking lids. All five batteries on average perform below the limit. However, the batteries approach or exceed the 2010 limit on occasion due to inherent variability. One battery had maximum values that exceeded the limit (up to 0.5 percent leaking lids), one battery had maximum values equal to the limit (0.4 percent leaking lids), and three batteries approached the limit at 0.3 percent leaking lids. All of the batteries averaged less than one lid leak during the inspections with averages of 0.1 to 0.3 lid leaks per inspection.

For offtake leaks, two batteries approached the limit of 2.5 percent leaking with inspection results of 2.4 percent leaking. The other three batteries had maximum values of 1.3 to 1.9 percent leaking. The average number of leaking offtakes during the inspections ranged from 0.1 to 0.9 leaks. Considering that these batteries approach or exceed the 2010 limits for lids and offtakes on occasion while averaging less than one leak per inspection, we cannot conclude that limits more stringent than those proposed have been demonstrated as achievable on a consistent basis.

For charging, all five batteries consistently met the proposed limit of 12 seconds per charge with maximum values of 4 to 9 seconds per charge. We evaluated the feasibility of a more stringent emission limit for charging. The data indicate that a limit of 9 seconds per charge has been achieved by the five batteries on a consistent basis. However, charging emissions contribute only 8 percent of the total emissions from the four emission points, and a 25 percent reduction in the charging emission limit would result in only a 2 percent reduction in overall emissions. A more stringent charging emission limit would achieve only a negligible reduction in emissions and risk while increasing the potential for non-compliance. Consequently, we determined that a more stringent charging emission limit is not warranted.

We considered one other option that would reduce risk beyond the 2010 LAER levels—requiring facilities to convert to the non-recovery cokemaking technology. We considered this technology because of its potential environmental benefits and because Congress required that we evaluate this technology as a basis for emission standards for new coke oven batteries.

Replacing existing batteries with non-recovery batteries would be financially crippling to the industry. The construction of a non-recovery battery requires a capital investment on the order of hundreds of millions of dollars (about $300 per ton of coke capacity). For example, the estimated capital cost to replace batteries on the MACT track ranges from $50 to $290 million per plant based on the existing coke capacity at these plants. The domestic coke industry is currently economically depressed, and the lower cost of imported coke has adversely affected domestic production. Based on recent trends that show a continuing decline in domestic coke capacity due to shutdowns, these coke facilities would be more likely to permanently close rather than construct new non-recovery batteries. For example, 12 of the 30 coke plants operating in 1993 have permanently shut down, and five of these plants were on the MACT track. Consequently, we determined that requiring the replacement of existing batteries with non-recovery batteries was not a reasonable or economically feasible option.

We examined more closely the current performance of the MACT track batteries, emissions and risks based on current performance, and the potential cost impacts of the 2010 LAER limits. As with many industrial processes, performance of coke oven batteries is variable from day to day. Recognizing this, the MACT and LAER standards are 30-day averages of seconds of charging and percent of leaking doors, lids and offtakes. A consequence of this is that longer-term averages (a year or longer) necessarily will be lower than the highest 30-day average during the same time period—40 to 73 percent lower for leaking doors, and lower for the other parameters, based on the level of emissions control achieved during recent visible emission inspections. This results in actual emissions lower than would occur if all facilities emitted consistently at the allowable 30-day average limits: 7.3 tons/yr of BSO based on actual visible emission observations vs. 11.2 tons/yr based on allowable visible emissions.

In Table 3 of this preamble, we provide risk estimates for these current "actual emissions".

TABLE 3.—RISK ESTIMATES BASED ON 70-YEAR EXPOSURE DURATION

Parameter	1993 national emission standards sources based on the allowable emission limits	1993 national emission standards sources based on current actual emissions [1]
Maximum individual risk at facility with highest risk	200 in a million	140 in a million.
Annual cancer incidence summed for all four facilities (cases/year)	0.04	0.02
Population at risk across all four facilities (modeled to 50 km):		
> 1 in a million	300,000	200,000
> 10 in a million	8,000	6,000
> 100 in a million	8	6
Total modeled	4,000,000	4,000,000

[1] Based on the level of emission control achieved during visible emissions inspections conducted from 1995 through 2003 (nationwide emissions estimated as 7.3 tons/yr).

When we examined compliance records for the four facilities, we found that they all met all the 2003 MACT levels for charging and for percent of leaking doors, lids and offtakes, except for one battery at one facility for percent leaking doors, in the first years after the MACT rule was published (but before the 2003 level took effect). After that time, that facility stayed below the 2003 MACT level. That facility's 30-day levels of percent leaking doors were above the 2010 LAER level several times into 1998, but then stayed below that level since that time.

Two batteries at a second facility stayed consistently below the 2003 MACT level for percent leaking doors, but had a number of events where the 30-day average exceeded the 2010 LAER level, as recently as 2001 and 2002. Similarly, one battery at that facility, while staying below the 2003 MACT level for percent leaking lids, had a few episodes when it exceeded the 2010 LAER level.

For the other facilities and for the other parameters, the batteries showed consistent compliance not only with the 2003 MACT levels, but with the 2010 LAER levels. In some cases, the maximum 30-day averages in the compliance history would have been relatively close to the 2010 LAER levels (3.0 percent maximum vs. 3.3 percent 2010 LAER percent leaking doors level for one facility, for example) but most would be less close.

Given this compliance history, only one facility would need to alter its practices in any way to consistently meet the levels being proposed today, equivalent to the 2010 LAER. The available information indicates that an increase in maintenance labor and sealing materials would be the primary components of any small increase in costs. The cost is estimated at $4,500/yr based on the projected number of additional leaks to be sealed and a conservative estimate of 30 minutes of labor per leak. We estimate that this facility's annual emissions would decrease by about 0.1 tons/yr. We anticipate no additional actions or costs at the other three facilities, and consequently no change in their emissions.

We estimate that there would be very small changes in the resulting risks because the one facility that we expect to take action as a result of the levels being proposed has only 8 percent of the total modeled population, its estimated maximum risk level is 70 in a million, and the total reduction in emissions is likely to be relatively small (from 7.3 tons/yr to 7.2 tons/yr). The maximum individual risk at the facility with the highest risk would not change, nor would the number of people at a risk above 100 in a million for all facilities (because we know from the data that all six of the individuals estimated to be at this level of risk reside around one of the three facilities currently meeting the 2010 LAER limits). We anticipate very small decreases in the total annual cancer incidence summed across all four facilities and in the estimated number of people at a risk above 10 in a million and 1 in a million. These decreases are well within the noise level of our ability to estimate such changes.

We determined that the 2010 LAER limits provide an opportunity for additional control and are achievable and reasonable. We believe that these coke oven batteries can achieve the 2010 LAER limits at a reasonable cost. Establishing more stringent limits or requiring the non-recovery technology is not technologically or economically feasible. Therefore, our proposed determination is that control to the 2010 LAER levels would provide an ample margin of safety to protect public health and the environment.

We expect that implementation of the proposed limits would reduce the estimated risk that a person living near a facility would have if he or she were exposed to that level for 70 years. Implementation of the proposed limits would ensure that we provide the maximum feasible protection against the estimated health risks by protecting the greatest number of persons to an individual lifetime risk level of no higher than 1 in a million. Specifically, under the proposed standard, more than 95 percent of the persons living within 50 km of the coke plants would be exposed at risk levels less than 1 in a million, as compared with more than 93 percent under the current standard. Additionally, the maximum estimated target organ specific HI for the emissions of HAP that may cause effects other than cancer from all emission points at the facility is 0.4. These emissions do not "exceed a level which is adequate to protect public health with an ample margin of safety."[12] Actual emissions would be reduced from 7.3 tons/yr to 7.2 tons/yr at a cost of $4,500/yr. No coke oven batteries are projected to close because of the proposed amendments. We specifically request comments on how measured data and modeled data are used to support the proposal.

As noted earlier, this analysis relates only to emissions from a single source category associated with coke oven batteries, not with total facility risk. If we adopt the facilitywide approach when the residual risk review for other source categories at coke plants is conducted, we plan to evaluate the risk associated with emissions from the other source categories. Moreover, we propose that an ample margin of safety should be obtained for emissions from the entire facility. If we adopt the facilitywide approach, delaying a determination of facilitywide risk is, for practical purposes, a necessity. First, EPA has only recently promulgated MACT standards for other emission points at coke oven facilities (*i.e.*, pushing, quenching, and battery stacks) and lacks information on what actual emissions will be once those standards take effect. Such information is directly relevant to assessing ample margin of safety (from the standpoint of both risk, technical feasibility, and cost). Second, at least one of the facilities involved in the present proposal contains a LAER battery as well as a MACT battery. Facilitywide determinations of risk for such facilities necessarily must be delayed due to the statutory delay for assessing residual risk from LAER batteries.

Finally, delaying facilitywide risk determinations appears to have some support in the legislative history of CAA section 112(f). That history suggests that although "residual risk standards shall be sufficient to protect the most exposed person with an ample margin of safety from the combined hazardous emissions of an entire major source," EPA need not do so in a single step.[13] Rather, since the statute establishes a staggered schedule for issuing standards:

> * * * the residual risk standards for such other categories do not have to be set until the prescribed later dates, but the standards for the categories in the first group must be sufficiently stringent so that when all residual risk standards have been set, the public will be protected with an ample margin of safety from the combined emissions of all sources within a major source.[14]

Here, as shown in Table 1 of this preamble, EPA has considered total baseline emissions and there is "sufficient room so that the combined risks from all parts of [coke oven batteries] do not exceed the ample margin of safety level."[15]

J. What Determination Is EPA Proposing Pursuant to CAA Section 112(d)(6)?

Section 112(d)(6) requires us to review and revise MACT standards as

[12] Section 112 of the Clean Air Act.

[13] Legislative History at 868 (Senate Debate on Conference Report, emphasis added).

[14] *Id.*

[15] *Id.* at 868–69.

necessary every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time. If we find relevant changes, we may revise the MACT standards and develop additional standards.[16]

The EPA does not read the provision as requiring another analysis of MACT floors for existing and new sources. First, there is nothing in the language of section 112(d)(6) that speaks clearly to the issue of whether or not another floor analysis is required. Indeed, the requirement that EPA consider "practices, processes, and control technologies" suggests that no additional floor determination is required, since it omits mention of "emission limitation achieved," the critical language in section 112(d)(3) triggering the requirement to determine floors for existing sources. Our position that floors are not required to be redetermined is further demonstrated by the fact that the provision for periodic review of the MACT standards was included in the 1990 draft legislation (*i.e.*, the House and Senate Committee reported bills) before the floor provisions (which came from later amendments to the Committee bills) were introduced.

The EPA also believes that interpreting section 112(d)(6) as requiring additional floor determinations could effectively convert existing source standards into new source standards. After 8 years, all sources would be performing at least at the MACT levels of performance, so that the average of the 12 percent of those best performers would be performing at a lower level still, probably approaching that of new sources. The EPA sees no indication that section 112(d)(6) was intended to have this type of inexorable downward ratcheting effect. Rather, we read the provision as essentially requiring EPA to consider developments in pollution control at the sources ("taking into account developments in practices, processes, and control technologies," in the language of section 112(d)(6)), and assessing the costs, non-air quality effects, and energy implications of potentially stricter standards reflecting those developments.

EPA also solicits comment on the relationship between section 112(d)(6) and 112(f). If EPA were to determine that standards adopted under section 112(f) (or section 112(d) standards evaluated pursuant to section 112(f)) provide an ample margin of safety to protect public health and prevent adverse environmental effects, one can reasonably question whether further reviews of technological capability are "necessary" (section 112(d)(6)).

Applying these principles here to by-product coke oven batteries, although no new control technologies have been developed since the original standards were promulgated, our review of emissions data revealed that existing MACT track batteries can achieve a level of control for door leaks and topside leaks more stringent than that required by the 1993 national emission standards. The emissions data for these batteries show that the more stringent limits for LAER track batteries have been achieved in practice on a continuing basis through diligent work practices to identify and stop leaks. However, as discussed in detail in the consideration of more stringent limits in this preamble, the data also show that the batteries are not consistently "over-achieving" the proposed 2010 LAER limits. Consequently, emission limits more stringent than those we are proposing to establish under section 112(f) (*i.e.*, the 2010 LAER limits) are not warranted.

We also conducted a review of the MACT standards for new by-product batteries. Our finding in this review was that there should be no change in these standards because we have identified no new technologies or control techniques that would support limits more stringent than the current standards for new by-product batteries.

We also reviewed the MACT standards for new and existing non-recovery batteries. There are no existing non-recovery batteries on the MACT track subject to the requirements in 40 CFR 63.303(a). Consequently, we are not revising those requirements.

Our review of the MACT requirements for new non-recovery batteries indicated that additional requirements for new sources are warranted based on the performance of the best-controlled existing sources. There is one non-recovery plant on the MACT track, and it is subject to the limits for new sources in the 1993 national emission standards. The new source standard in 40 CFR 63.303(b)(2) requires that this plant install a capture and control system for charging emissions. However, at the time the national emission standards were developed, no information was available that could be used to develop an emissions standard for charging emissions. Charging emissions are controlled primarily by using a high draft to contain emissions within the oven's combustion system, and additional control is provided by capturing and controlling any fugitive emissions that escape from the oven. A measure of the effectiveness and performance of charging emission control is the opacity of the fugitive emissions that escape the oven and its capture system. In 1998 and 1999, opacity readings for charging emissions were documented at this non-recovery plant. During startup in 1998, the plant achieved 20 percent opacity (3-minute average) for 95 percent of the charges that were observed. In 1999, the control performance improved to 99 percent of the opacity observations less than 20 percent. When the opacity observations were averaged over five charges, the variability was reduced, and a 20 percent opacity limit was achieved over 99 percent of the time. The few exceedances of 20 percent were caused by equipment malfunctions, changes in the coal grind, or inexperienced operators. These data indicate that a limit of 20 percent opacity (averaged over five charges) can be achieved, and that such a limit ensures that charging emissions are consistently well controlled. This limit reflects the performance of the best-controlled similar source. Consequently, we are proposing to revise the standards to incorporate a limit of 20 percent opacity for charging for new sources.

This non-recovery plant has a permit requirement that oven damper adjustments be made to maximize oven draft during charging, which ensures better containment of charging emissions within the combustion system. This requirement represents an improvement in control technology that should be applied to new sources. Consequently, we are proposing a requirement for new non-recovery batteries that the draft on the oven be maximized during charging. The proposed revisions would also require that records be kept to demonstrate compliance with the work practice standard, including procedures for monitoring damper position during charging to ensure that the draft is maximized.

Our review also indicates that the batteries at this plant are equipped with a baghouse to control charging emissions. An emission limit (in the plant's operating permit) of 0.0081 pounds of PM per ton of dry coal (lb/ton) has been achieved by these batteries. Consequently, we are proposing an emission limit of 0.0081 lb/ton for charging emission controls at new non-recovery batteries. We are also

[16] Technical review of LAER track standards occurs on a different time frame than MACT track batteries. Section 112(i)(8)(C) requires such review by January 2007. Thus, we are not considering any changes to LAER track battery standards in this rulemaking.

proposing a daily observation for visible emissions from the charging emissions control device to ensure it operates properly on a continuing basis. If any visible emissions are observed, corrective action must be taken to find and remedy the cause of the visible emissions. A visible emissions observation must be made within 24 hours by EPA Method 9 (40 CFR part 60, appendix A), and the opacity must be less than 10 percent to demonstrate that the corrective action was successful.

The EPA views all of these proposed changes for charging as reflecting developments in practices and control technologies at reasonable cost without appreciable non-air environmental impacts. Consequently, these proposed requirements for new sources are appropriate under section 112(d)(6).

We also reviewed the current MACT standards for door leaks in 40 CFR 63.303(b)(1), which require either zero percent leaking doors or monitoring the pressure in each oven or common tunnel to ensure the ovens are operated under negative pressure. Both of these options are based on monitoring doors once each day of operation. The intent of these requirements is to assure that no doors leak during normal operation. However, as explained earlier in this preamble, following these practices does not necessarily result in no leaks. We are proposing to amend the MACT standards to clarify this fact, and to assure that the extent and number of any such leaks are minimized. At the same time, our review indicates that there have been no changes in technology or emission control that would warrant more stringent emission standards for these sources. Consequently, we are not proposing more stringent requirements for coke oven doors under section 112(d)(6).

We specifically request your comments on our review of the 1993 national emission standards and our proposed determinations under CAA section 112(d)(6).

K. Why Are We Amending the Requirements in the 1993 National Emission Standards for Door Leaks on Non-Recovery Batteries?

We are proposing to amend the requirements in the 1993 national emission standards for door leaks at non-recovery batteries on the MACT track to ensure that the existing standards reflect MACT. The current MACT standards for door leaks in 40 CFR 63.303(b)(1) require either zero percent leaking doors or monitoring the pressure in each oven or common tunnel to ensure the ovens are operated under negative pressure. The intent of these requirements is to assure that no doors leak during normal operation. We recently obtained information from the affected facility that indicates certain equipment failures or operating problems can temporarily create a positive pressure in a non-recovery oven and cause a door to leak. The principal operating problems that can cause a door to leak include plugging of an uptake damper (resulting in a loss of oven draft) and fouling of the heat exchanger used for heat recovery (resulting in a positive back pressure). These events are very infrequent and short in duration because the problem is quickly remedied (typically in 5 to 15 minutes).

Our review of the door leak standards indicates that the current requirements in the 1993 national emission standards should be strengthened to ensure that door leaks do not occur regularly and to ensure that when leaks do occur, they are promptly stopped. The current standard does not address the rare occurrences when the equipment that controls the oven's draft may malfunction and cause minor leakage around the door area. We are proposing to supplement the current requirements with additional requirements to ensure that the minor leaks are promptly corrected.

The non-recovery plant subject to the MACT standards has developed procedures to assure that corrective actions are taken to stop leaks within 15 minutes. Problems with uptake dampers and fouled heat exchangers are quickly remedied, and the plant has instituted preventative measures to minimize their occurrence. Based on the plant's current practices, we have developed a proposed revision that would require that any door leak be stopped within 15 minutes by taking corrective actions. We are also proposing an exception that would allow up to 45 minutes to stop the leak for no more than two occurrences per battery during any semiannual reporting period. This exception is designed to accommodate the situations where 15 minutes may not be enough time to identify the cause of the leak and take corrective actions to stop the leak. We are allowing up to 45 minutes to stop a leak if a worker must enter a cokeside shed to take corrective action. After a door leak has been stopped, no additional leaks would be allowed from that oven during the remainder of its coking cycle. We are proposing monitoring provisions to require that each door be observed for visible emissions immediately after charging. We are also proposing that the startup, shutdown, and malfunction plan be expanded to identify failures that create door leaks, develop corrective actions for each potential failure, and establish preventative procedures to minimize their occurrence. These requirements are designed to ensure that even if an infrequent door leak occurs, the leak is stopped promptly.

The primary impact of the proposed amendments on the affected non-recovery plant would be additional labor to monitor for emissions and to identify and correct any problems associated with emissions from charging and doors. The revisions would not impose new substantive additional controls and are designed to assure that the non-recovery plant implements its current procedures on a continuing basis. The plant is expected to incur a total annualized cost of about $28,000 per year as a result of the proposed revisions.[17]

We are also clarifying that the work practice requirements for charging for existing non-recovery plants also apply to new non-recovery plants. This was the intent of the original rule; however, the requirement is not stated clearly in the 1993 national emission standards. This revision will not affect the non-recovery plant subject to the new source standards in the 1993 national emission standards because the work practice requirements have already been incorporated into its operating permit. However, the proposed revision will clarify that the work practice requirements apply to non-recovery plants that might be constructed in the future.

L. What Are the Estimated Cost Impacts of the Proposed Amendments?

We evaluated the cost impacts of the proposed amendments for existing by-product coke oven batteries and believe that the MACT track batteries can achieve the 2010 LAER limits with only a minimal increase in cost. Our conclusion is based on a review of inspection data that show the level of control that these plants are currently achieving.

The results of several years of daily compliance determinations show that all five MACT track batteries have met the 2010 LAER limits for charging and offtakes 100 percent of the time. There should be no incremental increase in costs for these emission points.

The review of the past 3 years of daily compliance determinations for door leaks shows that three batteries met the 2010 LAER limits 100 percent of the

[17] Additional details are provided in the supporting statement for the Information Collection Request.

time; consequently, these batteries will incur very little costs beyond those currently being incurred to control door leaks. One plant with two batteries had a few excursions of the proposed limit. One of these batteries met the limit 99 percent of the time, and the other met it 95 percent of the time. These two batteries have hand-luted doors, and leaks are controlled by applying sealing material. These batteries may incur minor increases in labor, supervision, and sealing materials to achieve the small improvement in control that is needed.

Four of the batteries have achieved the 2010 LAER limit for lid leaks 100 percent of the time and should incur little additional costs. One battery achieved the limit 96 percent of the time and may incur some additional cost. However, lid leaks are not difficult to control because they only require the application of sealant to a flat horizontal surface. Increased diligence in identifying and stopping lid leaks may be required. We estimate the cost of additional control of door leaks and lid leaks at one plant at $4,500/yr for additional labor and materials to identify and seal leaks.

We also evaluated the cost impacts of the proposed amendments for non-recovery batteries. There has been only one new non-recovery plant constructed in the past 30 years, and we have no indication that a new non-recovery battery will be constructed and operated in the next 5 years. Consequently, we expect no cost impacts in the near term from our proposed requirements for charging for new non-recovery batteries. Our proposed amendments for door leaks will affect one non-recovery plant. However, this plant is already implementing most of the proposed requirements as part of its routine operation. We expect that some increased labor will be incurred to identify and correct the infrequent occurrence of door leaks. In addition, there will be some burden associated with reporting and recordkeeping for these events. We estimate that the additional requirements proposed for door leaks will result in an increase in total annualized cost of $28,000 per year.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) 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:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this regulatory action is a "significant regulatory action" because it raises novel legal or policy issues. As such, this action was submitted to OMB for Executive Order 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the proposed amendments have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR No. 1362.05.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed amendments would establish work practice requirements designed to improve control of door leaks applicable to all non-recovery coke oven batteries. The owner or operator also would be required to add certain information on malfunctions associated with door leaks to the startup, shutdown, and malfunction plan. New non-recovery batteries also would be required to implement the same work practice standards that already apply to existing non-recovery batteries. Plant owners or operators would be required to submit an initial notification of compliance status and semiannual compliance reports. Records would be required to demonstrate compliance with applicable emission limitations and work practice requirements. Additional requirements would apply to a new non-recovery coke oven battery, but none are expected during the 3-year period of this ICR. This action would not impose any new or revised information collection burden on by-product coke oven batteries subject to the proposed amendments. These batteries are currently meeting the monitoring, recordkeeping, and reporting requirements in the 1993 national emission standards.

The increased annual average monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years of this ICR) is estimated to total 448 labor hours per year at a cost of $28,338. This includes an increase of three responses per year from one respondent for an average of about 148 hours per response. No capital/startup costs or operation and maintenance costs are associated with the proposed monitoring requirements.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of

automated collection techniques, EPA has established a public docket for the proposed rule, which includes this ICR, under Docket ID number OAR–2003–0056. Submit any comments related to the ICR for the proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after August 9, 2004, a comment to OMB is best assured of having its full effect if OMB receives it by September 8, 2004. The final rule amendments will respond to any OMB or public comments on the information collection requirements contained in the proposal.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of today's proposed amendments on small entities, small entity is defined as: (1) A small business having no more than 1,000 employees, as defined by the Small Business Administration for NAICS codes 331111 and 324199; (2) a government jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and that is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the five companies subject to the requirements of the proposed amendments, one company (operating a total of three batteries) is considered a small entity. However, the proposed amendments will not impose any significant additional regulatory costs on that small entity because it is already meeting the stricter emissions limitations for by-product coke oven batteries included in the proposed rule amendments, as well as the monitoring, recordkeeping, and reporting requirements.

Although the proposed rule amendments will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed amendments on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed amendments and have included provisions that address their concerns. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. No significant costs are attributable to the proposed amendments. Thus, the proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the proposed amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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."

The proposed amendments do not have federalism implications. They 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. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on

one or more Indian tribes, on the relationship between the Federal government and Indian tribes."

The proposed amendments do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, 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. No tribal governments own plants subject to the MACT standards for coke oven batteries. Thus, Executive Order 13175 does not apply to the proposed amendments.

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

Executive Order 13045 (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 EPA 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.

The proposed amendments are not subject to the Executive Order because they are not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to coke oven emissions.

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

The proposed amendments are not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we believe that the proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

These proposed amendments involve technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D (PM) and 9 (opacity) of 40 CFR part 60, appendix A.

Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, and 9. One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the proposed amendments. The voluntary consensus standard ASME PTC 19–10–1981—Part 10, "Flue and Exhaust Gas Analyses," is cited in the proposed amendments for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to Method 3B.

Our search for emissions monitoring procedures identified 14 voluntary consensus standards applicable to the proposed amendments. The EPA determined that 12 of these standards identified for measuring PM were impractical alternatives to EPA test methods due to lack of equivalency, detail, specific equipment requirements, or quality assurance/quality control requirements. The two remaining voluntary consensus standards identified in the search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly Method 1) and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2. Therefore, EPA does not intend to adopt these standards for this purpose. Detailed information on the EPA's search and review results is included in the docket.

Section 63.309 of the proposed amendments lists the EPA test methods that would be required. Under 40 CFR 63.7(f) and 40 CFR 63.8(f), a source may apply to EPA for permission to use alternative test methods or monitoring requirements in place of any of the EPA test methods, performance specifications, or procedures.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: July 29, 2004.

Michael O. Leavitt,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 63.14 is amended by revising paragraph (i)(3) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(3) ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," IBR approved for §§ 63.309(k)(1)(iii), 63.685(b), 63.3360(e)(1)(iii), 63.4166(a)(3), 63.4965(a)(3), and 63.5160(d)(1)(iii).

* * * * *

Subpart L—[Amended]

3. Section 63.300 is amended by:

a. Redesignating existing paragraphs (a)(3) through (a)(5) as (a)(5) through (a)(7); and

b. Adding new paragraphs (a)(3) and (a)(4).

The additions read as follows:

§ 63.300 Applicability.

(a) * * *

(3) [date 90 days after publication of the final rule amendments in the **Federal Register**], for existing by-product coke oven batteries subject to emission limitations in § 63.302(a)(3) and for non-recovery coke oven batteries subject to the emission limitations and requirements in § 63.303(b)(3) or (c);

(4) Upon startup for a new non-recovery coke oven battery subject to the

emission limitations and requirements in § 63.303(b), (c), and (d). A new non-recovery coke oven battery subject to the requirements in § 63.303(d) is one for which construction or reconstruction commenced on or after August 9, 2004;

* * * * *

4. Section 63.302 is amended by adding new paragraph (a)(3) to read as follows:

§ 63.302 Standards for by-product coke oven batteries.

(a) * * *

(3) On and after [date 90 days after publication of the final rule amendments in the **Federal Register**];

(i) 4.0 percent leaking coke oven doors for each tall by-product coke oven battery and for each by-product coke oven battery owned or operated by a foundry coke producer, as determined by the procedures in § 63.309(d)(1);

(ii) 3.3 percent leaking coke oven doors for each by-product coke oven battery not subject to the emission limitation in paragraph (a)(3)(i) of this section, as determined by the procedures in § 63.309(d)(1);

(iii) 0.4 percent leaking topside port lids, as determined by the procedures in § 63.309(d)(1);

(iv) 2.5 percent leaking offtake system(s), as determined by the procedures in § 63.309(d)(1); and

(v) 12 seconds of visible emissions per charge, as determined by the procedures in § 63.309(d)(2).

* * * * *

5. Section 63.303 is amended by:

a. Redesignating paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5) and adding new paragraph (b)(3); and

b. Adding new paragraphs (c) and (d).

The additions read as follows:

§ 63.303 Standards for non-recovery coke oven batteries.

* * * * *

(b) * * *

(3) For charging operations, the owner or operator shall implement, for each day of operation, the work practices specified in § 63.306(b)(6) and record the performance of the work practices as required in § 63.306(b)(7).

* * * * *

(c) Except as provided in § 63.304, the owner or operator of any non-recovery coke oven battery shall meet the work practice standards in paragraphs (c)(1) and (2) of this section.

(1) The owner or operator shall observe each coke oven door after charging and record the oven number of any door from which visible emissions occur. Emissions from coal spilled during charging or from material trapped within the seal area of the door are not considered to be a door leak if the owner or operator demonstrates that the oven is under negative pressure, and that no emissions are visible from the top of the door or from dampers on the door.

(2) Except as provided in paragraphs (c)(2)(i) and (ii) of this section, if a coke oven door leak is observed at any time during the coking cycle, the owner or operator shall take corrective action and stop the leak within 15 minutes from the time the leak is first observed. No additional leaks are allowed from doors on that oven for the remainder of that oven's coking cycle.

(i) For no more than two times per battery in any semiannual reporting period, the owner or operator may take corrective action and stop the leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed.

(ii) The limit of two occurrences per battery specified in paragraph (c)(2)(i) of this section does not apply if a worker must enter a cokeside shed to stop a leaking door under the cokeside shed. The owner or operator shall take corrective action and stop the door leak within 45 minutes (instead of 15 minutes) from the time the leak is first observed. The evacuation system and control device for the cokeside shed must be operated at all times there is a leaking door under the cokeside shed.

(d) The owner or operator of a new non-recovery coke oven battery shall meet the emission limitations and work practice standards in paragraphs (d)(1) through (4) of this section.

(1) The owner or operator shall not discharge or cause to be discharged to the atmosphere from charging operations any fugitive emissions that exhibit an opacity greater than 20 percent, as determined by the procedures in § 63.309(j).

(2) The owner or operator shall not discharge or cause to be discharged to the atmosphere any emissions of particulate matter (PM) from a charging emissions control device that exceed 0.0081 pounds per ton (lbs/ton) of dry coal charged, as determined by the procedures in § 63.309(k).

(3) The owner or operator shall observe the exhaust stack of each charging emissions control device at least once during each day of operation to determine if visible emissions are present and shall record the results of each daily observation or the reason why conditions did not permit a daily observation. If any visible emissions are observed, the owner or operator must:

(i) Take corrective action to eliminate the presence of visible emissions;

(ii) Record the cause of the problem creating the visible emissions and the corrective action taken;

(iii) Conduct visible emission observations according to the procedures in § 63.309(m) within 24 hours after detecting the visible emissions; and

(iv) Report any 6-minute average, as determined according to the procedures in § 63.309(m), that exceeds 10 percent opacity as a deviation in the semiannual compliance report required by § 63.311(d).

(4) The owner or operator shall develop and implement written procedures for adjusting the oven uptake damper to maximize oven draft during charging and for monitoring the oven damper setting during each charge to ensure that the damper is fully open.

6. Section 63.309 is amended by adding new paragraphs (j) through (m) to read as follows:

§ 63.309 Performance tests and procedures.

* * * * *

(j) The owner or operator of a new non-recovery coke oven battery shall conduct a performance test once each week to demonstrate compliance with the opacity limit in § 63.303(d)(1). The owner or operator shall conduct each performance test according to the procedures and requirements in paragraphs (j)(1) through (3) of this section.

(1) Using a certified observer, determine the average opacity of five consecutive charges per week for each charging emissions capture system if charges can be observed according to the requirements of Method 9 (40 CFR part 60, appendix A), except as specified in paragraphs (j)(1)(i) and (ii) of this section.

(i) Instead of the procedures in section 2.4 of Method 9 (40 CFR part 60, appendix A), record observations to the nearest 5 percent at 15-second intervals for at least five consecutive charges.

(ii) Instead of the procedures in section 2.5 of Method 9 (40 CFR part 60, appendix A), determine and record the highest 3-minute block average opacity for each charge from the consecutive observations recorded at 15-second intervals.

(2) Opacity observations are to start when the door is removed for charging and end when the door is replaced.

(3) Using the observations recorded from each performance test, the certified observer shall compute and record the average of the five 3-minute block averages.

(k) The owner or operator of a new non-recovery coke oven battery shall

conduct a performance test to demonstrate initial compliance with the emission limitations for a charging emissions control device in § 63.303(d)(2) within 180 days of the compliance date that is specified for the affected source in § 63.300(a)(4) and report the results in the notification of compliance status. The owner or operator shall prepare a site-specific test plan according to the requirements in § 63.7(c) and shall conduct each performance test according to the requirements in § 63.7(e)(1) and paragraphs (k)(1) through (4) of this section.

(1) Determine the concentration of PM according to the following test methods in appendix A to 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas, ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses" (incorporated by reference, *see* § 63.14).

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of front half PM in the stack gas.

(2) During each PM test run, sample only during periods of actual charging when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 dry standard cubic feet (dscf) during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a charge and finish at the end of a charge (*i.e.*, sample for an integral number of charges).

(3) Determine and record the total combined weight of tons of dry coal charged during the duration of each test run.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of PM, lb/ton;

C = Concentration of PM, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during charging, hr;

P = Total amount of dry coal charged during the test run, tons; and

K = Conversion factor, 7,000 grains per pound (gr/lb).

(l) The owner or operator of a new non-recovery coke oven battery shall conduct subsequent performance tests for each charging emissions control device subject to the PM emissions limit in § 63.303(d)(2) at least once during each term of their title V operating permit.

(m) Visible emission observations of a charging emissions control device required by § 63.303(d)(3)(iii) must be performed by a certified observer according to Method 9 (40 CFR part 60, appendix A) for one 6-minute period.

7. Section 63.310 is amended by adding new paragraph (j) to read as follows:

§ 63.310 Requirements for startups, shutdowns, and malfunctions.

* * * * *

(j) The owner or operator of a non-recovery coke oven battery subject to the work practice standards for door leaks in § 63.303(c) shall include the information specified in paragraphs (j)(1) and (2) of this section in the startup, shutdown, and malfunction plan.

(1) Identification of potential malfunctions that will cause a door to leak, preventative maintenance procedures to minimize their occurrence, and corrective action procedures to stop the door leak.

(2) Identification of potential malfunctions that affect charging emissions, preventative maintenance procedures to minimize their occurrence, and corrective action procedures.

8. Section 63.311 is amended by:

a. Revising paragraph (b)(1) and adding new paragraphs (b)(3) through (7);

b. Revising paragraph (c)(1) and adding new paragraph (c)(3);

c. Revising paragraphs (d)(1) through (3) and adding new paragraphs (d)(4) through (9); and

d. Revising paragraphs (f)(1)(i) and (ii) and adding new paragraphs (f)(1)(iv) through (ix).

The revisions and additions read as follows:

§ 63.311 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

(1) Statement signed by the owner or operator, certifying that a bypass/bleeder stack flare system or an approved alternative control device or system has been installed as required in § 63.307.

(2) * * *

(3) Statement, signed by the owner or operator, certifying that all work practice standards for charging operations have been met as required in § 63.303(b)(3).

(4) Statement, signed by the owner or operator, certifying that all work practice standards for door leaks have been met as required in § 63.303(c).

(5) Statement, signed by the owner or operator, certifying that the information on potential malfunctions has been added to the startup, shutdown and malfunction plan as required in § 63.310(j).

(6) Statement, signed by the owner or operator, that all applicable emission limitations in § 63.303(d)(1) and (2) for a new non-recovery coke oven battery have been met. The owner or operator shall also include the results of the PM performance test required in § 63.309(k).

(7) Statement, signed by the owner or operator, certifying that all work practice standards in § 63.303(d)(3) and (4) for a new non-recovery coke oven battery have been met.

(c) * * *

(1) Intention to construct a new coke oven battery (including reconstruction of an existing coke oven battery and construction of a greenfield coke oven battery), a brownfield coke oven battery, or a padup rebuild coke oven battery, including the anticipated date of startup.

* * * * *

(3) Intention to conduct a PM performance test for a new non-recovery coke oven battery subject to the requirements in § 63.303(d)(2). The owner or operator shall provide written notification according to the requirements in § 63.7(b).

(d) * * *

(1) Certification, signed by the owner or operator, that no coke oven gas was vented, except through the bypass/bleeder stack flare system of a by-product coke oven battery during the reporting period or that a venting report has been submitted according to the requirements in paragraph (e) of this section.

(2) Certification, signed by the owner or operator, that a startup, shutdown, or malfunction event did not occur for a coke oven battery during the reporting period or that a startup, shutdown, and malfunction event did occur and a report was submitted according to the requirements in § 63.310(e).

(3) Certification, signed by the owner or operator, that work practices were implemented if applicable under § 63.306.

(4) Certification, signed by the owner or operator, that all work practices for non-recovery coke oven batteries were implemented as required in § 63.303(b)(3).

(5) Certification, signed by the owner or operator, that all coke oven door leaks on a non-recovery battery were stopped according to the requirements in § 63.303(c)(2) and (3). If a coke oven door leak was not stopped according to the requirements in § 63.303(c)(2) and (3), or if the door leak occurred again during the coking cycle, the owner or operator must report the information in paragraphs (d)(5)(i) through (iii) of this section.

(i) The oven number of each coke oven door for which a leak was not stopped according to the requirements in § 63.303(c)(2) and (3) or for a door leak that occurred again during the coking cycle.

(ii) The total duration of the leak from the time the leak was first observed.

(iii) The cause of the leak (including unknown cause, if applicable) and the corrective action taken to stop the leak.

(6) Certification, signed by the owner or operator, that the opacity of emissions from charging operations for a new non-recovery coke oven battery did not exceed 20 percent. If the opacity limit in § 63.303(d)(1) was exceeded, the owner or operator must report the number, duration, and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(7) Results of any PM performance test for a charging emissions control device for a new non-recovery coke oven battery conducted during the reporting period as required in § 63.309(l).

(8) Certification, signed by the owner or operator, that all work practices for a charging emissions control device for a new non-recovery coke oven battery were implemented as required in § 63.303(d)(3). If a Method 9 visible emissions observation exceeds 10 percent, the owner or operator must report the duration and cause of the deviation (including unknown cause, if applicable), and the corrective action taken.

(9) Certification, signed by the owner or operator, that all work practices for oven dampers on a new non-recovery coke oven battery were implemented as required in § 63.303(d)(4).

* * * * *

(f) * * *

(1) * * *

(i) Records of daily pressure monitoring, if applicable according to § 63.303(a)(1)(ii) or § 63.303(b)(1)(ii).

(ii) Records demonstrating the performance of work practice requirements according to § 63.306(b)(7). This requirement applies to non-recovery coke oven batteries subject to the work practice requirements in § 63.303(a)(2) or § 63.303(b)(3).

* * * * *

(iv) Records to demonstrate compliance with the work practice requirement for door leaks in § 63.303(c). These records must include the oven number of each leaking door, total duration of the leak from the time the leak was first observed, the cause of the leak (including unknown cause, if applicable), the corrective action taken, and the amount of time taken to stop the leak from the time the leak was first observed.

(v) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(c)(1)(iv).

(vi) Records of weekly performance tests to demonstrate compliance with the opacity limit for charging operations in § 63.303(d)(1). These records must include calculations of the highest 3-minute averages for each charge, the average opacity of five charges, and, if applicable, records demonstrating why five consecutive charges were not observed (*e.g.*, the battery was charged only at night).

(vii) Records of all PM performance tests for a charging emissions control device to demonstrate compliance with the limit in § 63.303(d)(2).

(viii) Records of all daily visible emission observations for a charging emission control device to demonstrate compliance with the requirements limit in § 63.303(d)(3).

(ix) Records to demonstrate compliance with the work practice requirements for oven uptake damper monitoring and adjustments in § 63.303(d)(4).

* * * * *

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FEDERAL REGISTER PAGES AND DATE, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

72.....47828
73.....47828
74.....47828
77.....47828
78.....47828
81.....47399
96.....47828
180.....47051
300.....47068, 47072, 48187

42 CFR

Proposed Rules:
403.....46632
405.....47488
410.....47488
411.....46632, 47488
414.....47488
417.....46632, 46866
418.....47488
422.....46866
423.....46632
424.....47488
484.....47488
486.....47488

44 CFR

64.....46435
65.....47780, 47786
67.....46436, 46437

Proposed Rules:
67.....47830, 47831, 47832

46 CFR

71.....47378
114.....47378
115.....47378
125.....47378
126.....47378
167.....47378
169.....47378
175.....47378
176.....47378

47 CFR

0.....46438
1.....46438, 47788, 47790
2.....46438, 48157
25.....47790, 48157
73.....46447, 47385, 47795
74.....48157
90.....46438, 48157
95.....46438
101.....48157

Proposed Rules:
1.....48188
2.....46462, 48192
25.....48192
63.....48188
64.....48188
73.....46474, 46476, 47399
90.....46462

49 CFR

375.....47386

Proposed Rules:
171.....47074
172.....47074
173.....47074
175.....47074
178.....47074
571.....47075

50 CFR

17.....47212, 47330, 48115
20.....48163
100.....46999
402.....47732
635.....47797
648.....47798
660.....46448
679.....46451, 47025, 47026

Proposed Rules:
17.....47834, 48102

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 9, 2004

AGRICULTURE DEPARTMENT

Forest Service

National Forest System lands:

Locatable minerals; notice of intent or plan of operations filing requirements; published 7-9-04

AGRICULTURE DEPARTMENT

Religious organizations; participation in USDA programs; equal treatment for faith-based organizations; published 7-9-04

EDUCATION DEPARTMENT

Grants:

Direct grant programs; discretionary grant applications; electronic submission; published 7-8-04

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Iowa; published 6-10-04

Texas; published 6-10-04

Virginia; published 6-8-04

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arizona; published 7-19-04

Nebraska and Wyoming; published 7-19-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Lake Michigan—

Sheboygan, WI; security zone; published 6-10-04

Pierhead Channel, NJ, et al.; safety zones; published 7-8-04

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants:

Faith-based organizations; equal participation; agency policy; published 7-9-04

TRANSPORTATION DEPARTMENT

Special regulations:

Civil penalties; published 7-9-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Standard instrument approach procedures; published 8-9-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Administrative claims; monetary damages filed under Federal Tort Claims Act; comments due by 8-16-04; published 6-17-04 [FR 04-13711]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 8-17-04; published 6-18-04 [FR 04-13730]

Pacific Coast groundfish; comments due by 8-17-04; published 7-7-04 [FR 04-15256]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Speculative position limits; comments due by 8-16-04; published 6-17-04 [FR 04-13678]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Performance-based contracting use for services; incentives; comments due by 8-17-04; published 6-18-04 [FR 04-13618]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Energy conservation standards—

Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

List of hazardous air pollutants, petition process, lesser quantity designations, and source category list; comments due by 8-18-04; published 7-19-04 [FR 04-16335]

Air pollution control; new motor vehicles and engines:

Heavy duty diesel engines and vehicles; in-use emissions testing; comments due by 8-16-04; published 6-10-04 [FR 04-13179]

Heavy duty diesel engines and vehicles; in-use emissions testing; correction; comments due by 8-16-04; published 6-21-04 [FR 04-13930]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

New Jersey; comments due by 8-16-04; published 7-16-04 [FR 04-16208]

Air quality implementation plans; approval and promulgation; various States:

Montana; comments due by 8-19-04; published 7-20-04 [FR 04-16448]

Ohio; comments due by 8-19-04; published 7-20-04 [FR 04-16333]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticide programs:

Pesticide container and containment standards; comments due by 8-16-04; published 6-30-04 [FR 04-14463]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Humates; comments due by 8-16-04; published 6-16-04 [FR 04-12913]

Solid waste:

Municipal solid waste landfill permit program—

Indiana; comments due by 8-16-04; published 7-16-04 [FR 04-16205]

Solid wastes:

Municipal solid waste landfill permit program—

Indiana; comments due by 8-16-04; published 7-16-04 [FR 04-16204]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 12-30-99 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

California; comments due by 8-16-04; published 7-1-04 [FR 04-15003]

Radio stations; table of assignments:

Arkansas and Massachusetts; comments due by 8-19-04; published 7-19-04 [FR 04-16366]

Florida; comments due by 8-19-04; published 7-19-04 [FR 04-16369]

Wisconsin; comments due by 8-19-04; published 7-19-04 [FR 04-16368]

FEDERAL DEPOSIT INSURANCE CORPORATION

Fair and Accurate Credit Transactions Act; implementation:

Fair credit reporting provisions; affiliate marketing; comments due by 8-16-04; published 7-15-04 [FR 04-15950]

Maritime Security Program; comments due by 8-19-04; published 7-20-04 [FR 04-16454]

TREASURY DEPARTMENT

Comptroller of the Currency

Fair and Accurate Credit Transactions Act; implementation:

Fair credit; affiliate marketing; comments due by 8-16-04; published 7-15-04 [FR 04-15950]

TREASURY DEPARTMENT

Foreign Assets Control Office

Cuban assets control regulations:

Commission for Assistance to a Free Cuba, recommendations; implementation; comments due by 8-16-04; published 6-16-04 [FR 04-13630]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Safe harbor sale and leaseback transactions; uniform capitalization of interest expense; comments due by 8-18-04; published 5-20-04 [FR 04-11361]

TREASURY DEPARTMENT

Thrift Supervision Office

Fair and Accurate Credit Transactions Act; implementation:

Fair credit reporting; affiliate marketing; comments due by 8-16-04; published 7-15-04 [FR 04-15950]

LIST OF PUBLIC LAWS

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H.R. 4613/P.L. 108–287

Department of Defense Appropriations Act, 2005 (Aug. 5, 2004; 118 Stat. 951)

Last List August 5, 2004

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–052–00004–3)	60.00	Jan. 1, 2004
700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
1200–End	(869–052–00006–0)	61.00	Jan. 1, 2004
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–052–00008–6)	44.00	Jan. 1, 2004
27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–052–00011–6)	62.00	Jan. 1, 2004
300–399	(869–052–00012–4)	46.00	Jan. 1, 2004
400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
700–899	(869–052–00014–1)	43.00	Jan. 1, 2004
900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–052–00017–5)	61.00	Jan. 1, 2004
1600–1899	(369–052–00018–3)	64.00	Jan. 1, 2004
1900–1939	(869–052–00019–1)	31.00	Jan. 1, 2004
1940–1949	(869–052–00020–5)	50.00	Jan. 1, 2004
1950–1999	(869–052–00021–3)	46.00	Jan. 1, 2004
2000–End	(869–052–00022–1)	50.00	Jan. 1, 2004
8	(869–052–00023–0)	63.00	Jan. 1, 2004
9 Parts:			
1–199	(869–052–00024–8)	61.00	Jan. 1, 2004
200–End	(869–052–00025–6)	58.00	Jan. 1, 2004
10 Parts:			
1–50	(869–052–00026–4)	61.00	Jan. 1, 2004
51–199	(869–052–00027–2)	58.00	Jan. 1, 2004
200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–052–00029–9)	62.00	Jan. 1, 2004
11	(869–052–00030–2)	41.00	Feb. 3, 2004
12 Parts:			
1–199	(869–052–00031–1)	34.00	Jan. 1, 2004
200–219	(869–052–00032–9)	37.00	Jan. 1, 2004
220–299	(869–052–00033–7)	61.00	Jan. 1, 2004
300–499	(869–052–00034–5)	47.00	Jan. 1, 2004
500–599	(869–052–00035–3)	39.00	Jan. 1, 2004
600–899	(869–052–00036–1)	56.00	Jan. 1, 2004
900–End	(869–052–00037–0)	50.00	Jan. 1, 2004
13	(869–052–00038–8)	55.00	Jan. 1, 2004
14 Parts:			
1–59	(869–052–00039–6)	63.00	Jan. 1, 2004
60–139	(869–052–00040–0)	61.00	Jan. 1, 2004
140–199	(869–052–00041–8)	30.00	Jan. 1, 2004
200–1199	(869–052–00042–6)	50.00	Jan. 1, 2004
1200–End	(869–052–00043–4)	45.00	Jan. 1, 2004
15 Parts:			
0–299	(869–052–00044–2)	40.00	Jan. 1, 2004
300–799	(869–052–00045–1)	60.00	Jan. 1, 2004
800–End	(869–052–00046–9)	42.00	Jan. 1, 2004
16 Parts:			
0–999	(869–052–00047–7)	50.00	Jan. 1, 2004
1000–End	(869–052–00048–5)	60.00	Jan. 1, 2004
17 Parts:			
1–199	(869–052–00050–7)	50.00	Apr. 1, 2004
200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
1–399	(869–052–00058–2)	50.00	Apr. 1, 2004
400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
*500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00061–0)	47.00	Apr. 1, 2004
170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
200–299	(869–052–00064–7)	17.00	Apr. 1, 2004
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–052–00066–3)	47.00	Apr. 1, 2004
600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
*300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
*25	(869–052–00078–7)	63.00	Apr. 1, 2004
26 Parts:			
*§§ 1.0–1–1.60	(869–052–00079–5)	49.00	Apr. 1, 2004
*§§ 1.61–1.169	(869–052–00080–9)	63.00	Apr. 1, 2004
§§ 1.170–1.300	(869–052–00081–7)	60.00	Apr. 1, 2004
*§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
§§ 1.401–1.440	(869–052–00083–3)	62.00	Apr. 1, 2004
§§ 1.441–1.500	(869–052–00084–1)	57.00	Apr. 1, 2004
§§ 1.501–1.640	(869–052–00085–0)	49.00	Apr. 1, 2004
§§ 1.641–1.850	(869–052–00086–8)	60.00	Apr. 1, 2004
§§ 1.851–1.907	(869–052–00087–6)	61.00	Apr. 1, 2004
§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
2–29	(869–052–00092–2)	60.00	Apr. 1, 2004
30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
40–49	(869–052–00094–9)	28.00	Apr. 1, 2004
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

Title	Stock Number	Price	Revision Date
500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003
27 Parts:			
*1–199	(869–052–00099–0)	64.00	Apr. 1, 2004
200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
400–629	(869–050–00118–7)	50.00	July 1, 2003
630–699	(869–050–00119–5)	37.00	[7]July 1, 2003
700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7]July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6]July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–050–00159–4)	50.00	July 1, 2003
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41 Chapters:			
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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
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7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
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45 Parts:			
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200–499	(869–050–00176–4)	33.00	Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

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